

This introductory book on Thai politics and the rule of law explains why chronically unstable Thailand struggles to mediate and adjudicate its political disputes. It focuses on the continuities between the pre-1932 and post-1932 periods. Since the shift to constitutional monarchy in 1932, the power of the monarch and military has endured; the legislature, electorate and, until recently, judiciary have been comparatively powerless; and constitutions and laws have been comparatively unimportant. Historical continuities are also evident in the persistence of hierarchical thinking and ethno-nationalism, both of which have inhibited open debates about governance, and in the emergence of a distinctively Thai legal culture.

Thailand's governance was re-cast ambitiously in the 1890s, 1932 and 1997. Since 1997, governing Thailand and developing Thailand's economy have become harder. So political disputes have become more acute and the absence of a national consensus on dispute settlement mechanisms more obvious. Until governance is again re-cast, Thailand's political instability and cycle of coups will continue.

This volume offers contemporary insights and historical context to the general reader, newcomers to Thailand, and students of Thai history, politics and law.

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THAILAND

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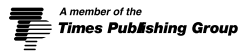
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To Teresa, Matthew and Anita

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Thailand Map



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PREFACE

“This is Thailand.”

The great letters in English and Siamese seemed to stare down insolently from the blatant, newly erected sign that, edging out from the jungle wall, encroached a foot or two onto the highway with the very evident intention that none should mistake its implied warning.¹

Thais often tell foreigners—or, more specifically, Westerners or *farang*²—that we don’t, won’t or can’t understand Thailand, especially Thai politics, particularly when Thailand is experiencing political instability, a coup or the aftermath of a coup.

Sometimes, Thais make this claim simply to mask their own difficulty in explaining Thailand’s complex and confusing politics.

On other occasions, Thais prefer to say to a foreigner, “You’ll never understand,” and move on to a simpler topic. I feel the same when Thais ask me to explain the game of cricket. I can explain it, and I enjoy the game, but with a foreigner I’d rather talk about something that is more familiar and less intricate.

Other Thais want to avoid talking to *farang* about Thailand’s politics because it embarrasses them. Thai politics, like politics everywhere, has villains² and scandals. Thais, like most people, don’t like to air their dirty laundry in public. As an Australian I feel embarrassed when foreigners ask me about our less appealing politicians and their more shameful policies and practices. Sometimes I don’t want to talk about them. In the same way, some Thais don’t want to talk about Thai politics.

¹ H.G. Quaritch Wales, *Years of Blindness* (New York: Cromwell, 1943), 1.

² *Farang* is the Thai word for a person of European origin or a white person. *Farang* can also be used to describe the West generally.

Also, as a rule, Thais believe it is impolite to disagree. Rather than risk discord, Thais will lightly dismiss our attempts to discuss Thai politics with a seemingly casual, “You don’t understand,” or, “You won’t understand,” or, “You’ll never understand.” This is another way of saying “*mai pen rai*”, the Thai phrase that means “it doesn’t matter”, which Thais use habitually to minimise or avoid disagreement or conflict.

Some Thais, though, truly believe we don’t understand their politics. They aren’t avoiding a conversation because they find it hard to explain Thai politics. They aren’t embarrassed by disarray in Thai politics. Nor are they trying to avoid a disagreement. They genuinely believe that we fail to comprehend. I hope that, having read this book, they will agree that any continuing failure on my part to comprehend is not for want of trying.

Perhaps because I was a government official for over 30 years, I am more interested in the practice of government and politics than the theory. I have some sympathy for the choices faced by leaders and officials, whether they are kings, ministers, judges, generals or bureaucrats. Each day, they have to deal with what is urgent as well as what is important; and in the face of everyday pressures it is not always easy to detect the difference. All will make mistakes and, because governing a nation is not easy, the longer they are in office the more mistakes they will accumulate.

When I have made judgments about the decisions of Thailand’s political leaders—elected and unelected—I have tried to assess whether, given the challenges and choices they faced at the time, those decisions were reasonable, not whether they illuminated a political theory.

I have written for the general reader. In particular, I have in mind the diplomat, journalist, businessperson or NGO employee whose new posting is Thailand, as well as the student who is new to Thai history, politics and law. Often they have little or no prior experience

of Thailand and, unnervingly for them, very soon their employer, clients or professor will expect an explanation of modern Thai politics from them. At least initially, these readers may not have the time or appetite to grapple with the theory development and testing that is usually critical to academic writing, or at least provides a framework for it.

My conclusions about Thailand have also been influenced by my experiences elsewhere as a diplomat, especially my postings to Papua New Guinea (1983–85), the Soviet Union (1987–91) and Malaysia (2003–07). Unlike Papua New Guinea, Thailand is not a new nation. It does not face the nation-building challenges, especially linguistic diversity, forbidding geography and socio-economic indicators that Papua New Guinea faces. The authoritarian strain in Thai politics is not comparable with the authoritarianism of the Soviet Union. Some commentators on authoritarianism in Thailand tend to demonise what is not truly demonic. I am not excusing authoritarianism in Thailand. Nor am I excusing human rights abuses that occur in Thailand. But I wonder what vocabulary these commentators would use if Thailand ever drifted towards Soviet-style authoritarianism, which is highly unlikely. The eminent Thai historian, Nidhi Eoseewong, has written: “If Hitler and Stalin are taken as the standard of dictators, Thai dictators of every era are only clowns.”³ At the core of Malaysia’s politics are race and religion. For all their complexity and seeming intractability, the problems at the core of Thailand’s politics are not as difficult to overcome as Malaysia’s problems—which is not to minimise the significance of race and religion in the politics of Thailand, especially in the southern border provinces.

My broadly positive view of Thailand’s achievements and my sympathy for government officials may prompt some readers to question my reliability—and perhaps my sanity. I hope they will

³ Nidhi Eoseewong, “The Thai Cultural Constitution,” *Kyoto Review of Southeast Asia*, Issue 3, March 2003 (translated by Chris Baker; originally published in Thai in 1991)—<https://kyotoreview.org/issue-3-nations-and-stories/the-thai-cultural-constitution/>

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be more forgiving of the value I have placed on history. History helps us to understand the present. I have therefore tried to explain contemporary political developments and issues in Thailand within an historical context.

Because I am not concerned with theory development, and because I am not an activist-scholar who sympathises with either the existing regime or the resistance to it, this book seldom considers what might have happened or what should happen. It tries to be a book about what has happened and why.

I owe a debt, first of all, to Thais who have discussed Thai politics with me. Many of them did so when I was a diplomat. They spoke in confidence and I will not mention them by name. Some of them also shared with me their fears and hopes as well as their thoughts and ideas, which stimulated me to try to understand their story and the story of Thailand.

I should add here that this book does not reflect the views of the Australian Government, to which I am thankful for the opportunity to work in Bangkok for over seven years. The views in this book are entirely my own.

Those views are clearer in my mind and articulated more clearly thanks to the kindness of Stephen Henningham, Craig Keating, Joel Akins, David Armstrong, Paul Stephens, Anita Wise, Gwen Robinson, Greg Raymond, Mark Warnock and Kyle Wilson, who read the entire manuscript or parts of it, made valuable comments, and encouraged me to continue.

I am grateful to Kirida Bhaopichitr and Punpreecha Bhuthong of the Thailand Development Research Institute for their assistance with the graphs; to Brendan Whyte for drawing the maps; and to Watcharapat Kongkhaow for the cover photograph of a wooden panel of a temple pediment, which was included in the “Revolutionary Things” exhibition in 2018 at the Cartel Art Space, curated by Chatri Prakitnonthakan and Kittima Chareeprasit. The panel shows an angel

carrying the 1932 Constitution on a traditional Thai tray—an example of the government’s use of Buddhist imagery and rituals in the 1930s to persuade Thais of the significance of their first constitution, and a wonderful illustration of a principal theme of this book—the co-existence of traditional and modern political legitimacies in Thailand.

Conducting research was easier than it might have been thanks to the resources and efficient staff of the Siam Society in Bangkok and the National Library of Australia in Canberra.

From the very start of my relationship with Marshall Cavendish International (Asia), Anita Teo has been an understanding as well as a proficient editor. A first-time author could not have wished for more. Michael Spilling was a thoroughly professional copy editor. Thanks to Benson Tan for his work on the design of the book.

Finally, my thanks to Teresa, Matthew and Anita for supporting me in this endeavour, and in so much more.

ABBREVIATIONS

CEO	Chief Executive Officer
IMF	International Monetary Fund
ISOC	Internal Security Operations Command
NACC	National Anti-Corruption Commission
NGO	Non-Governmental Organization
PAD	People's Alliance Of Democracy
PDRC	People's Democratic Reform Committee
THB	Thai Baht
UDD	United Front For Democracy Against Dictatorship

INTRODUCTION

A billionaire tycoon is praised as the champion of the poor. A scandal-tainted politician leads a mass movement against corruption. Protesters declare that they need to block elections to save democracy.¹

Chronic instability is an abiding feature of Thai politics. In the last century, Thailand has been a world leader in its number of coups, attempted coups, constitutions and ministerial reshuffles. Millions of Thais have protested against governments they don't like, most notably in 1973, 1976, 1992, 2005, 2008, 2010 and 2014. They have seized control of parts of the national capital, sometimes for several months. In 2008, yellow-shirted dissenters forced the closure of the international airport. In 2009, red-shirted dissenters forced the government to abandon a meeting of regional heads of government. Just as readily, governments have ordered security forces to shoot protesters. Or security forces and paramilitaries have shot them anyway—with impunity.

Over the same period, few countries have pulled such a high proportion of their population out of poverty and few can match Thailand's achievements in areas like child mortality, life expectancy, universal health care, universal education, maternal health, and gender equality in certain sectors. Thailand usually scores well in the World Bank's ease-of-doing-business survey and the World Economic Forum's report on economic competitiveness. Few peoples have the cultural stability and composure of the Thais, or the resilience and community spirit that Thais exhibit when disasters strike, like the

¹ Thomas Fuller, "Taking on Thailand's Crisis with a Bit of Western Bite," *New York Times*, 8 February 2014.

tsunami in 2004, massive floods in 2011, or the plight of 13 young Thais trapped in a cave for more than two weeks in 2018. And which Southeast Asian nation has accommodated millions of Chinese and other migrants as well as Thailand has?

Without doubt, Thailand is hard to understand. At the height of the demonstrations in Bangkok in February 2014, Thomas Fuller wrote the three sentences in the epigram at the head of this chapter, which capture neatly how confusing Thai politics can be. The billionaire tycoon is Thaksin Shinawatra. The scandal-tainted politician is Suthep Thaugsuban. Fuller might have added that most of the protesters claiming that they were saving democracy by blocking an election would have been supporters of a party called the Democrat Party.

