

# **East Asia's New Democracies**

Deepening, reversal, non-liberal  
alternatives

**Edited by Yin-wah Chu and Siu-lun Wong**

# Contents

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## 7 Thailand's conservative democratization

*Kevin Hewison*

Since its overthrow of the absolute monarchy in 1932, Thailand has had an astonishing democratic transition record: it has had more transitions to democracy than any other Asian country. It has also had more transitions *away* from democracy in the same period. While something of a joke, this highlights the fact that Thailand's widely anticipated democratic consolidation has repeatedly been confounded. But as the twentieth century ended, as a new constitution was implemented and the military weakened, there was increased confidence that the "consolidation process" had advanced so far that a "reversal of the democratic trend [seemed] increasingly unlikely" (Suchit 1999: 68).<sup>1</sup>

According to Linz and Stepan (1996: 3), a democratic transition is:

complete when sufficient agreement has been reached about political procedures to produce an elected government, when a government comes to power that is a direct result of a free and popular vote, when this government *de facto* has the authority to generate new policies, and when the executive, legislative and judicial power generated by the new democracy does not have to share power with other bodies *de jure*.

They also note that democratization involves liberalization, asserting that the former is a wider process that includes the right to win control of government through free and fair elections that determine who governs.

In the decade since its 1997 constitution was promulgated, Thailand has failed on all of the counts specified by Linz and Stepan. Further, from 1997 to 2008, the country saw seven prime ministers (not counting interim prime ministers), a military coup in 2006, a new constitution developed under a military-dominated government in 2007, waves of street protests meant to overturn electoral outcomes and five-year political bans on 220 politicians and party executives.

There are several ways to interpret these events. This chapter begins by acknowledging that contestation over democratic practices amounts to a struggle for control of Thailand's political regime. A political regime is a particular organization of the state's power, embedded in the institutions of

the state apparatus (see Hewison *et al.* 1993: 4–5). Although this approach shares common ground with that of Connors (2008a, 2008b), whereas he emphasizes the liberal aspects of this struggle in Thailand, this chapter concentrates on conservative and authoritarian power.

In a chapter of this length, it is impossible to discuss all aspects of the multiple discourses and struggles in Thailand's recent politics. Hence, the focus is on three elements of these struggles and debates, each of which is central to the future of Thailand's democratization: constitutions, judicialization, and the monarchy. Initially, a brief background of recent political events is provided (for further details, see Hewison 2007a, 2008; Connors 2008a).

### Reshaping the regime: the rise of Thaksin

Thaksin Shinawatra, leader of the Thai Rak Thai (TRT) Party from 2001 to 2006, was elected prime minister in 2001 and again in 2005, before being overthrown by the military in 2006.<sup>2</sup> His electoral popularity and that of his party derives from an earlier period. The economic boom of the 1980s and early 1990s resulted in exceptionally rapid social change as business opportunities multiplied, employment grew and poverty declined. Political change was also rapid.

Following the 1991 coup, resistance to military political domination led to street protests in May 1992. When the military and police fired at demonstrators, the government was forced to resign (see Hewison 1997; Pasuk and Baker 2000). These events led to the development of a new constitution. Sometimes referred to as the "People's Constitution," the 1997 charter was the product of a political compromise. It was meant to provide a basis for further democratization, establishing checks and balances, encouraging participation, embedding the rule of law and establishing stable government (see McCargo 2002; Hewison 2007b).

Connors (2008a: 481) refers to the political compromise on the 1997 constitution as a "liberal-conservative" alliance that advanced a governance agenda that was meant to move electoral politics beyond a reliance on vote-buying and influential local figures. Although liberals cautiously introduced a division of powers and limited rights and liberties into the constitution, they agreed with conservatives that the military and monarchy should remain largely untouched, even if some liberals hoped they would modernize. The aim was to establish a political regime that was more recognizably democratic while maintaining ruling-class control over the state. To the surprise of the elite authors of this compromise, the electoral outcome of their efforts amounted to a serious challenge to the liberal-conservative pact and the political regime it had hoped to entrench. This challenge was mounted as the impacts of a serious economic downturn remade Thailand's capitalist landscape.

The economic crisis had political consequences. With bankruptcies, unemployment and poverty spiking, and the Democrat Party-led coalition government implementing unpopular IMF-mandated restructuring,

opposition developed. There was considerable elite fear about the potential for social chaos. Domestic business leaders, intellectuals, workers, leaders of non-governmental organizations (NGOs), opposition politicians, and the king came together in a nationalist campaign against the government (Hewison 2000). The Democrats stood accused of destroying the economy, ceding sovereignty over economic policy-making to outsiders and selling off Thai assets to foreigners. Founded by Thaksin in 1998, TRT emerged as the political vehicle to save the domestic business class. The economic slump and fear of social conflict convinced the conservative, Bangkok-centered elite to support Thaksin.

One of the few business people not crippled by the crisis, Thaksin had the resources necessary to fund a new political party (Pasuk and Baker 2004; McCargo and Ukrist 2005). He recognized that to resurrect domestic capitalism, TRT needed to develop policies that appealed to poor and rural-based voters. In late 2000, TRT went to the electorate with a nationalist message and range of welfare policies. It developed a new social contract that enhanced social welfare for the poor while leading the elite to believe that its power would be reestablished (Hewison 2004). What many conservatives failed to realize was that a new political assertiveness would develop among the voting public, especially the poor (Pasuk and Baker 2008a: 18).

