

Thailand's conservative courts political allies of royal interests

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Street battles have again erupted in Thailand. Suthep Thaugsuban, the latest anti-government protest leader, has declared a need to rid the country of the 'Thaksin regime'. To do this he wants to move political power — at least for a time — to appointed 'virtuous people' who are not politicians.



Such demands represent an extension of the anti-Thaksin Shinawatra opposition's preferred options in dealing with the repeated electoral landslides for pro-Thaksin parties since 2001. The unelected 'non-politicians', who have sided with the anti-Thaksin opposition, have been the King, the military and, increasingly, the judiciary.

It was a Constitutional Court decision that gave Suthep his chance to go to the streets to unseat Prime Minister Yingluck Shinawatra's ruling Pheu Thai Party government. In its decision, the Court determined that in seeking to make the upper-house Senate a fully elected body, Yingluck's government acted unconstitutionally. The verdict was especially revealing of the Court's politics as it came from complaints under section 68 of the 2007 constitution, on the right to protection of the constitution, and implied that a parliamentary effort to amend a contested constitution was deemed treasonous. Thailand's courts are now so highly politicised that decisions that defy legal logic are the norm.

While there were earlier politicised decisions, including some helping Thaksin, it was the King's call for judges to sort out the 2006 political mess following an election boycotted by opposition parties that deepened judicialisation. Judges hastily convened and jailed election commissioners and annulled the election. This intervention inevitably led to the 19 September

2006 coup.

Since then, the judiciary has been at the centre of political disputes as constitutions came and went, prime ministers cycled through, political parties dissolved, and treason charges traded.

The judiciary's politicisation has effectively institutionalised the political bias that pro-Thaksin red shirts identify as 'double standards'. The story of this judicialisation of politics is noteworthy in that supposedly independent institutions have been subverted and begun to undermine the processes that underpin Thailand's democracy and rule of law.

Following the coup, the military junta established a complex selection system for members of the Constitutional Drafting Assembly and Committee, intent on a new constitution that would prevent another Thaksin-dominated government. The resulting 2007 constitution gave the judiciary a number of new political roles, appointing 'independent agencies' and in selecting those appointed to the senate.

With the new constitution in place, the Constitutional Court has operated to prevent any constitutional change. Its decisions have ridden roughshod over parliament's constitutional mandate on amendment. Equally significant were a series of interventions that dissolved pro-Thaksin political parties in 2007 and 2008, and banned more than 200 politicians associated with those parties.

In 2007, the Court applied laws on party dissolution retrospectively. In 2008, the Constitutional Court ruled against the pro-Thaksin People's Power Party government several times. The dissolution of the party in late 2008 came amid demonstrations by the royalist People's Alliance for Democracy, which demanded the government's ouster. The Court quickly decided the case, refusing to hear scores of pro-Thaksin party witnesses. The Democrat Party was placed in government and political violence followed in 2009 and 2010 as red shirts challenged this arrangement.

Seen as a 'judicial coup', the Constitutional Court's 2008 intervention established it as a political ally of royalist interests. Indeed, when the 2011 election produced a landslide victory for Yingluck Shinawatra and the Pheu Thai Party — the fifth election win for a pro-Thaksin party since 2001 — the courts became allies to opposition attempts to destabilise the government.

Despite Pheu Thai's electoral mandate for constitutional change, the opposition Democrat Party and various pro-royalist groups opposed all proposed changes. The government's attempt to make the Senate a fully elected body unleashed a cacophony of elite outrage that saw Democrat Party MPs brawling in parliament and leading street protests. Initially these were noisy sideshows, with the real effort being a shower of anti-amendment petitions to the Constitutional Court.

When the Court ruled against the government, it paved the way for other actions. The decision emboldened street demonstrators, led by the Democrats. They called for the ousting of an 'illegitimate government', with the protests meant to show 'popular' support for excising the 'Thaksin regime'. It seems certain that that the courts will soon be brought back into the

political action especially as the military seems reluctant to throw the government out.

It is not just the Constitutional Court that has been politicised. Decisions by other courts on *lese majeste* charges have been legally dubious and deeply biased. In order to protect the monarchy, which royalists consider the keystone for their preferred arrangement of political and economic power, the *lese majeste* law has been expanded to cover all kings of the current dynasty and constitutionally guaranteed rights have been brushed aside.

The judiciary might occasionally declare its neutrality and virtue, but nobody believes them. One of the few agreements in Thailand's contested politics is that the judiciary is a reliable ally of the royalist side.

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