Some Foreign Viewpoints

When we try to understand the politics of other countries, we bring certain preconceptions to the task. Commonly, we try to understand an unfamiliar political culture and an unfamiliar political system by comparing them with the political culture and system of places with which we are familiar.

In the first instance, this is likely to be our own country. For *farang*, the political culture and system of our own country fit within the broader Western liberal democratic tradition. We have three independent branches of government—legislature, executive and judiciary—and a range of other institutions, conventions and practices, like elections and the rule of law, that are rooted in the ideas of equality and individual rights. These are so familiar to us that we almost take them for granted.

Our second point of reference is likely to be other non-Western countries that we have experienced directly or indirectly. This experience could be in Southeast Asia, Asia more broadly, or elsewhere in the non-West. We may have lived or worked there, or

we may have become acquainted with one or more of these countries through reading and study.

To bring these broad observations back to Thailand, and to run the risk of over-simplification: we tend to think of our first reference point—our Western homeland—as “not like Thailand”. And although we are usually not blind to the obvious differences between Thailand and other non-Western countries, we tend to think of our second reference point—our non-Western experience—as “like Thailand” or “more like Thailand” than our Western homeland is.

Colonial Heritages

More likely than not, the non-Western countries that we already know were colonized. In colonized societies, in the place of traditional political authority, the colonial powers substituted themselves (as viceroys, governors-general, political residents and the like) as well as certain Western-style institutions (like centralised bureaucracies, disciplined police and military forces, law courts and, over time, consultative or quasi-consultative bodies). And, by both design and accident, and to a greater or lesser extent in different places, they introduced Western ideas like equality, individual rights, elections and the rule of law, which gradually infiltrated local political culture.

After the colonial powers were dislodged, the leaders of the newly independent nations relied to a certain extent on these imported institutions and ideas to govern. They had little choice. Traditional political authority was a dim memory or debilitated. Above all, it had lost much, if not all, of its legitimacy.

By the time of independence, the leaders of the new nations were informed about, and even steeped in, Western-style institutions and Western ways of thinking—because these institutions and ideas were clothed in a legitimacy previously worn by traditional political authority. The new leaders assumed the governing role of their colonizers and, naturally, relied on the institutions the colonizers

had established—and, more or less, the ideas that underpinned them. Over time, they customised their inherited colonial institutions, conventions and practices to fit their post-colonial environment. Significantly, though, they didn't try to revive or re-establish pre-colonial political authority.

Thailand's Historical Context

Some non-Western countries are indeed more like Thailand than Western countries are. But Thailand differs from almost all other non-Western countries because Thailand wasn't directly colonized. Scholars debate whether Thailand was “indirectly colonized”, or “crypto-colonized”, or “semi-colonized”, or colonized in some other partial manner. But they cannot deny that traditional political authority retained its legitimacy, and even thrived, during the period when traditional authorities in Thailand's neighbours ceded political control to Britain, France, the Netherlands, Spain and the United States. Because Thailand wasn't directly colonized, the threads connecting its pre-modern and modern political history are straighter and stronger. Understanding how and why these threads remained straighter and stronger helps to explain some of the distinctive features of Thai politics.

Although Western powers had fewer opportunities to directly transplant their institutions, conventions and practices into Thai soil, Siam—as Thailand was then called—was influenced by them.² Starting with Britain in 1855, through treaties of extraterritoriality (or “unequal treaties”), they dictated the tax rates that Siam could apply to its exports and imports. The same treaties also compelled Siam to replicate Western legal codes and processes. In addition, Thais found Western ideas both alluring and threatening. So traditional political

authority in Thailand has been challenged and re-shaped in all sorts of ways by external forces. But Thais could control the nature and the pace of this influence in ways that directly colonized peoples couldn't.

To the extent that foreign institutions were introduced into Thailand, they were grafted on to a traditional political system. They were not substitutes for a traditional political system. Western ideas influenced Thai political culture, but they never crushed established ways of thinking. Thailand's traditional political system and traditional political culture, like native plants, continued to grow; they sprouted new shoots and were occasionally pruned into a different shape, but their roots and trunk remained the same. It is this hybrid nature of political authority in Thailand that makes its politics distinctive, even idiosyncratic—and harder to understand.

Western Political Heritage

If our experience of non-Western countries sometimes gets in the way of our understanding of the distinctiveness of Thailand's politics, our experience of our Western homelands can be an even bigger impediment.

First of all, our Western political culture and political systems differ from Thailand's culture and systems even more than those of non-Western countries. Our Western homeland is “not like Thailand”. The organizing principles of our Western liberal democratic system are equality, individual rights, elections and the rule of law. Many Thais are not opposed to these ideas, which continue to influence political debate in Thailand. But these principles have not replaced the foundations of traditional political authority in Thailand, especially hierarchy, patron-client relationships and the dominance of personal connections. Nor have they been as appealing as nationalism.

There is another reason why a Western-centric perspective is problematic. When comparing one culture or political system with another, we may imply that one is superior to the other, even if we

² Before 1939 Thailand was known as Siam, and it was again from 1946–48. I have used “Siam” and “Siamese” when referring to the pre-1939 period and “Thailand” and “Thai” for the period since, except in cases covering both the pre- and post-1939 period, when it normally made more sense to use “Thailand” and “Thai”.

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try hard not to. Both the *farang* and Thai observer can easily fall into that trap. But we *farang* are more likely to do so. The values and interests of the West have shaped the modern world powerfully. For several centuries, the West and modernity have been synonymous. Sometimes willingly and sometimes unwillingly, the non-West has sought to emulate the West in many fields, including politics and governance. Western ideas have held sway in many Western minds (unsurprisingly) and non-Western minds, including the idea that people and societies would be better off if they adopted democratic institutions and the rule of law.

I am not arguing against either democratic institutions or the rule of law. But assumptions that Western values provide some of the answers to Thailand's political challenges can make the foreign observer lazy and conceited. Presuming the superiority of our values, we *farang* can sometimes become judgmental and prescriptive. *Farang* commentators on Thai politics occasionally say things like: "To become a mature democracy Thailand needs to entrench the rule of law." Or "Thais will not be truly democratic until they narrow the gap between the rich and the poor." Or "Thailand will not be stable while Thais are subjects rather than citizens."

These sorts of conclusions about Thailand can help us to see more quickly how Thailand's political culture and political system are different. But they do not help us to understand why Thailand does not yet have the rule of law as we understand it; or why income disparities in Thailand may not be as problematic as many foreigners expect; or why many Thais believe they can happily be subjects, or believe that they can be subjects and citizens simultaneously. In other words, this approach does not help us to make sense of Thailand on its own terms.

Political Instability: Causes and Cures

Understandably, many studies of modern Thai politics have concentrated on the causes of the disputes that fuel Thailand's

chronic instability. Analysts tend to point to one of, or a combination of, class conflict, regional loyalties, urban-rural tensions, disparities in incomes and the allocation of state resources, and an overbearing military protecting the interests of the elite. Or they have assessed why electoral democracy has struggled to take firm root in Thailand.

This study touches on the causes of Thailand's political instability, and on the uncertain course of electoral democracy. But it focuses more on the absence in Thailand of an agreed understanding on where political disputes should be mediated and arbitrated, and on the absence of an agreed understanding on how political conflicts should be arbitrated and, where necessary, adjudicated. The reasons Thailand has not yet reached a consensus on how to mediate, arbitrate and adjudicate political disputes and conflicts also explain the persistence of chronic political instability, as well as the fitfulness of electoral democracy.

In Western-influenced political systems, major disputes over policy and power are usually mediated and settled in the legislature. Failing that, they become key issues in the next election. Or disputes may be taken to the courts, where independent judges make rulings based on the law. Put simplistically, there are three referees: the legislature, the electorate, and the judiciary.

In some circumstances, these three avenues for dispute settlement have been available in Thailand, but not regularly and not consistently. Because traditional political authority has retained legitimacy in Thailand, the monarchy and the military continue, at times, to play a refereeing role in politics, regardless of the views of the legislature, electorate or judiciary, and regardless of the law. Again, put simplistically, in Thailand there are five referees: the monarchy, the military, the legislature, the electorate and the judiciary.

The survey of the course of modern Thai history in Part I of this book focuses more on the continuities than the discontinuities between the pre-1932 and post-1932 periods. This approach helps to explain both the durability of the political role of the monarchy and the military as well as the comparative powerlessness of the legislature, electorate and judiciary, and the comparative unimportance of constitutions and laws. In addition to offering an institutional approach to Thai politics, Part I shows how socio-economic conditions have affected the political temperature in Thailand.

Part II explores some features of the Thai political landscape through lenses which are more familiar to Thais: hierarchy, protection, patron-client relations, personal connections, identity and nationalism. These are so familiar to Thais that they almost take them for granted. On most days, they are as invisible as the air they breathe. An appreciation of Thailand's hierarchical political culture helps us to understand why Thailand does not have independent agencies to mediate and arbitrate political disputes. An appreciation of Thais' sense of identity and nationalism helps us to better understand the continuities between the pre-1932 and post-1932 periods, and to appreciate why open discussions in Thailand about politics and governance are hard.

Part III discusses the role of the law in Thai politics, because so often *farang* and Thais alike express frustration at what they see as the weak application of the rule of law, or even the absence of the rule of law; and because in countries where the rule of law applies there is a trusted adjudicator of political disputes and conflicts: an independent judiciary.

Jointly, the three parts of the book introduce the reader to the politics and the rule of law in Thailand in an historical context. At the same time, each part is more-or-less a stand-alone essay on modern political history, elements of Thai political culture, and the rule of law.

There are two important addenda. The following chapters fall short of being a comprehensive history or assessment of Thai politics

and society over the period since 1932, and they hardly touch on economic or religious developments. The interested reader will find an annotated guide to further reading as well as a conventional bibliography at the end of the book.³

Secondly, as this book is about the impact of history on mainstream Thai politics, it focuses on the traditional political authority of the Chakri dynasty centred in Bangkok. Bangkok's traditional political authority often thrived at the expense of the authority of traditional rulers and traditional systems of government on the periphery of the territory now called Thailand. The literature on the perspective of the "periphery" on Bangkok's political expansion and consolidation has grown over the last 25 years, especially since the publication of Thongchai Winichakul's ground-breaking *Siam Mapped: A History of the Geobody of a Nation*.⁴

3 The best general histories are Pasuk Phongpaichit and Chris Baker, *Thailand: Economy and Politics* (New York: Oxford University Press, 2002, revised edition); Chris Baker and Pasuk Phongpaichit, *A History of Thailand* (Cambridge: Cambridge University Press, 2014, third edition); B.J. Terwiel, *Thailand's Political History: From the 13th Century to Recent Times* (Bangkok: River Books, 2011, revised edition); David K. Wyatt, *Thailand: A Short History* (Chiang Mai: Silkworm Books, 2003, second edition); and Charles F. Keyes, *Thailand: Buddhist Kingdom as Modern Nation State* (Bangkok: Editions Duang Kamol, 1989).