Once in power, Thaksin and TRT demonstrated the problems associated with this conservative myopia and the liberal-conservative compromise of the 1997 charter. Thaksin accrued tremendous power to himself as prime minister and to his cabinet, establishing the superiority of the executive over parliament and countervailing agencies. In fact, the drafters of the constitution had intended that there should be a strong party system and a powerful executive; however, TRT, with Thaksin in charge, was considered by some to be abusing the provisions and spirit of the constitution (Ginsburg 2008). Further, Thaksin and TRT leaders sought to neuter independent agencies, engaged in serious human rights abuses,<sup>3</sup> attempted to control sections of the media, and strengthened state security agencies. Critics emerged, but TRT's mass appeal and winner-take-all political strategy neutralized many of them.

### Reshaping the regime: opposing Thaksin

The first sustained opposition to the TRT government was from state enterprise unions opposing the privatization policies that the government had begun to implement as the economy recovered. They drew attention to alleged corruption in the privatization process (Brown and Hewison 2005). But as TRT strengthened its electoral relationship with the poor in the run-up to the February 2005 election, its landslide victory seemed to make Thaksin and TRT invulnerable.

Surprisingly, just a few months later, an anti-government campaign emerged, led by disgruntled former Thaksin supporters. Significant among these opponents was former Thaksin acolyte and media entrepreneur Sondhi

Limthongkul. He accused the government of authoritarianism, conflicts of interest and corruption. Strikingly, Sondhi declared opposition to Thaksin as a crusade to protect the monarchy. Linking the king to political bickering was a risky strategy, with Sondhi gambling that patriotism could mediate a political alliance amid increasing elite consternation about Thaksin and his party. The earlier liberal-conservative compromise seemed doomed as conservatives began to oppose Thaksin. In December 2005, the king's call for the government to accept more criticism allowed Sondhi and his supporters to claim that their fight was for crown and nation.

The event that catapulted this opposition into a broader movement was the US\$1.88 billion sale of the Shin Corporation, a Shinawatra business, to the Singaporean government's Temasek in January 2006. Many saw the tax-free sale as an outrageous example of Thaksin's nepotism and corruption (*Time* 10 April 2006). Outrage was strongest among the middle class, who saw Thaksin as escaping tax payment, while using their own taxes to boost TRT's electoral appeal by providing benefits to the poor. Some feared the creation of a "welfare state," imagining indolent villagers getting fat on state handouts. They also feared the rising political influence of the masses (Pasuk and Baker 2008a: 19, 21). An alliance was soon forged between the middle class and disgruntled conservatives.

The People's Alliance for Democracy (PAD) came to represent the interests of these two groups, and joined together Sondhi supporters and activist organizations. PAD demonstrations in 2006 brought thousands into the streets for well-organized rallies to accuse Thaksin of nepotism, corruption, censorship, and human rights violations. Repeatedly trumpeting Thaksin's alleged disrespect for the throne, the PAD called on the king to remove him and appoint a new prime minister (Connors 2008b). Sondhi's call to defend the monarchy was exceptionally powerful, playing to middle-class fears regarding the succession, and resulted in the resurgence of conservative political beliefs, which effectively ruptured the liberal-conservative alliance.

Thaksin responded to extra-parliamentary opposition by calling a snap election in April 2006, but at the PAD's urging, the major opposition parties, led by the Democrats, boycotted the polls. Essentially unopposed, TRT romped home, but alleging fraud, the PAD petitioned the Constitutional Court to suspend the results of the election (*Christian Science Monitor* 4 April 2006).

This brief account provides the background for the remainder of this chapter, which seeks to explain a conservative resurgence that sought to reinforce a conservative royalist regime. This renaissance is illustrated in three overlapping chronicles traversing the period from mid-2006 to late 2009, explaining the destruction of Thaksin, TRT and their political agenda. The chapter focuses on the struggle over the constitution, the politicization of the judiciary and the palace's enhanced political role.

### The struggle over the constitution

The 1997 constitution, thrown out in the 2006 coup, is often identified as the most democratic of Thailand's many constitutions. Although correct, this is also a romanticization of the drafting process and political positioning of the basic law.

Scholars have long observed that constitutions are sites of political conflict. Writing of U.S. constitutionalism, DeBats (1983: 58–9) notes that the “Federalist revision of liberalism was in the service of a deliberate social conservatism,” emphasizing property-holding as an element of freedom and sovereignty and the emergence of interest-based activism rather than a broader democratic involvement of citizens. Earlier, in 1938, Beard observed that the “prime consideration of any realistic constitutional history is economic: whose property, what property, and what forms of regulation and protection?” (cited in Belz 1972: 648). The development and operation of a constitution are contested processes, and the existence of a democratic constitution is no guarantee that political participation will be expanded and embedded. Indeed, constitutions can be used to *exclude* certain interests (see Hirschl 2004).

Constitution drafting in Thailand has traditionally been the preserve of the dominant political and military elites, and their interests have always prevailed. Even in the development of the 1997 document, elite control was maintained (Hewison 2007b). As already noted, Connors (2008a) considers the 1997 constitution to be the outcome of a liberal-conservative alliance. While liberals emphasized good governance, conservatives initially opposed expanded participation. The need to maintain order, stability, and unity along with the maintenance of the positions of the monarchy and military brought the conservatives into this alliance. More broadly, many reformers, NGOs, and intellectuals were also convinced that a “people’s agenda” was being achieved, and middle-class angst about “money politics” and political rights was also addressed.