4 Full publication details are: Thongchai Winichakul, *Siam Mapped: A History of the Geobody of a Nation* (Honolulu: University of Hawaii Press, 1994).

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The draft was passed on 27 September 1997, the same day that the government concluded an agreement with the IMF.¹⁰⁵

The 1997 Constitution was different from Thailand's previous 12 constitutions. Like Chulalongkorn's reforms of the 1890s and the constitution of 1932, the constitution of 1997 was an attempt to put Thailand's governance on a new footing. The drafters of the 1997 Constitution tried to answer assorted prayers: the prayers of Thais who were fed up with bullying military governments and ineffectual civilian governments; the prayers of Thais who wanted greater freedom of expression and less corruption; the prayers of business people who wanted a stable government to rescue them from the Asian financial crisis; the prayers of NGOs who wanted greater community consultation on development projects; and the silent prayers of Thais who realised that political stability could not rely forever on King Bhumibol's mediation.

Chapter Three

REFORMATION UNRAVELLING: SINCE 1997

Nothing can bring me home apart from royal kindness
or the power of the people.¹

The 1997 Constitution tried to shift Thailand from a five-branch form of government towards a more conventional three-branch form, under which political disputes would be mediated and arbitrated within the legislature and judiciary, or by the electorate. Both houses of the legislature were fully elected for the first time and, in a bid to lift the public image of the legislature, all parliamentarians had to have a university degree. Elaborate arrangements were put in place to elect an apolitical Senate, which was to play a critical role in overseeing the selection of principled and capable judges and commissioners to serve in the courts and independent agencies. The executive was released from the burdens of unstable coalition governments by an electoral system that favoured larger political parties. Through party lists, the electoral system also allowed for the election of 100 MPs who need not be grass-roots politicians, and who could bring technocratic expertise to the ministry. In addition, the new constitution strengthened the powers of the prime minister.

The judiciary was expanded, with the establishment of a Constitutional Court, administrative courts and a slew of independent

¹⁰⁵ Baker and Pasuk, *A History of Thailand*, 260.

¹ Thaksin Shinawatra in 2008, quoted in Pasuk Phongpaichit and Chris Baker, *Thaksin* (Chiang Mai: Silksworm Books, 2009, second expanded edition), 335.

agencies, the roles of which are reflected in their names: National Anti-Corruption Commission (NACC), Electoral Commission, Human Rights Commission, Ombudsman's Office and State Audit Commission. The judiciary was also given unprecedented authority to check and balance the power of the executive and legislature, and to protect individual rights and freedoms that, for the first time, were spelled out in the charter.

The military lost its hold over the legislature because both houses of parliament were elected. The power of military courts was curbed and military-controlled media outlets faced stiffer competition. The monarchy, while still "enthroned in a position of revered worship and not to be violated", was expected to play a political role only in extreme circumstances.

Thaksin Shinawatra and Popular Legitimacy

The 1997 Constitution created some of the conditions that led in January 2001 to the emergence of a prime minister, Thaksin Shinawatra, with strong electoral support, or popular legitimacy. In the first election under the 1997 Constitution, he had the political skills and financial resources to gain 248 seats in the 500-seat parliament, and shortly afterwards his Thai Rak Thai Party absorbed smaller parties to give his government a comfortable majority. In the 2005 elections, Thai Rak Thai secured 377 seats. In particular, Thaksin was able to tap into the aspirations of the people variously called middle-income peasants, cosmopolitan villagers and urbanised villagers.² His election victory, like most previous Thai electoral victories, owed something to the use of money to gain the support of candidates as well as voters. But in 2001 rural voters of

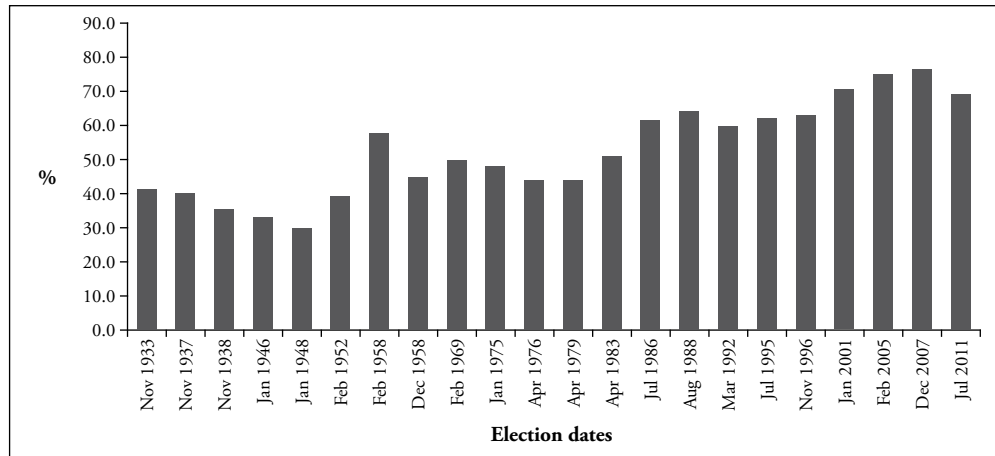
the populous northeast and north, as well as the urban poor who often hailed from these regions, were also won over with Thaksin's well-researched and well-advertised promises of a moratorium on rural debt, a revolving fund for village development and a universal healthcare scheme.

Thaksin's ascendancy, especially in 2001, owed a lot to his ability to convince business-people and the wider community that he could lift the Thai economy out of its post-1997 gloom. In 2000, the CEO of Thailand's biggest business conglomerate, Dhanin Chearavanont, said: "This is an age of economic war. It's crucial that we have a prime minister who understands business and the economy." The CEO of Thailand's biggest bank, Chatri Sophanpanich, said he supported Thaksin "because as a businessman, he understands business".³

In 2001, the Thaksin government appeared to represent a dream come true: it had the clearest electoral mandate in Thai history; it was therefore more stable than previous elected governments; it was governing more efficiently than its predecessors; and it was still free of the allegations of corruption that had tarnished earlier governments. In addition, if the health of a legislature is partly measured by participation rates in elections, the legislature was fairly healthy under Thaksin and the Thai Rak Thai Party (and their successors: first the Palang Prachachon Party, then the Pheu Thai Party). In the 2001, 2005, 2007 and 2011 elections, 70 per cent, 73 per cent, 76 per cent and 69 per cent respectively of the voting age population cast a vote. The following graph shows the growing appetite in Thailand for electoral politics.

³ Quoted in Pasuk and Baker, *Thaksin*, 70.

² Walker, *Thailand's Political Peasants* (Madison: University of Wisconsin Press, 2012), 221; Charles Keyes, *Finding Their Voice*, 185–8; Naruemon Thabchumpon and Duncan McCargo, "Urbanized Villagers in the 2010 Thai Redshirt Protests," *Asian Survey*, Vol 51, Number 6 (November–December 2011), 999–1009.

Graph 1 Voter turnout for general elections, by Election dates

If, as the constitution drafters imagined, the absence of multi-party coalition governments was a sign of a healthy legislature and a more effective executive, the signs were also good. In those four elections Thai Rak Thai and its successor parties secured 50 per cent, 75 per cent, 49 per cent and 53 per cent of the parliamentary seats; its closest rival at each election was the Democrat Party, which secured 26 per cent, 19 per cent, 34 per cent and 32 per cent.⁴

The elected government could focus on policy making rather than politicking, and it could assume some of the power that typically rested with an unaccountable bureaucracy. Drawing on his authority as prime minister—in other words, as the head of the political executive—Thaksin tried to reform the administrative executive, or bureaucracy. He believed the bureaucracy's main task was to implement policies determined by the elected government, so he restructured the bureaucracy and streamlined some of its functions. In keeping with the globally fashionable New Public Management philosophy at the time, he also tried to apply business

⁴ All percentages are rounded. The results of the 2006 and 2014 elections are not included because the Democrat Party boycotted both of them, thereby skewing the results. Also, neither of these elections led to the formation of a new government; both of the Democrat Party boycotts ultimately led to military coups.

principles to public administration, creating “CEO governors” and “CEO ambassadors” who were directed to put the nation’s economic interests first and to take risks.

Supremacy of the Law and Judicial Independence

The new constitutional arrangements also had a profound effect on the judiciary. For several years after 1997, the Constitutional Court delivered weighty judgments that would have pleased the drafters of the Constitution. It restricted the powers of military courts. It made well-judged decisions when considering politically-motivated petitions against the elected government’s economic policy-making in response to the 1997 financial crisis. Another important decision set a precedent preventing the government from using its lower-house strength to avoid Senate approval of legislation. The court also ruled that the constitution’s gender equality provisions meant that married women were no longer legally required to assume the surname of their husbands. And it strongly backed the National Anti-Corruption Commission’s efforts to punish wayward politicians; by 2002 Constitutional Court judges had endorsed 17 of 18 decisions by the commission’s decisions to disqualify politicians for corrupt practices.

A telling example of the Court’s contribution to the new constitutional arrangements was its support for the Electoral Commission’s firm stance against fraud and vote-buying during the campaign for the 2000 Senate elections and, in particular, against any candidate who did not meet the new constitution’s strict criterion of non-partisanship. “The commissioners had the mettle to disqualify the wife of the Minister of Interior, the chief political advisor of the Minister of Interior, the elder brother of the Deputy Minister of Interior, the wife of the Minister of Justice, the sister of the Deputy Minister of Agriculture, and the wives, siblings, canvassers, and business associates of numerous members of parliament, provincial

governors, and the city mayors.”⁵ As a result, the elections were not finalised for four months, after five rounds of voting. A year later, the Electoral Commission expelled 10 senators, including the President of the Senate, for violations of the electoral law.

Another telling example was the Constitutional Court’s unanimous confirmation of the National Anti-Corruption Commission’s ruling in 2000 against the politically powerful Major General Sanan Kachornprasart, who had lodged a false statement of his assets and liabilities. Sanan was no ordinary politician; he was Deputy Prime Minister, Minister for Interior and Secretary General of the Democrat Party, and he had been a prominent political figure since 1977. After the Court’s ruling, Sanan was immediately dismissed from all his political positions and banned from politics for five years.

The number of cases brought before the new administrative courts, and the quality of their judgments, also met the high standards set by the drafters of the 1997 Constitution, although the courts did not become fully operational until 2001 after implementing legislation was passed in 1999. Between 2001 and 2009, the courts dealt with about 44,000 cases, providing a new and improved avenue for holding state officials accountable. Most cases had limited impact, but they provided ground-breaking protections for ordinary citizens. For example, in 2004 the Central Administrative Court ordered the Office of Atomic Energy and Peace to compensate survivors of a radiation leak. Other cases had wider impact. In 2005 the Supreme Administrative Court ruled against the Thaksin government’s major policy initiative to privatise the Electricity Generating Authority of Thailand. The Court accepted the arguments of non-government organizations, labour unions and opposition political parties that no mandated public consultations had occurred, the sale of shares was illegal, and

consumers and employees were inadequately safeguarded. In 2009 the same court suspended the development of 65 projects worth \$8 billion in Rayong province because health impact assessments were inadequate.

Judicial Independence meets Popular Legitimacy

But a court case against the newly-elected Thaksin exposed a gap between the words in a principled constitution and the deeds of fallible humans. In August 2001, the Constitutional Court had to rule on a NACC decision of December 2000 that while he was a minister in the Chavalit government (1996–97) Thaksin had intentionally concealed assets valued at Bt4.5 billion (approximately US\$105 million in early 2001) in the names of his housekeeper, driver, maid, security guard and business colleagues. In nine similar cases against serving politicians, the Court had endorsed the Commission’s decisions and all the defendants had been barred from political office for five years.⁶ So the signs for Thaksin appeared ominous—and even more so because just a few hours before the decision on his case the judges had ruled by a 12:1 margin against Senator Prayuth Mahagitsiri, whose case was comparable with Thaksin’s.⁷

But millions of Thais had voted for Thaksin’s party, even though they already knew that the NACC had said Thaksin should be ineligible for political office for five years because he had concealed assets worth billions of baht. Prominent figures, including the highly regarded and conservative social critic Prawase Wasi, who had played a leadership role in initiating the 1997 Constitution, publicly supported Thaksin. After more than three years of gloom following the Asian financial crisis, he and many other Thais saw Thaksin as the answer to Thailand’s economic and political malaise. Thaksin’s supporters persuaded 1.4 million Thais to sign a petition. Others

5 James R. Klein, “The Battle for Rule of Law in Thailand: The Role of the Constitutional Court,” in *The Constitutional Court of Thailand: The Provisions and Working of the Court*, ed. by Amara Raksataya and James R. Klein (Bangkok: Constitution for the People Society and Asia Foundation, 2003), 57.

6 In the next 14 months, the Court would endorse eight more NACC decisions on the same issue, *ibid.*, 70.

7 *Ibid.*, 75.

asked the court to postpone its verdict for a year to give Thaksin an opportunity to rescue the country. And 20,000 followers performed religious rites “to purify and strengthen Thaksin’s aura so that it would be able to protect him from a guilty verdict”.⁸ The two men who were ultimately to spearhead the anti-Thaksin yellow-shirt movement—Sondhi Limthongkul and Chamlong Srimuang—openly supported Thaksin at the court. In addition, “Thaksin had deliberately courted popularity, challenging the judges to risk the public discontent that would flare up if he were removed. He dramatized his appearances at the court by arriving on foot and walking through the crowds, shaking hands. He claimed he alone could boost economic growth and rid Thailand of poverty.”⁹

The judges of the Constitutional Court ruled in Thaksin’s favour by an 8:7 margin. The judges’ decision-making and the Court’s vote-counting were complex.¹⁰ In brief, in a two-part judgment, four judges said Thaksin wasn’t required to declare his assets and four judges said he hadn’t intended to conceal his assets. Even though the votes of these judges were in the minority (7:4), they were aggregated, while the votes of the judges in the majority were not. Hence, an 8:7 decision.

A reported remark by one of the Constitutional Court judges, Chumphol na Songkhla, summed up a widely held view at the time: “Who are we to judge that Thaksin is guilty? He was elected by 16 million Thais.”¹¹ Thaksin agreed with Chumphol, but (accurately) said that he had been elected by 11 million Thais. “It’s strange,” he said, “that the leader who was voted by 11 million people had to bow to the ruling of the NACC and the verdict of the Constitutional Court, two organizations composed only of appointed commissioners and judges, whom people did not have a chance to choose. This is a crucial

point that we missed. In the USA, only a congressional process can impeach a president.”¹²

The day after the judgment, the front-page commentary in the *Bangkok Post* started: “Most Thais are happy with the result because they believe Prime Minister Thaksin Shinawatra is the man with the right policies to alleviate their pain. Businesses are relieved because after months of waiting and guessing, there is political stability and certainty—at least for the short and medium term. A conviction would lead to more months of uncertainty and the economy would suffer even more.” But a couple of paragraphs later it warned: “Despite the feeling of euphoria and relief by the majority, a black cloud of uncertainty still hangs over the rule of law under the new constitution. This country and its people have fought long and hard through the decades for a better and more transparent political system where the rule of law prevails over and above that of the individual, no matter who that person may be.”¹³

On the same day, *The Nation* concluded that “the verdict was delivered under ambiguous circumstances; and it seems to be a ‘political’ rather than a ‘judicial’ decision”. The *Bangkok Post* claimed that two judges had planned to vote against Thaksin but changed their minds at the last minute “at the request of a person who has considerable clout”. Although no concrete evidence has been produced, the person with considerable clout is reported to have been Prem Tinsulanond, the President of the Privy Council, the king’s advisory body.¹⁴ Thirteen years later, an anti-Thaksin figure claimed to this writer that Prem had not intervened; rather, he said, again without any concrete evidence, Thaksin had “promised to look after” at least one of the judges.

8 Michael H. Nelson, “Thailand’s House Elections of 6 January 2001: Thaksin’s Landslide Victory and Subsequent Narrow Escape.” In *Thailand’s New Politics: KPI Yearbook 2001*, edited by Michael H. Nelson (Bangkok, KPI and White Lotus Press, 2002), 369–70.

9 Pasuk and Baker, *Thaksin*, 2–3.

10 James Klein has written the fullest account. See Klein, “The Battle for the Rule of Law,” 71–6.

11 Quoted in Bjorn Dressel, “Judicialization of Politics or Politicization of the Judiciary? Considerations from Recent Events in Thailand,” *The Pacific Review*, 23, 5 (2010), 677.

12 Quoted in Pasuk and Baker, *Thaksin*, 2.

13 *Bangkok Post*, 5 August 2001.

14 Duncan McCargo, “Network Monarchy and Legitimacy Crises in Thailand,” *The Pacific Review*, 18, 4 (December 2005), 513; and Thitinan Pongsudhirak, “The Tragedy of the 1997 Constitution,” in *Divided Over Thaksin: Thailand’s Coup and Problematic Transition*, ed. by John Funston (Singapore, ISEAS, 2009), 33.

Whether these specific stories about behind-the-scenes influence peddling are true matters little. In the Thaksin assets concealment case, the Constitutional Court came under political pressure from a range of sources, and it succumbed. Indeed, in their written decisions, published several weeks later, the judges who cleared Thaksin chose not to rule explicitly on his guilt or innocence. Thaksin and his supporters would argue that the Court succumbed rightly: in a democracy, they would say, why should a few unelected judges have the power to throw out leaders who have been elected? Others would argue that the outcome of the Thaksin assets concealment case was an early sign that the Constitutional Court was not unfailingly independent, regardless of what the constitution might say, and notwithstanding the readiness of the same judges to deliver impartial and cogently argued decisions in other cases.

The Thaksin case was the first major test under the 1997 Constitution of the judiciary's capacity to withstand pressure from the executive, legislature (through pro-Thaksin MPs) and public opinion. The case was a momentous opportunity to demonstrate that the courts, as an independent arbiter of political disputes, could uphold the supremacy of the law. On paper, the Constitution appeared to give the judges greater authority than ever before to protect the interests of the judiciary from political pressure and to advance the rule of law. By a narrow margin, and thanks to a quixotic method of counting votes, the advocates of an independent judiciary—inside and outside the judicial system—were outmanoeuvred. Judges could not, or chose not to, protect the independence of the judiciary and the supremacy of law.

Judiciary under Threat

That said, judges faced a formidable opponent in a challenging environment. For a start, Thaksin's close encounter with the Constitutional Court did not encourage him to respect the authority of the judiciary or to use his authority as a democratically elected

prime minister to champion the independence of the judiciary. On the contrary, only a year later he was intimidating the independent institutions and the courts: "Their attitude has to be a correct one. At present we're spending an annual Bt3 billion on independent bodies. If they become antagonistic, I think spending even one baht would be expensive."¹⁵ In 2002, when vacancies arose in the judiciary, Thaksin was able to get people he favoured into these key positions because, over time, he had enticed a sufficient number of notionally independent senators to support his party on most issues, including the selection of a judges and commissioners to serve in the courts and independent agencies.¹⁶ As a result, from 2002, new commissioners on the NACC included a long-time friend of Thaksin's and a former mentor, and new judges on the Constitutional Court included a customs official who had defended one of Thaksin's companies against tax evasion charges, and a former business partner.¹⁷

CEO Prime Minister

Thaksin's leadership style, electoral popularity, and indifference to the rule of law were not the only reasons he could govern decisively, even brazenly. The new constitution intentionally facilitated strong executive leadership. The framers of the constitution wanted to rid Thailand of unstable, inefficient and corrupt coalition governments, so the new charter strengthened the authority of the elected prime minister vis-à-vis the legislature. First, it required 40 per cent of MPs to agree before a parliamentary no-confidence debate could be launched against the prime minister. Secondly, MPs had to relinquish their parliamentary seats when they became ministers; so if the prime minister sacked them they could not resume their seat in parliament. Thirdly, the prime minister could call an election at 45 days' notice,

¹⁵ Quoted in Pasuk and Baker, *Thaksin*, 173.

¹⁶ For details on how this occurred, see Paul Chambers, "Superfluous, Mischievous or Emancipating: Thailand's Evolving Senate Today," *Journal of Current Southeast Asian Affairs*, 28, 3 (2009), 19–20.

¹⁷ Pasuk and Baker, *Thaksin*, 173–6.

but prospective MPs had to have been members of their political party for at least 90 days before the election—so they could no longer threaten to defect to another party.

Thaksin's cabinet felt neither pressure nor obligation to include the parliament in policy development or decision-making. Thaksin "argued that checks and balances, human rights, open debate, and even parliamentary opposition got in the way of his mission".¹⁸ He co-opted and intimidated the media, including through purchasing some outlets and threatening to deny government advertising revenue to others. Thaksin and his cabinet were supreme. Before long, the legislature was again struggling to be relevant; Thaksin rarely attended parliament and parliamentary sessions often lacked a quorum.