The electoral power of Thaksin and TRT challenged the liberal-conservative alliance. Thaksin’s control of politics through election victories and the perception that he was bending rules or using them to his own and his party’s advantage while empowering rural electorates caused a radical and conservative revision of the alliance. The liberals and conservatives, much of the urban middle class, and many activists came to oppose the government. They also agreed that the 1997 constitution needed to be reworked. Their enthusiastic support for the 2006 coup was one means to achieve this.

The coup set in motion a military-dominated process to develop a new constitution, with the junta establishing, tutoring, and controlling the bodies drafting the new constitution (*Nation* 20 December 2006<sup>4</sup>). Not surprisingly, the outcome was a regressive constitution. It weakened the executive branch, transferred considerable decision-making power to the bureaucracy and other unelected bodies, including the half-appointed senate and the judiciary, and enhanced the military’s political role and budget (Hicken 2007; Thi 2007).

The junta also controlled the country’s first-ever constitutional referendum. TRT-associated groups and coup opponents campaigned against the draft charter and were vigorously opposed and suppressed. When the constitution was approved, the Asian Human Rights Commission (AHRC 2007b) described a “heavy-handed undemocratic atmosphere,” observing that the “junta . . . coerced, threatened, bought and cajoled part of the electorate.” An editorial in the *Bangkok Post* (1 August 2007) said the process had a “facade of being a democratic choice,” adding, “[t]his is not democracy, this is not the rule of law.”

During the referendum campaign, fearing rejection of the charter, it was explained that the document was not permanent. Junta-allied National Legislative Assembly president Meechai Ruchupan said the charter could be amended later. An Army spokesman stated, “Whether the draft is good or bad is not the whole point. People can amend it later” (*Bangkok Post* 18 August 2007). Similar statements were heard in the run-up to the December 2007 elections. Interestingly, the constitution permitted parliament to make amendments based on a simple majority vote. The People’s Power Party (PPP), which inherited TRT’s mantle following the latter’s dissolution, campaigned in the election for changes to the charter. In particular, the PPP wanted amendments to provisions that gave the junta immunity from prosecution for its illegal coup. It also wanted a legal review of all junta announcements that had the force of law.

At the time, a PPP victory seemed improbable. But win they did, and the new government announced a committee to review the 2007 constitution (*Naewna* 8 February 2008). Immediately, though, the earlier conciliatory conservative promises were forgotten. Various commentators agreed that changes were required, but they were wary of the PPP’s motives, fearing that changes would benefit Thaksin and former TRT members. They opposed haste and, importantly, rejected the parliamentary route to amendment, favoring broader public involvement. Conservative groups began to insist that approval by referendum meant that the charter could not be changed (see *Bangkok Post* 5 May 2008).

With the appointment and election of new senate members, the PPP again proposed constitutional amendment (*Matichon* 7 March 2008). One of its executives went before the Supreme Court, charged with electoral fraud, so although the PPP raised questions regarding the dissolution of TRT in 2007, it faced the prospect of dissolution itself. It seemed that the PPP stand had considerable public support (*Bangkok Post* 27 March 2008). Opposition to amendment was initially led by a coalition of mostly appointed senators and the Democrats. However, the PAD soon returned to take on this issue.

The PAD had announced its “dissolution” two days after the 2006 coup, but was reactivated in March 2008, motivated by the government’s push for constitutional change. Its first public gathering drew several thousand participants, and its leadership declared a campaign to stop constitutional amendment (*Bangkok Post* 29 March 2008). The PAD claimed that changes

would benefit the PPP and its allies. Ominously, PAD leaders asserted that confrontation was unavoidable (*Bangkok Post* 20 and 24 April 2008).

As the amendment tug-of-war continued, in May, the PAD's Sondhi Limthongkul announced a "last war" against the "Thaksin regime," lodging an impeachment petition against those parliamentarians supporting constitutional revision. The PAD was supported by royalists including former prime minister Anand Punyarachun and former coup leader General Saprang Kalayanamitr (*Bangkok Post* 26 and 27 May 2008). The PAD's demonstration was protracted, lasting from 25 May until early December 2008. When the government proposed a joint panel with the Democrats to review charter changes and invited the PAD, the latter rejected the offer, stating that the constitution could *only* be amended *outside* parliament. Later, PAD leader Chamlong Srimuang announced that parliament offered no hope for the country and claimed that the government had acquired power "unconstitutionally" and had no right to amend the constitution (*Matichon* 7–18 June 2008).

Adding weight to the conservative opposition, Constitution Court judge Jarun Pukditanakul attacked the PPP's plans, asking whether a criminal should rewrite the Criminal Code and ill-intentioned people rewrite the charter. Military leaders, including Army commander General Anupong Paochinda, supported by Air Force Chief Chalit Phukpasuk, both junta alumni, also expressed doubts: "If the amendment is to happen, people must know whether that will serve the demands of any particular group . . . It is inappropriate to make changes for the sake of a small group of people" (*Bangkok Post* 17 July 2008). Within days, privy councilor and former premier Tanin Kraivixien and former Democrat prime minister Chuan Leekpai threw their support behind the opponents of amendment, arguing that the junta charter was well crafted, implying that no change was necessary (*Bangkok Post* 19 July 2008).