Military and Monarchy Provoked

Eventually, Thaksin over-reached. Although untroubled by the rise of Thaksin, the military became upset when he started to interfere in military appointments, promoting his former classmates from the military academy as well as other loyalists and relatives, which included controversially transferring the army commander, General Surayud Chulanont, to make way for them. Most blatantly, in 2003 he elevated his cousin to army commander. These promotions offended Prem. For many years, as president of the Privy Council and as a former prime minister of a military government, Prem had played an active role in military appointments. Prem and the military also resented Thaksin's decision in 2002 to transfer command of security operations in the three southern border provinces from the military to the police.

Most critically, though, Thaksin gave the military political space to oppose him when he left himself open to claims that he questioned the traditional authority of the king. As is the way of politics everywhere, some of these claims were exaggerated or even concocted by political enemies who were keen to bring him down. But some of the claims

were sustainable. At one end of the spectrum, Thaksin was accused of republicanism. More convincingly, Thaksin's critics alleged that he displayed pictures of himself in poses normally reserved for the king at royal events; appeared without approval at the king's 60th jubilee celebrations; improperly conducted a merit-making ceremony in Temple of Emerald Buddha; and inappropriately appointed an acting Supreme Patriarch in 2004.¹⁹

Especially after the 2005 elections, which had shown that voter support for Thaksin had grown, supporters of a strong monarchy became more insistent in pointing at Thaksin's alleged failings and flaws, and they claimed that his domestic popularity and international reputation could not match Bhumibol's moral and constitutional authority. Privy councillors—seen as proxies for the king—openly criticised Thaksin and reminded him of the role of the monarchy. Army generals spoke publicly about their duty to protect the monarchy; their voices drowned out murmurings about the benefits of a depoliticised, professional armed forces. Privy councillors and generals publicly accused Thaksin of corruption, mismanagement of the insurgency in southern Thailand, and interference in military promotions.

Street Politics

In 2005, the political tug-of-war spilled on to the street—and the street became a favoured arena for political combat for most of the next decade. As in the 1970s and 1992, the legislature was not considered a fitting venue for resolving political differences. In early 2006 the number of anti-Thaksin yellow-shirted²⁰ protesters, under the

¹⁹ Pasuk and Baker, *Thaksin*, 255, and Thak Chaloeontiarana, "Distinctions with a Difference: The Despotism of Sarit Thanarat and the Demagogic Authoritarianism of Thaksin Shinawatra," *Crossroads: An Interdisciplinary Journal of Southeast Asian Studies*, Vol. 19, No. 1 (2007), p 69. A decade before Thaksin was prime minister, Nidhi Eoseewong had written: "In Thailand there may be someone who is more 'popular' than the person who occupies position of king . . . , but there is definitely nobody more sacred than the king." Nidhi, "The Thai Cultural Constitution." Thaksin's critics would say that he failed to respect this cultural convention.

²⁰ The pro-monarchy protesters wore yellow shirts because yellow is associated with Monday, the day on which King Bhumibol was born. The pro-Thaksin and pro-democracy protesters wore red shirts because red represents the land and people in the tri-coloured Thai flag (white represents Buddhism; blue represents the monarchy).

¹⁸ Baker and Pasuk, *A History of Thailand*, 267.

umbrella of an organization called People's Alliance for Democracy (PAD), grew quickly to several hundred thousand. The numbers rose because Thaksin riled many Thais by selling his Shin Corporation to Singapore's Temasek Holdings for Bt73 billion (\$2 billion), after first legislating to raise the foreign ownership limits for telecommunications companies and then allegedly re-arranging his family shareholdings to avoid paying tax on the sale. Thaksin responded to PAD protests by calling for a fresh election in April 2006.

The results of the 2006 election were messy because key opposition parties, including the Democrat Party, boycotted it. In the absence of the main opposition parties, Thaksin's party naturally won (and, based on earlier and subsequent election results, it would almost certainly have done so even if major opposition parties had participated in the election). More critically, the boycott led to a stalemate—parliament could not reconvene because the boycott had left some seats unfilled.

Monarchy Speaks, Judiciary Listens

Throughout this period, the king had resisted calls to use Article 7 of the Constitution, which allowed him to replace the incumbent prime minister in extreme circumstances. On occasions, he also tried to calm the situation, for example by getting the main protagonists to drop legal cases against each other, or by choosing to ignore requests that he intervene. Still, when Bhumibol expressed a view—directly or indirectly—it was invariably directed against Thaksin. He also personally endorsed a popular pro-monarchy tract, which argued that democracy had failed and that all Thais had faith in the king.²¹

Faced with a political system that had become dysfunctional after the 2006 elections, the monarchy intervened in an unprecedented way. During his customary addresses to newly appointed judges, Bhumibol said, first of all, that as a constitutional monarch he could not intervene unilaterally: "If the King did so, he would be

overstepping his duty. I have never overstepped this duty. Doing so would be undemocratic." He then told the judges that the issue should be relevant for them and, "You have sworn to work for democracy. If you cannot do it, then you may have to resign. You must find ways to solve the problem."²²

Afterwards, some of the judges' private conversations were publicised. One of them said, "Yes, but we ourselves when making announcements don't dare to mention the Royal Address because it would be like we just followed what he instructed. The foreigners won't accept it... Don't be afraid. It's better to go out in a dignified manner. Nobody can go against a Royal Address."²³ And they didn't. Following private as well as public consultations involving judges, officials (including palace officials) and anti-Thaksin political activists, the Administrative Court suspended the elections for the 14 unfilled seats, the Constitutional Court invalidated the April election, and the Criminal Court imprisoned the electoral commissioners for malpractice.

Eventually, a coup led by General Sonthi Boonyaratkalin, rather than the judges, ended the crisis in September 2006, but the monarchy's willingness to direct the judiciary was clear. Equally clear was the judges' willingness to oblige their monarch. The monarch (who said he was not supposed to intervene), and his supporters in the judiciary (who were supposed to be independent) and military (who were supposed not to play a political role), were able to match Thaksin at every turn, even though Thaksin had a strong electoral mandate.

Generals and Judges Pursue Thaksin

After the coup, the military installed a government led by the general controversially transferred by Thaksin, Surayud, who had pointedly been elevated to the Privy Council by the king in 2003.²⁴ Most

²² Quoted in Pasuk and Baker, *Thaksin*, 274.

²³ Quoted in Pasuk and Baker, *Thaksin*, 276. See pp 274–76 for a fuller account of these developments.

²⁴ In 2001, King Bhumibol had elevated two other officials to the Privy Council who had problems with Thaksin. Duncan McCargo, "Thaksin and the Resurgence of Violence in the Thai South," in *Rethinking Thailand's Southern Violence*, ed. by Duncan McCargo (Singapore, NUS Press, 2007), 65.

²¹ Pasuk and Baker, *Thaksin*, 256.

observers give the Surayud government low marks; its ministers were not technocrats of the calibre of the military-appointed and monarchy-appointed civilian governments of Anand Panyarachun of 1991–92. Unsurprisingly, though, the Surayud government did help to rebuild the military's stocks. It increased the military budget and put the armed forces back in charge of the southern border provinces. It passed a new Defence Act, which gave the military more autonomy from the government. The Surayud government also resuscitated the Internal Security Act, which re-empowered ISOC. And under its watch the courts kept the electorally popular Thaksin out of Thailand, if not out of Thai politics, by convicting him of helping his wife to buy government property cheaply.

Earlier, the generals introduced an interim constitution, which replaced the pro-Thaksin Constitutional Court with a Constitutional Tribunal. In May 2007, this Constitutional Tribunal, relying on the military government's September 2006 decree that the judiciary could dissolve a political party and ban members of that party's executive from politics for five years, dissolved Thaksin's Thai Rak Thai Party and banned 111 of its MPs (including Thaksin) for five years for malpractice during the April 2006 elections—even though the election results had since been annulled. This decision emasculated the political leadership of Thaksin's political party. It is notable for four other reasons. First, the penalty imposed by the military government's September 2006 decision was applied retrospectively; in other words (and as the Tribunal's president observed in his dissenting opinion), individuals were receiving a punishment that did not exist when the misconduct was committed. Secondly, the day before the verdict was announced the 2006 coup leader, General Sonthi, met the vice-president of the Tribunal, and immediately after the announcement Sonthi proposed that the banned politicians be amnestied. He quickly backtracked, but his actions created a perception of political

interference.²⁵ Thirdly, a few days before the verdict the king referred to the case indirectly, saying, "I have the answer in my heart, but I have no right to say it." His ambiguous comments led some to conclude that he may have wanted a compromise rather than harsh punishment.²⁶ Fourthly, on the same day that the Constitutional Tribunal dissolved the Thai Rak Thai Party and banned the 111 members of its executive board, it unanimously acquitted the Democrat Party of similar charges. The evidence against the Democrat Party was less compelling, but the exoneration of the Democrats provoked claims of double standards. Collectively, these developments raised further questions about the independence of the judiciary.

The military-appointed government also used the judiciary to target Thaksin personally, including his assets, as well as his political party. It established an Assets Scrutiny Committee, which included several members who had publicly criticised Thaksin and his government, to investigate charges of corruption under Thaksin, with a view to bringing lawsuits before the courts and freezing assets that may have been gained corruptly.

2007 Constitution

The military also established a Constitutional Drafting Assembly, which was heavily populated with coup supporters who, above all, wanted to put the menacing Thaksin genie back in his bottle. Whereas the drafters of the 1997 Constitution sought to make the political executive more accountable to a fully elected legislature and an independent judiciary, the drafters of the 2007 Constitution sought to make the political executive—which, in their opinion, Thaksin had abused—less accountable to the legislature (even though it was no longer fully elected; half the senators were appointed) and more

²⁵ Duncan McCargo, "Competing Notions of Judicialization in Thailand," *Contemporary Southeast Asia*, Vol 36, No 3 (2014), 428–9.

²⁶ *Ibid.*, 428.

accountable to the judiciary, whose independence was diluted by the increase in its formal powers, including the power to sack a prime minister. These changes to the executive and judicial arms of the government weakened the authority of the legislature—which, in institutional terms, was Thaksin’s power base.

In relation to the judiciary, the new constitution sought, first, to lessen the risk of political interference that had marred the reputation of the Constitutional Court after Thaksin gained control of the Senate, which had a decisive role in selecting judges. Selection of judges was depoliticised; judges had to have 30 years of continuous experience, and the five serving judges on the now nine-member bench (previously 15 members) would outnumber the four legal experts and political scientists.²⁷ Secondly, the new constitution gave the court unprecedented powers, which included “policing political parties, removal from office of members of parliament and ministers, approval of disqualification of election commissioners, approval of organic laws for important institutions, approval of challenges to emergency decrees, and a role for its chairman in committees that select senators”.²⁸ In fact, it wasn’t the Chairman of the Constitutional Court alone who was to play a role in the selection of senators; the judiciary generally now had a major say in the composition of the Senate. Under the new constitution, roughly half the Senate was elected on a provincial basis and the other half was appointed by a committee which included the presiding officers of the Constitutional Court, Election Commission, Ombudsman’s Office, National Anti-Corruption Commission and State Audit Commission, as well as two judges from the administrative courts. Senior judges also played a critical role in selecting members of the various independent agencies.

27 Before the 2007 Constitution came into effect the Surayud government took a leaf out of Thaksin’s book and appointed its loyalists as judges and commissioners.

28 Ginsburg, Tom. “Constitutional Afterlife: The Continuing Impact of Thailand’s Postpolitical Constitution.” *International Journal of Constitutional Law*, Vol 7: 83 (January 2009), 100–1.

Some judges expressed concern that this expanded role would compromise the judiciary’s independence.²⁹ There were also reports of judges declining appointment to the Constitutional Court because it was becoming politicised.³⁰

Public consultations on the new constitution were perfunctory. In August 2007, 58 per cent of the electorate turned out to vote in a take-it-or-leave-it referendum (in the 2005 elections, 73 per cent of the electorate had voted). Fifty-seven per cent of those who voted approved of the text. Put another way, over 40 per cent of the electorate chose not to participate. A regional analysis of the referendum results shows that a majority of voters in the northeast and north were opposed to the constitution; in other words, rather than building a national consensus for a new supreme law, the referendum underlined and possibly exacerbated political divisions.

Elections, Sackings and a Funeral

Through court cases against Thaksin and his party, and through constitutional reform, the military tried to domesticate electoral democracy. But Thais continued to value their vote, and Thaksin. Two elections—with high voter turnout—were held under the 2007 Constitution. Thaksin-aligned political parties won both of them.

In December 2007, Samak Sundaravej, whom Thaksin had anointed as the leader of his party (now called Palang Prachachon Party) won after running a “Vote Samak—Get Thaksin” campaign. The election of Samak, and his government’s policies to protect Thaksin and amend the 2007 Constitution, inflamed Thaksin’s opponents. PAD demonstrators, again dressed in yellow shirts, clogged streets near Government House and eventually occupied the building. The elected government’s efforts to get the police, army and courts to move against the demonstrators failed.

29 Bjorn Dressel, “Thailand’s Elusive Quest for a Workable Constitution, 1997–2007,” *Contemporary Southeast Asia*, Vol 31, No 2 (2009), 304.

30 Bjorn Dressel, “Thailand: Judicialization of Politics or Politicization of the Judiciary,” 92.

In this highly-charged political environment the judiciary was called upon to deliver judgments that again drew it into the cauldron of political debate. On 3 July 2008, the Supreme Court endorsed an Electoral Commission ruling to ban the Thaksin-aligned Speaker, Yongyuth Tiyaiphairat, from political office for electoral malpractice. Six days later, the Constitutional Court sacked the health minister, Chaiya Sasomsap, for failing to properly declare his assets. The next day, the same court forced the resignation of Foreign Minister Noppadol Pattama, who was also Thaksin's personal lawyer, over the Preah Vihear temple dispute with Cambodia. On 12 July, the attorney-general charged Thaksin of using his authority as prime minister to boost the profits of his family-controlled Shin Corp. Other judicial moves during this period that specifically targeted Thaksin included charges that as prime minister he: influenced the Exim Bank to increase loans to Myanmar in order to benefit his family business; breached anti-gambling laws in setting up a new government lottery; and unlawfully approved the expenditure of government funds to purchase rubber saplings.

On 9 September, the Constitutional Court sacked Samak, on the grounds that he had been an "employee" of a television company when he continued to host a television cooking show after he became prime minister. Samak's supporters, and some independent observers, noted that the Court relied on a conventional dictionary, rather than Thailand's civil code and labour laws, to define the word "employee". One judge later described this decision as "judicial creativity".³¹

Parliament decided, by 298 votes to 163, to replace Samak with Somchai Wongsawat, Thaksin's brother-in-law. Samak's sacking did not sate the PAD's thirst for political blood; on the contrary, PAD demonstrators laid siege to Parliament House (forcing Somchai to escape by climbing the rear fence after delivering his prime ministerial policy address) and Government House (forcing Somchai's government to relocate). They also occupied Bangkok's

international airport, forcing its closure for eight days and disrupting hundreds of thousands of passengers. On 2 December, the Constitutional Court dissolved the Thaksin-sponsored Palang Prachachon Party and banned more than a hundred of the party's executives from politics for five years for electoral malpractice. Somchai had to resign as prime minister.

In the midst of this politicisation of the judiciary, the queen attended the funeral of a PAD protester who was killed by a police tear-gas canister, smothering faint hopes in some quarters that the monarchy might try to appear above politics. One of her daughters, Princess Chulabhorn, and the army chief, General Anupong Paochinda, also attended.

It was in between the sackings of Samak and Somchai that the Supreme Court ruled that in 2003 Thaksin had abused his authority by assisting his wife to purchase government-owned land. It sentenced Thaksin, who was overseas, to two years' imprisonment. Thereafter, Thaksin remained in self-imposed exile, claiming he was the victim of a political vendetta, while his opponents counter-claimed that he was evading justice. About 18 months later, in February 2010, the Supreme Court seized Bt46 billion (US\$1.3 billion) of the Bt76 billion of Thaksin's assets that the Assets Scrutiny Committee had frozen after the 2006 coup. The court ruled that Thaksin had concealed his ownership of shares in the family-controlled Shin Corp and then committed "policy corruption" by pursuing policies that, while legal and potentially in the national interest, also enriched his family business.

The guilt or innocence of Thaksin and Thaksin-aligned politicians, and the prospect of dispassionate discussions about the role of the judiciary in constitutional government, were overshadowed by triumphalism among Thaksin's opponents and victimhood among his supporters. The PAD and its parliamentary ally, the Democrat Party, with tacit and sometimes overt backing from the military

³¹ Bjorn Dressel, "Judicialization of Politics or Politicization of the Judiciary?" 682.

and the monarchy, had used the courts and independent agencies, as well as mob intimidation, to try to banish the electorally popular Thaksin and his influence from Thai politics.

Abhisit Interregnum

After the Constitutional Court disqualified the short-lived Samak and Somchai governments, the military persuaded some MPs previously tied to Thaksin's party to instead support the Democrat Party, led by Abhisit Vejjajiva. In other words, the military was instrumental in determining the shape of an "elected" government. For some months, the newly formed Abhisit government had to operate out of an army base because it was besieged by red-shirted demonstrators, in the same way that Thaksin-aligned governments had periodically been besieged by yellow-shirted demonstrators.

Thaksin's political party and the allied red-shirt movement, whose formal name was the United Front for Democracy Against Dictatorship (UDD), questioned the courts' seeming predisposition to throw out elected governments. Anger over repeated court rulings against Thaksin, and over Abhisit's refusal to hold an election before the scheduled 2012 deadline, fuelled massive red-shirt demonstrations in April–May 2010. Relying on the same intimidatory mob tactics of the yellow shirts, some red shirts occupied public buildings, including parliament and the Electoral Commission, and pressured commissioners to take up a stalled electoral fraud case against the Democrat Party with the Constitutional Court. Following violence by red-shirt demonstrators and heavily armed "black shirt" militants, Abhisit and his deputy prime minister, Suthep Thaugsuban, relying on the Internal Security Act, ordered the army to break up the red-shirt demonstrations. Over 90 protesters and security personnel were killed in the April–May 2010 clashes.

In November 2010 the Constitutional Court dismissed the electoral fraud case against the Democrat Party on a technicality,

provoking further claims of judicial double standards. The case was given added piquancy because three judges had to recuse themselves after the release of a video that showed a Democrat Party parliamentarian lobbying court officials in relation to the case, and another video showing an attempted cover-up of improper hiring practices of court staff. To make matters worse for the pro-Thaksin camp, no action was taken against the judges or court officials, but the police launched an investigation into the alleged red-shirt who leaked the videos.

2011 Elections and Yingluck Government

In May 2011, Abhisit announced an early election, which was held in July. The election lowered political temperatures on all sides. The Democrat Party conceded defeat as soon as the magnitude of the electoral victory of the Pheu Thai Party, headed by Thaksin's sister Yingluck, became clear. Pheu Thai won 265 seats in the 500-seat parliament; the Democrats won 159 seats.

During the election campaign, the new army commander Prayuth Chan-ocha, who as deputy commander had played a key role in suppressing red-shirt protesters in 2010, suggested that Thais should not vote for Pheu Thai. After the elections, though, in the face of overwhelming electoral support for the party (including in military-dominated constituencies), the military chose to stay in the background and allow an orderly transfer of power. For her part, Yingluck took the opportunity to develop a respectful relationship with the military. She ensured that the military budget continued to grow and agreed not to meddle in the promotion of senior officers (as well as promoting his favourites to senior positions, Thaksin had cut the military budget as a percentage of GDP).³² Yingluck tried to constrain Prayuth, and

³² James Ockey, "Broken Power: The Thai Military in the Aftermath of the 2006 Coup," in *"Good Coup" Gone Bad: Thailand's Political Developments Since Thaksin's Downfall*, ed. by Pavin Chachavalpongpun (Singapore: ISEAS, 2014), 58.

simultaneously placate red-shirt supporters who wanted him and other military leaders brought to trial, by allowing the police to continue to investigate the army's handling of the 2010 protests.

The military seemed to realise that it would harm itself if it needlessly antagonised the newly-elected government. In addition, the military rebuilt some of its public reputation through impressive and widely publicised relief efforts during massive floods in late 2011. In the following year, it resisted calls for it to unseat the Yingluck government, most notably when a retired army general, Boonlert Kaewprasit, tried to organise a mass rally in Bangkok. Boonlert failed to draw a crowd, let alone awaken the sort of yellow-shirt passion that had derailed Thaksin's government.

In 2013, as the Yingluck government began to attract domestic opposition to some of its policies, the media began to speculate on the possibility of a military coup. From as early as July, Prayuth's response to repeated media questions on this issue invariably included words to the effect: "Don't people who advocate a coup realise that a coup would bring serious bloodshed?" Prayuth was reflecting a widespread view that military intervention would anger the Yingluck government's red-shirt supporters, who would rally on the streets of Bangkok and possibly in provincial towns as soon as a coup occurred; and the military would be able to restore order only by shooting them. In addition, at the time, there was also a widespread view, including in parts of the military, that Thailand's economy and society was now too complex to be governed by the military. The proponents of this view pointed to the ineffectual Surayud government as evidence.