With such strong conservative support, the PAD leadership announced that its street protest would continue indefinitely. Proclaiming its opposition to any constitutional amendments, PAD leaders announced that there would be no negotiations with the government. The PAD's Suriyasai Katasila proclaimed, "our stance is to topple the nominee government and then to reform politics" (*Bangkok Post* 27 September 2008). For PAD, constitutional amendments could be made only after Thaksin—who had fled the country to the U.K.—had been "brought to justice" (*Bangkok Post* 1 October 2008).

The PAD's continuing street demonstration led to the government offering a limited compromise, suggesting that the constitution could be amended by an extra-parliamentary committee (*Matichon* 2 October 2008). The Democrats initially supported this approach but the PAD remained opposed, with PAD-associated civil society groups threatening violence if there was any move to amend the charter. PAD leaders announced a final push to oust the government (*Bangkok Post* 5 and 6 November 2008), beginning with 40,000 supporters massing to blockade parliament.<sup>5</sup> They said this was to

block constitutional amendment, even though the prime minister denied such an agenda (*Bangkok Post* 23 November 2008).

The PAD's activism, highlighted by its occupation of Bangkok's airports, ended when the government fell following the dissolution of the PPP and two of its coalition partners by the Constitutional Court. Those who opposed the government, both liberals and conservatives, had succeeded, through a combination of legal and illegal tactics, in preventing any changes to a constitution that had grown out of a military coup and political repression, paving the way for a new government that came to power with the support of the military.

### Judicialization or politicization?

Analysts including Ginsburg (2008), Dowdle (2009) and Leyland (2009) have identified a process of judicialization in Thailand that began with the 1997 constitution and has accelerated since April 2006.<sup>6</sup> As Pasuk and Baker (2008b) observe, a more assertive judiciary could be a positive development. However, a highly interventionist judiciary during periods of political conflict can lead to charges of political bias; they add that, "much of this judicial activity could be construed as politics by other means." This is certainly the case since 2006, as Thaksin and the "Thaksin regime" have been special targets of judicial sanctions. In this discussion, separating Shinawatra family cases from political cases is difficult, but then the protagonists did not separate them.

For all their efforts to destroy the Thaksin regime, from the 2006 coup to the December 2007 polls, the PPP's electoral success was a stinging rebuke to the forces that supported the coup. With a coalition of smaller parties, the PPP established a comfortable parliamentary majority, leaving the Democrats as the opposition.<sup>7</sup> Support for the PPP was strongest in the poorer northern and northeastern regions and in the working-class regions that encircle Bangkok (Pasuk and Baker 2008c). Assuredly, the margin was much closer than the 2005 landslide, but the 2007 vote represented a rejection of the coup, the military and the anti-TRT/PPP campaigns. The massive voter turnout could also be interpreted as popular support for electoral processes. However, for those who opposed Thaksin and TRT, this electoral outcome was unacceptable.

A series of judicial and extra-constitutional measures soon began, targeting the PPP. Just prior to the election, junta leader General Sonthi Boonyaratglin and the PAD leadership predicted a swathe of PPP disqualifications (*Nation* 1 January 2008). Indeed, three PPP candidates were the first to be yellow-carded.<sup>8</sup> Within days of the election, the Election Commission (EC) was investigating 83 cases, with 65 of them PPP winning candidates (*IHT* 3 January 2008). Meanwhile, the EC head predicted that electoral fraud charges against deputy PPP leader Yongyuth Tiyapairat would result in the party's dissolution (*Bangkok Post* 10 January 2008). Within a month, the EC found him guilty, with dissident EC commissioners claiming that the decision had been rushed, without hearing Yongyuth's witnesses (*Bangkok Post* 15, 17,

and 27 February 2008). This verdict set in motion a legal process that eventually led to the dissolution of the PPP in December 2008.

When the PPP leadership suggested an “invisible hand” was at work and demanded that the EC be transparent, the military denied that a “coup by stealth” was underway and reasserted its strong support for the EC. The EC denied bias but replaced one of its investigation officers. For its part, the PAD warned that the PPP’s electoral mandate meant little (Kate 2008; *Bangkok Post* and *Nation* 6–8 January 2008).

The National Commission to Counter Corruption (NCCC) soon launched legal proceedings against the new government, initially targeting the public health minister, who would become the first minister to be disqualified. The *Bangkok Post* (10 April 2008) explained that his mistake was an “unintentional blunder” in being a month late declaring his wife’s assets. In late April, the NCCC also found that a deputy commerce minister had failed to properly declare a holding in a private company. That the company was apparently defunct carried no weight, and he was disqualified (*Bangkok Post* 25 April 2008).

At about the same time, the EC voted to dissolve two government coalition parties—Chart Thai and Matchimathipataya—passing the cases to the Constitutional Court. The Court was identified as a threat to the PPP as it was composed of judges considered Thaksin opponents and with links to military leaders (*Bangkok Post* 22 May 2008). In October, the Office of the Attorney General petitioned the Constitutional Court to dissolve the PPP (*Matichon* 11 October 2008). In May, the Constitutional Court found that Prime Minister Samak had breached the constitution in hosting a television cooking show and receiving small allowances (*Thai Post* 21 May 2008). This was a victory for the PAD, whose leaders called for even more legal action against the PPP, targeting anti-monarchy cases (see below).

The PAD now claimed that no prime minister from the coalition government was acceptable and that the government had to go (*Bangkok Post* 10–12 September 2008). To further this aim, it began publicly pressuring the judiciary and members of independent agencies. It insisted that investigations be sped up and called for increased political support. General Anupong complied, declaring his support for the Assets Scrutiny Committee (ASC), a critical junta-established agency. At the same time, just as the PAD harassed those it considered pro-Thaksin, its leaders were less concerned about legal decisions against their own number. When they faced charges, they were usually quickly bailed out or the courts rejected the serious charges against them, and they immediately returned to their rallies (*Times Online* 10 October 2008).

As soon as the PPP-led government took office, the ASC issued warnings of more charges against Thaksin, his family, and other TRT/PPP members. At the same time, former members of the junta announced that they would continue to “shield” it and prevent its closure by the government. When Thaksin proposed returning from exile, General Sonthi warned of further street demonstrations and the Attorney General’s Department, headed by a

junta ally, declared that Thaksin would be arrested on his return (*Matichon* 21 January 2008).

The ASC soon brought new charges against a swathe of PPP members and Thaksin (*Bangkok Post* 11 March and 1 April 2008). As its term neared its end, the ASC accelerated its work, with one panel recommending legal action without hearing 300 defense witnesses or considering 100 additional pieces of evidence. ASC secretary Kaewsan Atibodhi said the “evidence and witnesses are useless” (*Bangkok Post* 9 April 2008). When the ASC’s tenure expired at the end of June, some 15 cases were pending against Thaksin (Crispin 2008a). When the ASC closed, PAD supporters cheered its members as heroes in the anti-Thaksin campaign (*Bangkok Post* 30 June 2008). At the same time, former junta members attended a farewell party for the ASC at the Army Club, promising to protect its legacy (*Bangkok Post* 1 July 2008). Meanwhile, the Constitutional Court ruled that the ASC’s work, undertaken under junta rules, was legal.

Another legal tack taken against the government began in late May, after the government signed a joint communiqué with Cambodia and UNESCO for the World Heritage listing of the Preah Vihear temple complex. The PAD and Democrats protested and promoted a nationalist outcry. Various activists claimed, with no evidence produced, that the agreement was brokered to facilitate Thaksin’s Cambodian business interests (*Bangkok Post* 15 July 2008). The Democrats brought a no-confidence debate in parliament (*Matichon* 24 and 25 June 2008).<sup>9</sup> Eventually, the foreign minister resigned after the Constitutional Court ruled against the government.

In July, Pojaman Shinawatra, Thaksin’s wife, was convicted of tax evasion and sentenced to three years in jail. A day later, the Supreme Court’s Criminal Division for Holders of Political Positions began hearing another case against Potjaman and Thaksin. The couple fled, with Thaksin claiming, “My cases have been pre-judged, to get rid of me and my family, who are regarded by a group of people as their political enemies, irrespective of the law and international principles of justice” (*Bangkok Post* 12 August 2008). Prosecutors then seized some US\$2 billion in Shinawatra assets (*IHT* 25 August 2008). Arrest warrants were issued for Thaksin and his wife (*Matichon* 27 September 2008). In his absence, on 21 October, the Supreme Court found Thaksin guilty of violating conflict of interest rules and sentenced him to two years in prison (*Time* 21 October 2008).

With pro-PPP groups rallying against what they saw as a “judicial coup,” the PAD occupied the airports on 25 November 2008. Just hours later, the Constitutional Court announced that party dissolution trials would proceed and demanded that evidence be submitted within hours (*Bangkok Post* 27 November 2008). The Court then set a 2 December deadline for closing statements, ruling that there was no need to hear witnesses or consider additional evidence. The Court’s president announced that there would be no more hearings, meaning that some 200 witnesses would not be heard

(*Bangkok Post* 1 December 2008). The abrupt wrapping-up of the case made it clear that the parties would be dissolved. With pro-government groups threatening to protest at the Constitutional Court, newspapers warned of chaos if they were permitted to demonstrate, and the military announced the need to respect the Court's forthcoming judgment. The Air Force chief warned "If the power of the judiciary is not respected, there will be confusion. If the rules and court judgments are not followed, some decisive measures must be taken" (*Nation* 1 December 2001).

The Court announced its verdict on 2 December 2008. It dissolved the parties and revoked the political rights of 109 executives, banning them from politics for five years. This meant that some 146 TRT/PPP politicians had been banned by the Court in 2007 and 2008. Matchimathipataya party leader Anongwan Thepsuthin appeared stunned, asking:

The verdict came out shortly after I read out my closing statement. Does this mean the court did not care about what the party had to say? What is going on with the judicial system? Chart Thai leader Banharn Silpa-archa claimed that the court's verdict had been made in advance.

(*Bangkok Post* 3 December 2008)

Upon dissolution, as if following a script, PAD members left the airports, which resumed operations within 24 hours. The PAD announced: "The Constitution Court's verdict is clear proof that the previous administration's power was not obtained through democracy under the Constitution but was accomplished through electoral fraud and that the rally by the People's Alliance for Democracy was legitimate" (*Phujatkan* 2 December 2008).

General Anupong was reportedly relieved by the court's decision (*Bangkok Post* 3 December 2008), and he and senior military figures immediately entered into negotiations with banned politician Newin Chidchob and wealthy business people to encourage Newin's faction of the PPP to support the Democrats in forming a new government (*Bangkok Post* 4, 8, 10, and 13 December 2008). With broad business and military support, the Democrats formed a coalition government following Abhisit's election as prime minister by a parliamentary vote (*Bangkok Post* 16 December 2008).

Between 2006 and 2008, the judiciary brought down several ministers, convicted Thaksin and members of his family, banned four political parties that had all had electoral success, and ended the PPP-led government. It might be argued that these actions represent a flowering of a more activist judiciary enforcing the rule of law. However, as these cases progressed, there was a significant reluctance to take legal action against the PAD or other opponents of the PPP-led government.