Yingluck also worked assiduously to develop respectful, even personable, relations with the palace, including the influential Prem. During her prime ministership, unlike the prime ministership of her brother, there was no hint of disrespect or tension in her relationship with the king, the royal family more broadly, or the Prem-led Privy Council.

Because Yingluck reached an accommodation with the palace and the military after securing a clear parliamentary majority, from about August 2011 until late 2013 Thailand enjoyed a period of rare political stability—or, more accurately, political equilibrium. Each of the five branches of government was equally strong and equally weak. This stability was, however, fortuitous—and fragile—rather than structural. The five branches of government were balanced because an unambiguous election result had made the legislature stronger than usual. The stability was not the result of the five branches acting as institutional checks and balances against each other in the manner in which this typically occurred in the Western democratic system. The fragility of Thailand's political stability was demonstrated by the ease with which it crumbled when the elected government attempted structural reform.

Judiciary Resists Constitutional Reform

After the Yingluck government felt reasonably secure in its relationships with the monarchy and the military, it set about implementing an election promise to strengthen democracy by amending the military-inspired 2007 Constitution. In 2012, it took its first steps to establish a drafting committee to review the constitution. The Democrat Party immediately brought the matter to the Constitutional Court, arguing that constitutional amendments were an attempt to "overthrow the democratic regime of government with the King as Head of State" (Article 68 of the 2007 Constitution). Rowdy scenes erupted in parliament and protesters blockaded the parliament building. Demonstrations also occurred outside the Constitutional Court. Judges were given police protection and the riot squad was deployed. Pro-Thaksin supporters, fearing that the Court would find against the government and perhaps ban the Pheu Thai Party and its leadership, warned that "civil war" would occur if the Court ruled against the government.

Again, the judiciary was at the centre of political debate. Again, politicians tried to draw the monarchy into politics. Again, parliament was unable to contain a political issue within its walls. Again, mobs of protesters from both sides tried to put pressure on the judiciary. And again the judges were perceived, rightly or wrongly, to have assumed that their responsibility was to read political tea leaves as well as the constitution.

Several observers argued that a strict reading of the constitution would have seen the judges refuse the Democrat Party's application because it was not submitted through the attorney-general's office. Instead, the judges accepted the application but ruled that the proposed amendment of the constitution was not aimed at overthrowing the monarchy. Then, rather curiously, the judges recommended, rather than ruled, that parliament amend only individual articles of the 2007 constitution, not the whole document, which had been adopted in 2007 by a referendum; this constitution, the judges said, could be comprehensively reformed only through another referendum.

The government, in effect, accepted the Court's recommendation as a ruling and put comprehensive constitutional reform to one side. Seemingly in keeping with the Court's view that piecemeal constitutional change was acceptable, in 2013 the government passed through parliament a constitutional amendment that would have restored a fully elected Senate. The Democrat Party again brought the matter to the Constitutional Court and again claimed that the government was contravening Article 68. It also asked the Court to dissolve the Pheu Thai Party. In November 2013, the Court didn't dissolve Pheu Thai but, in a ruling that effectively prevented an elected government from trying to amend the constitution, it ruled that the government had breached Article 68. In other words, it ruled that in seeking to reintroduce an elected Senate (in place of a semi-appointed Senate) the government had attempted "to overthrow the democratic regime of government with the King as Head of State".

The Price of Rice

During the election campaign, the Yingluck government had also promised to introduce a rice subsidy scheme. Under the scheme, the government would pay farmers more for their paddy rice than the Democrat Party government had and, critically, at a price well above the prevailing market price. Because Thailand was the world's largest rice exporter at the time, the Yingluck government thought it could manipulate global prices. It miscalculated, badly, and the scheme cost Thailand billions of dollars. In 2017, Yingluck (whom the Constitutional Court had sacked as prime minister in 2014 for reasons unrelated to the rice subsidy scheme) was ultimately found responsible for overseeing a scheme that was corruptly administered, fined over US\$1 billion personally, and sentenced to five years imprisonment. She fled the country before the sentence was delivered.

The Cost of Amnesty

As well as promising constitutional reform and rice subsidies, during the 2011 election campaign the Pheu Thai Party had told its supporters that it would try to bring the self-exiled Thaksin home. Recognising that this undertaking was controversial, party leaders moved cautiously. In November 2013, however, in the middle of the night during the third reading of an amnesty bill with limited scope, a Pheu Thai MP who wanted to curry favour with Thaksin amended the legislation to include all leaders, including Thaksin, as well as grass-roots demonstrators. Massive public opposition, including deep dismay among red-shirts and many Pheu Thai MPs because the amnesty would also have covered political and military leaders who spearheaded the 2010 anti-red shirt crackdown, saw the ill-conceived amnesty bill quickly overturned.

The deputy leader of the Democrat Party, Suthep Thaugsuban, who exploited the anti-Thaksin sentiment in enormous anti-amnesty crowds that had gathered on Bangkok's streets to demand the

parliament reject the bill, was unwilling to declare victory and go home. He formally resigned from the Democrat Party (but continued to wield considerable informal influence within it) and established the People's Democratic Reform Committee (PDRC), which called for an unelected government of "good people". For months, Bangkok witnessed massive PDRC-led protests as well as counter-protests organised by the UDD. In various clashes, over 20 people were killed. Over time, the Yingluck government was paralysed—by the demonstrations, an election boycott, and several rulings from the judiciary.

2014 Coup

On 7 May 2014, the judiciary sacked another elected prime minister. The Constitutional Court found that Yingluck had abused her prime ministerial power in 2011 when she transferred a senior civil servant (this transfer was also linked to the appointment of Thaksin's former brother-in-law as the police chief). Nine other ministers and deputy ministers were sacked for their involvement in the decision. On 20 May, army commander Prayuth imposed martial law, followed by a fully-fledged coup on 22 May. He averted potential counterattacks from demonstrators by detaining their leaders immediately, organizing transport to take the demonstrators home, and intimidating anti-military activists in the provinces.

Crisis and Coup: An Institutional Assessment

Reverting to our five-branches-of-government perspective, let us try to assess the 2013–14 political crisis and the 2014 coup. Throughout this period, the monarchy remained in the background. Unlike in 1973, 1992 and 2006, Bhumibol did not try to foster a resolution, although there were calls for him to intervene. It is difficult to know what role the palace might have played behind the scenes. As in the past, the monarchy sanctioned the coup after the event.

Faced with a political crisis and a challenge to its own authority, the political executive responded in a conventional manner for a parliamentary government: it called for fresh elections. The elections were boycotted by the PDRC and Democrat Party. At times, elections were also thwarted by the actions (or inactions) of the Electoral Commission. The administrative executive, or bureaucracy, reflecting the divisions within Thai society as well as its own difficulty in trying to appear apolitical, variously demonstrated against and for the Yingluck government, or kept quiet.

As for the military, from the 2011 elections until the late-2013 mass protests in Bangkok, the troops stayed in their barracks and let politicians tackle Thailand's various challenges through the political system that the military had helped to author through the 2007 Constitution. As mentioned earlier, it did not respond in 2012 when a retired army general tried to destabilise the Yingluck government. Prayuth also seemed genuinely concerned that military intrusion into politics would provoke a red-shirt backlash. And in at least some quarters of the military, there was a feeling that the military's best interests would be better served by professionalization, not re-politicization. From personal experience, I know that these concerns were strongly held by senior military leaders in late November 2013.

Coincidentally, when the large street protests started and the prospect of prolonged disturbances was becoming apparent, the head of the Australian Defence Forces visited Bangkok to receive an official award from the Thai government. At various functions and informal gatherings with the upper echelons of the Thai armed forces, the emerging political turmoil was a natural topic of conversation. In their words and demeanour, Thai generals showed unmistakable annoyance at Thaksin and his supporters for seeking an amnesty and at Suthep and his supporters for calling for intervention by the military or monarchy. They clearly expressed an aversion to another coup, saying it would harm the standing of the Thai military.

The Thai military is not monolithic and some others would have been more willing to resume a political role. As we saw earlier, Prayuth himself openly opposed the Pheu Thai Party before the election. In addition, because of the role he had played as deputy army commander in the suppression of the 2010 protests, he had worked closely with Suthep, who was the director of the Centre for Resolution of the Emergency Situation (CRES), a committee of ministers and security officials that Abhisit established to manage that crisis. Furthermore, as army commander when the 2013–14 protests occurred, Prayuth surely could have exercised more discipline over elements of the armed forces that provided behind-the-scenes support to Suthep's PDRC. He could also have said that the military's role was to support the elected government. And, if Prayuth genuinely did not want to lead a military government, after he declared martial law on 20 May 2014 he could have given the opposing camps of politicians more than two days to produce a political compromise. Instead, he announced a full-blown coup on 22 May.

The point here is not to deny that elements within the military, including Prayuth himself, played a role as the events of 2013–14 unfolded. But if we want to assess, in institutional terms, which branches of government brought Thailand's political system to its knees over this period, the main culprit was not the military. Nor was it the monarchy or executive. As institutions, the legislature and judiciary ultimately played bigger roles in breaking the system.

In the more than eight decades since 1932, the Thai legislature and judiciary have not accumulated stabilising, dispute-settlement responsibilities that are commonly exercised by legislatures and judiciaries in conventional parliamentary democracies. Certainly, the magnitude of the task of reducing the domestic political power of the military should not be underestimated. But, using history as a guide, nor should we overestimate the inclination or ability of MPs and judges in Thailand to consider how the legislature and judiciary

might develop into institutional counterweights to the military's political power.

Although voters continued to give Thaksin-aligned political parties a healthy parliamentary majority, the people they elected—the legislature—could not protect either the legislature itself or the elected government from a military coup. Nor could the legislature break a political deadlock through elections. This is partly explained, first, by the underdeveloped party system, especially the absence of sophisticated party organizations that constantly modify policies and strategies. For example, if the Pheu Thai Party had been organized along the lines of political parties in more established democratic systems, in November 2013 the politically suicidal idea to seek an amnesty for Thaksin would have been considered, and almost certainly dismissed, by the party's leadership well before it was introduced into the parliament. Instead, in the middle of the night and without even consulting the office of the party leader (Yingluck), the amnesty was introduced. Until this misstep, the Yingluck government seemed likely to serve its full four-year term, although political and economic pressures caused by the rice subsidy scheme were rising. Similarly, a more developed party system would have prevented Yingluck from re-shuffling senior civil service appointments so that Thaksin's former brother-in-law could become the police chief.