When the PAD held rallies at government ministries and the Government House, seized a government television station, and then occupied airports, legal reactions were muted. General Anupong repeatedly refused to act on

requests for assistance in managing demonstrations. Senior Democrats applauded the PAD's actions (*Bangkok Post* 9 September 2008). Anti-government legislators including Democrat leader Abhisit encouraged the PAD occupiers at Government House and criticized the government's use of police against demonstrators, ignoring the use of weapons by the PAD (*Bangkok Post* 30 August 2008).

Further, Democrats such as Korn Chatikavanij openly supported the PAD. He wrote:

No point shying away from the obvious—after all . . . one of the PAD leaders . . . is a Democrat MP. Many other key speakers were our candidates in the recent general elections. Almost all of the tens of thousands . . . [of PAD demonstrators] are Democrat voters.

Referring to the PAD's illegal actions, Korn stated: "Did everything change as a result of the illicit acts? Not for me," adding, "I was saddened by the PAD decision to cross the legal line. Yet I understood it from the perspective of strategy." Acknowledging the PAD's significance for his party, Korn stated: "like it or not, the Democrats could not on our own have resisted the PPP." Korn admitted that the public did not support the PAD but retorted, "screw the opinion polls, the people attending the rally don't deserve to be vilified as criminals and I . . . visit[ed] them." While he criticized the PAD's airport occupation, Korn believed that the "disruption and economic damage" was limited because PAD members were "just sitting peacefully outside the airport," adding, "this damage can be repaired" (*Bangkok Post* 2 and 9 December 2008).

Sombat Thamronthanyawong, the president of the prestigious National Institute of Development Administration, also justified the PAD's illegal and violent actions, stating that "it is only natural that the PAD had to violate some laws." He added that while the "PAD did break the law and violate some people's rights" it was essentially a "political pressure group . . . acting as a check and balance for Thailand's future political reform . . . fighting against corrupt politicians" (*Bangkok Post* 30 August 2008).

These views make it clear that there had been a substantial politicization of the judiciary. As Ginsburg (2008: 31) observed, the shift in constitutional power means that "[u]nelected technocratic guardians are deciding who governs" and this inevitably means that these "institutions are themselves transformed by their new, high-profile mandates." The seeming technocratic structure of the legal decision-making "masks judicialized politics, and the guardians have inevitably been politicized as they are called on to determine who will govern."



## Politics and the monarchy

The judiciary's remarkable and ongoing intervention in Thailand's political struggles was given a immense boost when the king first called for the courts to solve the problems created by the boycotted April 2006 election.

In its first round of anti-Thaksin demonstrations, the PAD had pinned its hopes on the king throwing Thaksin out and appointing his own prime minister and a new government (Connors 2008b). King Bhumibol claimed this would be undemocratic. Nevertheless, he declared the situation following the election a "political crisis," and added, "we have to find a way to solve the problem . . . This is not a democracy." He identified the judiciary as the body to set things right and called on them to clean up the political mess (*Nation* 25 April 2006). The judges heeded the king's advice, and on 8 May 2006 the Constitutional Court annulled the April elections and ordered new polls (forestalled by the 2006 coup). The judges then called on the Election Commissioners to resign (Vander Meer 2006). When they refused, the Criminal Court removed them from their posts and had them jailed. Apparently this was discussed in advance with palace representatives (AHRC 2007a; Asian Legal Resource Centre 2007), and even TRT critics referred to it as "judicial hijacking" (Vander Meer 2006).

From this moment, the leadership of the anti-Thaksin opposition shifted from the PAD to General Prem Tinsulanonda, a former prime minister and the president of the king's Privy Council.<sup>10</sup> Prem's relationship with the king and his Army links made him a powerful opponent. He made a series of speeches criticizing the government, and established control over the military. Supported by military leaders and privy councilors, Prem demanded that officers be loyal to the king (Prem 2006). The coup followed a few months later.

Even if it is officially denied, the palace's *political* role cannot be ignored.<sup>11</sup> The palace was critical in Thaksin's ousting through the military coup. Former National Security Council chief and royalist Prasong Soonsiri claimed that he and five senior military figures planned the coup from July 2006, with the PAD's Sondhi saying that this planning included the palace, General Prem and military figures (see *Nation* 2 October 2006; *Asia Times Online* 22 December 2006; and *Phujatkan Online* 25 August 2007). Coup troops advertised their support for the palace by displaying yellow ribbons; yellow being the king's color.<sup>12</sup> When the junta announced its reasons for the coup, the monarchy ranked high: "severe rifts and disunity among the Thai people . . . signs of rampant corruption, malfeasance, political interference in government agencies and independent organizations . . . [and] several actions verging on lèse-majesté."<sup>13</sup>

Following the coup, the palace's role was also important. The king approved the putsch within hours, deflating opposition. The military appointed General Surayudh Chulanond as prime minister, plucking him from the Privy Council. He then appointed a cabinet with numerous palace links. Led by General Prem, palace officials and royalists were mentors to the coup makers and

their government, and royalists held numerous positions as the junta-backed government sought to neuter the "Thaksin regime." Most importantly, the writing of the 2007 constitution was placed in the hands of conservatives and royalists.

The PPP's 2007 election victory shocked royalists. During the initial jockeying to form a government, the king called for national unity and adherence to the junta's constitution (*Bangkok Post* 1 January 2008). Frantic attempts were made by anti-PPP groups to ensure a coalition agreement that would enable "control" of the PPP and ensure loyalty to the royalist agenda. At the top of the agenda was reverence for the monarchy, respect for General Prem, and no reprisals against the junta generals. The PPP rejected these demands while expressing loyalty to the king (*Xinhua* 28 December 2007).

Royalists then began attacking the PPP-led government. At the same time, lèse-majesté charges, which brought 3 to 15 years in prison, were made against PPP minister Jakrapob Penkair (*Bangkok Post* 21 and 22 February 2008). The Democrat Party highlighted these allegations (*Bangkok Post* 20 May 2008), and were supported by General Surayud, who had returned to the Privy Council, and military leaders (*Bangkok Post* 19 and 30 May 2008). After all military senior leaders had met and denounced him, Jakrapob resigned (*Nation* 2 June 2008). At the same time that they were attacking Jakrapob, the Democrats began to demand the censorship of websites deemed critical of the monarchy (*Thai Post* 20 May 2008).

The Democrats repeatedly made references to anti-monarchy websites, publications, and "movements," lending credibility to the PAD's claim that the monarchy was under threat. Senior Democrat Piraphand Salirathaviphak demanded amendments to the draconian lèse-majesté law, claiming that the monarchy was a national security matter (*Bangkok Post* 19 November 2008). Meanwhile, the Army warned community radio stations that they would be closed if they insulted the monarchy (*Bangkok Post* 5 November 2008).

As the PAD initiated further rallies, pro-PPP/Thaksin groups also mobilized, targeting Privy Council President Prem. Supreme Commander Boonsang Niempradita called these demonstrators "social garbage" and the media labeled them "hired thugs" and "extremists" (*Bangkok Post* 28 April 2008). The PAD seemed to comprise another category of demonstrator. Cloaked in the king's yellow and claiming to protect the monarchy, it continually warned against offending the crown (*Bangkok Post* 18 May 2008). Sondhi claimed that if the government was not dissolved, "the monarchy might collapse" (*Phujatkan* 26 August 2008).

After participants in a PAD rally were attacked by a pro-PPP crowd in Udonthani, it was reported that a PAD demonstrator was killed, although this claim was proved false. Even so, it stirred further support for the PAD, especially among intellectuals and the Bangkok elite (*Bangkok Post* 25 July 2008; *The Irrawaddy* 28 July 2008). General Prem, apparently an avid viewer of Sondhi's xenophobic ASTV, was moved to write a song about the political rift and death, while the *Bangkok Post* (6 September 2008) decried the violence.<sup>14</sup>

Throughout this period, Prem repeatedly met with military leaders, reminding them of their duty to protect the nation and monarchy (*Bangkok Post* 9 September 2006).

When Samak was forced to step down, the Democrats adopted a royalist strategy, calling for a national unity government, and were supported by General Anupong. The PAD briefly agreed, rejecting any dissolution of parliament.<sup>15</sup> Amid considerable maneuvering within the PPP, Somchai Wongsawat, Thaksin's brother-in-law, became prime minister (*Bangkok Post* 1 October 2008). Somchai offered the PAD a compromise, visiting General Prem as a sign of respect.

Immediately, however, the PAD sealed off parliament to prevent Somchai from presenting his constitutionally required policy statement, and there was a clash between police and armed demonstrators (*New York Times* 8 October 2008). Two protestors were killed, one of whom was a PAD security guard, who died when explosives in his car detonated.<sup>16</sup> To the surprise of many, Queen Sirikit immediately made donations to the injured PAD protestors, and she and a princess attended the funeral of one of those who died, along with hundreds of PAD supporters (*Nation* 13 October 2008). These royal acts allowed the PAD to proclaim that it was actively supported by the monarchy (*The Economist* 16 October 2008). Former prime minister and palace loyalist Anand Punyarachun attended the funeral of the PAD bomber (*Bangkok Post* 16 October 2008).

The government was blamed for the clash. Royalist Prawase Wasi called on Somchai to resign. General Anupong agreed and his call for the government's resignation was supported by the military chiefs (*Bangkok Post* 8–11 and 17 October 2008). As violence grew, Anupong asserted that the PAD had not perpetrated violence and remained steadfast: the military would not intervene except for "keeping peace and [in] order to protect the public and uphold important institutions like the monarchy" (*The Irrawaddy* 25 November 2008; *Bangkok Post* 26 November 2008).<sup>17</sup>

Recognizing that the Democrats might form a new government, PPP members of parliament petitioned for an early and special parliamentary session to select a new prime minister (*Bangkok Post* 2 December 2008), but their request went unanswered by the parliament's president and the palace (*Bangkok Post* 6 December 2008). The king did not make his usual birthday speech on 4 December, apparently because of illness (*Bangkok Post* 5 December 2008). At such a politically charged moment, not giving a speech was meaningful (*Asia Times Online* 6 December 2008). By not speaking, the king did not meet the dissolved PPP's interim prime minister.

This account makes it clear that the palace can no longer be considered "above politics," even if it would prefer to be in such a position. Political events in recent years have seen the monarchy move to the center of the political stage. Crispin argues that the speculation is that:

The military now marches mainly to the beat of the . . . Privy Council.

Both institutions would likely see their powers legally diminished in a post-Bhumibol era were a pro-Thaksin administration allowed to rule and amend laws without the resistance of a PAD-like protest movement. (Crispin 2008b)

In other words, the palace's role has been to support the maintenance of a conservative political regime.