Secondly, the legislature could not match the appeal of the mass political movements, whether they were PDRC or UDD. Aggrieved Thais of all political persuasions have regularly concluded that they are less likely to find satisfaction in a legally constituted parliament (or a court of law), and more likely to find it in mass political movements that resort to often illegal and sometimes violent street protests. For example, after the Senate blocked Thaksin's amnesty in 2013, the Democrat Party was unable to persuade Suthep and his followers to go home and allow parliament to again become the primary venue for political struggle—even though Democrat Party MPs were saying

privately that fresh elections and a return to parliamentary politics, and not more PDRC protests, offered the only constitutional and sustainable way forward.

Thirdly, the legislature could not prevent the Constitutional Court from sacking Yingluck and two earlier prime ministers, Samak and Somchai. The legislature did not want Yingluck, Samak and Somchai to lose their jobs; the elected prime ministers had not lost the confidence of the elected lower house of parliament. But the 2007 Constitution made the executive more accountable to the judiciary than to the legislature. Supporters of parliamentary democracy began to say that a “judicial coup” was as threatening to democracy as a military coup.

The judiciary was equally unable to mediate or arbitrate the political impasse—largely because the judiciary broadly defined (i.e. including the so-called independent bodies like the Electoral Commission and NACC) was not perceived by many Thais to be independent. Rightly or wrongly, the Pheu Thai Party believed the judiciary was biased against them. In the same way, many in Suthep’s PDRC and the Democrat Party thought the police were biased against them.

From November 2013 until May 2014, some judgments and public statements by commissioners and judges prompted observers to further question the independence of the judiciary. For example, an election commissioner publicly derided the elected government’s efforts to resolve the early 2014 political impasse through fresh general elections, and the Election Commission did little to stop anti-government protesters disrupting the registration of candidates and the distribution of ballots for that election. An anti-corruption commissioner publicly implied that members of the government were corrupt in their administration of rice subsidies before any charges had been brought to the Commission, and the Commission fast-tracked an investigation into Yingluck while taking a business-as-usual approach to longstanding allegations against Democrat Party leaders.

The Constitutional Court ruled that the protests led by Suthep, who openly called for the replacement of the elected government with an unelected body, were not an attempt to overthrow the democratic system of government. And within hours of an armed clash that resulted in the deaths of two policemen and four protesters, the Civil Court ruled that the anti-government protesters had demonstrated “peacefully and without weapons” and, therefore, the elected government could not prevent them from occupying public roads and buildings.

In constitutional terms, what Suthep and the PDRC wanted was unconstitutional: to ban a particular family (Shinawatra) from politics, to install an unelected government of “good people” and to delay elections until unspecified “reforms” were implemented. But just as the constitution could not deliver what Suthep and the PDRC wanted, nor could it satisfy Yingluck, the Pheu Thai Party or the red-shirts—because the constitution legitimised the so-called independent institutions which, Yingluck and her supporters believed, were trying to unseat the elected government or prevent a new one from being formed. Nor did the constitution allow the appointment of an “interim” prime minister who might have led a short-term government that could have cleared the way for a political compromise.³³

From an institutional perspective, therefore, the military prevailed at least partially because the legislature and the judiciary were unable to fulfil the mediating and arbitrating roles in Thailand that they customarily fill in democratic systems.

Prayuth Government

Prayuth decided to lead the post-coup government himself, rather than appoint a civilian administration which might either

³³ This sort of behind-the-scenes compromise was mooted in the weeks preceding the coup, with possible interim prime ministers including Arsa Sarasin (former Principal Private Secretary to the King and diplomat), Isra Vongkusolkit (successful businessman and Chairman of the Thai Chamber of Commerce and Board of Trade of Thailand), Wisanu Krue-Ngam (former Deputy Prime Minister under Thaksin, and legal expert) and Anand Panyarachun (former Prime Minister, diplomat and businessman).

underperform (like Surayud's government of 2006–7) or clip the military's wings (like Anand's in 1992). He replaced the 2007 constitution with an interim constitution and invoked Section 44 of that constitution, under which the security forces could arrest people without warrant and detain people without charge. Section 44 gave Prayuth full authority over all branches of government while absolving him of any legal responsibility for his actions. In addition to protecting national security and the monarchy and promoting reforms, Section 44 was used to enhance "unity and harmony".³⁴ In 1958, Sarit Thanarat held, and exercised, similar authority when he was prime minister. Like Sarit, Prayuth also tried to present himself as a fatherly figure who wanted to bring happiness to Thais. Unlike Sarit, he felt obliged to outline a roadmap that included a new constitution and an eventual return to civilian government.

2017 Constitution: Reinventing the Past

Unsurprisingly, the military-appointed drafters of the 2017 Constitution gave the military a supervisory role that pro-military observers argued was aimed at preventing a recurrence of extreme political volatility and the public demonstrations that had been persistent features of Thai politics since 2005. In brief, the military designated itself the supreme referee. The constitution allows the military government to preside over the appointment of a 250-member Senate, in which seats will be reserved for the supreme commander of the armed forces, the chiefs of the army, navy and air force, the secretary of the defence ministry and the police chief. For the five years after the next election (in effect, for the next two elections, given the four-year electoral cycle), it also gives the 250 unelected senators a say in the appointment of the prime minister, and even permits the appointment of a non-MP as

the prime minister. The constitution allows the military government to retain its Section 44 powers until the new government is formed (i.e. for the period between the election and the swearing-in of a new cabinet). In addition, it facilitated a 20-year national reform strategy that has been drafted and overseen by committees mainly composed of generals or people hand-picked by generals. The government is required to report quarterly to the Senate on its progress in implementing this national strategy. If the Senate adjudges any ministers or officials are failing to follow the strategy, it can refer them to the NACC or Constitutional Court. So, even if the government happens to be headed by an elected MP, the shadow of the military will still fall over it.

The 2017 Constitution further strengthened the judiciary, which included giving the Constitutional Court and independent agencies authority to also set ethical standards for themselves, MPs, senators and ministers. These standards should cover "the upholding of national prestige and interest", with judges having enormous discretion to define national prestige and interest. The judiciary's authority is also secured by articles in the constitution that allow 10 per cent of MPs and senators to petition the Constitutional Court to remove from office a minister who does not possess "apparent honesty" or whose behaviour seriously violates "the ethical standard". Again, the court has immense discretion to define ethical standards. In addition, although still untested, the Constitutional Court appears to have the authority to remove individual ministers, or the entire cabinet, if it concludes that they have misused public funds. When considering cases, the Court no longer has to rely entirely on the constitution but can also base its rulings on undefined "constitutional conventions of Thailand under the democratic regime of government with the King as Head of State".

In line with the practice introduced for the 2007 Constitution, the government sought public endorsement through a (firmly

³⁴ We will return to this theme in later chapters.

controlled) referendum in August 2016.³⁵ On this occasion, 59 per cent of the electorate voted (75 per cent voted in the 2011 elections) and 61 per cent of voters approved of the text. Fifty-eight per cent approved a second question, which asked whether the appointed Senate might play a role in appointing the prime minister. Like the referendum results for the 2007 Constitution, in 2016 provinces in the northeast and north voted against the new constitution (and second question). In 2016, so did the three predominantly Muslim southern border provinces, because electors there feared the new constitution was shifting towards making Theravada Buddhism the official state religion. So the 2016 referendum, like its 2007 predecessor, laid bare political divisions; its validation of the new supreme law was superficial.

Initially, the drafters of the 2017 Constitution wanted the judiciary to have even more power. No doubt worried by Bhumibol's failing health (he died in October 2016), they had opened the way for a judiciary-led committee to take over the crisis-management role that under previous constitutions had been viewed as a royal prerogative. The newly installed king, Vajiralongkorn, overruled them and restored the provisions of the previous constitution. In doing so, he acted boldly, first of all, in refusing to endorse the draft constitution that had been approved in a referendum; and, secondly, in indicating that he believed the monarchy should be able to play a dispute-settling role during periods of deep political crisis. He had earlier shown boldness in defying protocol by not formally assuming the throne soon after his father's death, saying he wanted to mourn for his father and not concern himself with other matters (he waited until December 2016).

In April 2017, presumably at Vajiralongkorn's request, in a secret sitting, the military-appointed legislature increased the monarchy's

formal power by transferring the custody of five state agencies to the new king. Two of them—the Royal Household Bureau and the Office of His Majesty's Principal Private Secretary—provide the monarch with administrative support. The other three—Royal Thai Aide-De-Camp Department, Office of Royal Court Security Police and Royal Security Command (which has six battalions comprising several thousand troops)—are responsible for security. Since 1932, these agencies had been under the control of the Prime Minister's Office, Ministry of Defence and the police. In July 2017, a law was amended to allow the king to appoint the chairman of the Crown Property Bureau, a position that was previously occupied *ex officio* by the minister of finance. Vajiralongkorn appointed a private secretary, who is a retired air chief marshal, to the post. In February 2019, the king disallowed his sister, Ubonrat, from openly engaging in politics. In summary, under the 2017 Constitution, and through legislative changes as well as personal interventions by the king, the formal authority of the monarchy has been strengthened.

The new constitution allows for an elected 500-member lower house, or House of Representatives; 350 of the elected MPs will be chosen on a constituency basis, and 150 from party lists. The new electoral arrangements (a multi-member apportionment system) are designed to help small- to medium-sized parties to become bigger, which would reduce the chances of a Thaksin-aligned political party gaining a majority. And reflecting public distrust of elected politicians as well as their own ambition to retain control, the military's new blueprint lifts the chances of an outsider, most likely an army general, being appointed prime minister.

Through these constitutional changes, the military may be able to dilute some of Thailand's chronic political instability. However, if history is a guide, the military won't be able to silence elected MPs, who will claim a democratic mandate and legitimacy that the military-controlled Senate and military-controlled national reform strategy

³⁵ Duncan McCargo, Saowanee T. Alexander and Petra Desatova, "Ordering Peace: Thailand's 2016 Constitutional Referendum," *Contemporary Southeast Asia*, Vol 39, No 1 (2017): 65–95.

committee lack. If MPs follow in the footsteps of their democratically-minded predecessors, over time they will also: criticise the 2014 military coup; baulk at reporting to the Senate on its implementation of a national strategy in which they have had little say; object to the new powers of bodies like the Electoral Commission, Auditor General, NACC and Constitutional Court; demand that more of the budget goes on social programs and less on military equipment; ask questions about military corruption and other wrong-doings; and advocate constitutional reform.

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