## Conclusion

This broad-brush summary of the journey of democratization in Thailand cannot do justice to the full range of recent debates and struggles. By choosing to address the constitution, judiciary, and monarchy, the emphasis has been on the struggle to shape these for the establishment and maintenance of a conservative political regime.

In 1992, a civilian uprising saw a major diminution of the political dominance of the military. One of the principal outcomes of this uprising was the 1997 constitution, which was, as Connors (2008a) explains, the result of a liberal-conservative alliance. However, the logical outcome of this compromise, forged during an economic and political crisis, was a strong and electorally popular government led by Thaksin Shinawatra. Soon after Thaksin's 2005 landslide reelection, an alliance of opponents rejected both the 1997 constitution and the political compromise that had shaped it. This new alliance, while including liberals, came to be firmly dominated by conservatives and royalists.

The powerful interests—political and economic—of the conservatives close to the palace trumped the 1997 model of electoral democracy. Their aim was to reestablish a regime that included elections and political parties but where the interests of the conservatives were predominant, with the military required to maintain political order and the monarchy as the paramount symbol of loyalty. A kind of semi-democracy was reestablished, with the poor, the dispossessed, the working class, and rural people held to be unimportant for a conservative semi-democratic regime that emphasizes royalism, traditionalism, nationalism, and paternalism.

## Notes

- 1 Suchit also pointed to specific weaknesses in Thailand's political structure: the fragile party system, unstable multi-party coalition governments, and "money politics."
- 2 There was another election in April 2006. TRT won after the opposition boycotted the polls. The courts declared the election invalid (see below).
- 3 Most reprehensible were extra-judicial killings in an anti-drug campaign, the government's ham-fisted efforts to control southern separatism and attacks on human rights activists (Human Rights Watch 2006; Connors 2009).
- 4 In referring to the local press, most of the citations are to stories that appeared in

- several or most newspapers and in both Thai and English. Rather than burden the chapter with excessive citation, I have listed just one source. Readers will find similar stories in other sources for each date cited.
- 5 When postponing or moving the meeting was considered, Democrat Party leader Abhisit Vejjajiva opposed this, claiming that the president of parliament was "duty-bound" to hold the meeting. In January 2009, Abhisit changed his mind and his own government both postponed and moved a key meeting of parliament.
  - 6 Here, "judiciary" includes the courts and other bodies established with watchdog mandates under the 1997 and 2007 constitutions.
  - 7 Klein (2008) states: "only two parties, the PPP and the opposition Democrat Party, received double digit support. . . . Each received about 37 percent of the votes (the Democrats receiving about 200,000 less than the PPP out of a total 32 million votes cast)." This is misleading as it fails to report actual seats won. The initial official count gave the PPP 199 of 400 constituency seats and 34 of 80 party list seats, with the Democrats gaining 132 and 33 seats, respectively (see Pasuk and Baker 2008c: 21).
  - 8 The EC issues yellow and red cards against candidates suspected of election fraud. Yellow cards are issued when there is indirect evidence of a candidate's involvement in fraud. The lack of direct evidence means a yellow-carded candidate may stand again. Red cards are issued when there is evidence of direct involvement. A new election is held and the red-carded candidate and his/her party are disqualified. The EC received 1,030 complaints regarding the 2007 election, with 352 considered to provide cause for investigation (*Bangkok Post* 30 December 2007). Cards continued to be issued throughout 2008, mainly to the PPP and its coalition parties.
  - 9 The stewardship of Preah Vihear had been decided by the International Court of Justice in 1962, when Cambodia was considered the rightful custodian.
  - 10 The Privy Council is made up of advisers selected by the king, mostly members of the royal family, former military leaders, and former bureaucrats (see Handley 2008).
  - 11 The official line is: "the Thai monarchy has never been a player in politics. The king has gone to great lengths to demonstrate this point over the years. And it is this carefully cultivated political neutrality that gives his words such weight" (Tharit 2008).
  - 12 In Thailand, each day is assigned a color. The king was born on Monday, 5 December 1927, in Cambridge, Massachusetts. Hence, the king's color is yellow.
  - 13 "Statement by the Council for Democratic Reform." Online. Available HTTP: <[http://www.cns.go.th/readnews\\_all.asp?page=2&cid=3&search=](http://www.cns.go.th/readnews_all.asp?page=2&cid=3&search=)> (accessed 12 July 2007).
  - 14 At this point, there had been one death. A pro-government demonstrator was allegedly beaten to death by PAD supporters.
  - 15 Dissolution meant a new election, and the PAD wanted to avoid another PPP victory. It soon proposed a "people's government," in which elected politicians would make way for "qualified, non-partisan" outsiders (*Bangkok Post* 11–15 September 2008).
  - 16 Police were attacked, shot, impaled, beaten and run over (*Bangkok Post* 10 October 2008). In addition to the two deaths, 8 to 10 persons suffered serious injuries, and 300 were treated for minor injuries and the effects of tear gas.
  - 17 Independent observers noted that the "PAD has committed grave violations of domestic law and violated . . . human rights principles . . . They have been using weapons . . . with the aim to kill. This movement is turning into a criminal gang" (Human Rights Watch researcher Sunai Phasuk, cited in *The Irrawaddy* 27 November 2008). PAD demonstrators were also attacked several times including bomb and grenade attacks.

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## Part II

# Democracy in East Asia?

## Achievements and enduring challenges