

RESEARCHERS AT THE INSTITUTE OF SOUTHEAST ASIAN STUDIES SHARE THEIR UNDERSTANDING OF CURRENT EVENTS

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Will Thailand's New Constitution Be a Return to Authoritarianism?

*By Puangthong Pawakapan**

EXECUTIVE SUMMARY

- The aim of the 2014 coup d'état in Thailand goes beyond toppling the elected government of Yingluck Shinawatra.
- By putting in place a new Constitution, the old centres of power are aggressively reconstructing the electoral system in their favour. The new political game deviates from the majoritarian principle and will instead ease the way for extra-parliamentary powers, including the armed forces, to intervene in politics.
- The new Constitution and an election will not return Thailand to full democracy. Although the new Constitution seeks to legitimize the position of the old centres of power, this will not be enough to guarantee stability for the new regime.
- Military power in politics will remain, and military control in some form will likely stay after the election.

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INTRODUCTION

The aim of the latest coup in Thailand which took place on 22 May 2014 and which was carried out by the National Council for Peace and Order (NCPO) goes beyond the simple ousting of the government of Yingluck Shinawatra. The electoral victories of Thaksin's parties, the Palang Prachachon in 2007 and the Pheu Thai in 2011, informed the royalist elite that they could no longer afford to abide by the principle of majoritarian democracy. The discourse of anti-majoritarian democracy, crusaded by the anti-Thaksin Yellow Shirt movements, is now adopted by the military-appointed Constitution Drafting Committee (CDC). Instead of trying to win the hearts and minds of the electorate by introducing popular and positive policies, the entrenched elite appears to prefer an aggressive manipulation of the electoral system through rewriting the Constitution.

Seven months after the coup, key actors have disclosed their ideas for the new Constitution, making their heretofore unseen agenda more apparent. The revelation indicates that the new Constitution will be similar to the semi-democracy model that Thailand adopted in the 1980s. On the one hand, the structure that is being discussed, when implemented, will certainly prevent an emergence of strong and popular elected government. The appointed Senate will be the agent of the conservative elite and will play a vital role in that capacity. On the other hand, the new Constitution will provide the military with legitimacy to intervene in politics. Even if the junta holds general elections in early 2016 as it has declared that it will do, the top brass will continue to exert major influence over events.

A NEW POLITICAL RULE

In a previous *ISEAS Perspective*, I have argued that Thailand's pro-coup entrenched royalists distrust electoral democracy, politicians and rural-voters. The anti-rural voter discourse was in fact central to the Yellow Shirt campaigns led by the People's Democratic Reform Council (PDRC) and its predecessor the People's Alliance for Democracy. The coup is an opportunity for them to put construct a new political game where the electoral power of majority voters is reduced.¹ In late December 2014, members of the military-appointed Constitution Drafting Committee (CDC) revealed that the new charter will allow for a non-elected Member of Parliament to become prime minister. "We will not require the PM to be an MP or a member of any political party", said CDC spokesperson and a staunch anti-Thaksin royalist, Kamnoon Sidhisaman.² The change, if it happens, will be a step backwards for Thai politics. According to the so-called People's Constitution of 1997, a prime minister must be an elected MP. It was one of the major demands made by democratic movements in the 1980s and 1990s, and was aimed at preventing military interference in politics. The inclusion of this requirement in the 1997 constitution was considered a major advance of Thailand's democratization.

¹ Puangthong Pawakapan, "The Thai Junta's Interim Constitution: Towards an Anti-Electoral Democracy", *ISEAS Perspective*, 45, 2014,

http://www.iseas.edu.sg/documents/publication/ISEAS_Perspective_2014_45.pdf

² "Thai Constitution Drafters Pave Way For Unelected PM", *Khaosod English*, 24 December 2014, <http://www.khaosodenglish.com/detail.php?newsid=1419578744§ion=11>

Moreover, the CDC wants the new Constitution to grant the Senate more power. Senators are to be able to propose reform bills and even scrutinize the profiles of nominated cabinet ministers before the prime minister submits the list for royal approval. The CDC also favours giving senators authority to vet the profiles of heads of all governmental organizations and to publish the details.³ In effect, the Senate will be a dutiful agent of the conservative powers in their attempt to steer the new game.

The set-up of the Senate proposed by the CDC reveals the conservative elite's determination to consolidate their power over parliamentary politics. This ambition has been noticeable since the coup in 2006, which tore up the 1997 constitution. Previously, the clause on the Senate in the 1997 Constitution stated that all senators must be directly elected by the people. The coup-sponsored 2007 Constitution altered that. Of the 150 senators, 76 were directly elected while the rest were appointed. According to Mr. Kamnoon, the presently expected Constitution will increase the number of senators to 200, half of which will be appointed and the rest "indirectly elected", which mean in effect that they are appointed, as I shall explain below. Mr. Kamnoon has said that senators are to be drawn from five groups: the first four are appointed and the fifth group "indirectly elected".⁴

The first group will be comprised of former leaders of the three power pillars. They are the twelve living prime ministers (Thaksin will no doubt be excluded), a small number of former House Speakers who are not members of a political party, and former court presidents. Members of the second group will be former high-ranking government officials. The third will involve chairpersons and representatives of certified professional organizations, such as the Thai Chamber of Commerce and the Medical Council of Thailand. The civil sector, including agricultural cooperatives, labour unions and people's organizations will form the fourth group.

Though the process of selection of the first four groups is not yet determined, a majority of the appointed senators will most likely represent the old power centres. This was the case with the anti-Thaksin group of "40 senators", almost all of whom were appointed by the military-sponsored constitution of 2007. They were the major obstacle to the Pheu Thai's party's attempts to amend the Constitution and it was they who sought opportunities to have the Yingluck government impeached by the Constitutional Court.

The charter drafters claim that the fifth group of the senators will be "indirectly elected". However, candidates of this group will first be "selected or screened" by professional councils before they are eligible to stand for election. Considering that most existing professional councils in Thailand are Bangkok-based middle class and aligned with the conservative powers, this fifth group will in no way be able to claim that they represent broad-based participatory politics. In essence, the whole Senate will be dominated by old

³ "Provision for non-elected PM, Senators to have more power under proposals for new Thai constitution", Bangkok Post, 25 December 2015, <http://www.bangkokpost.com/news/politics/452091/provision-for-non-elected-pm-senators-to-have-more-power-under-proposals-for-new-thai-constitution>

⁴ Ibid.

power structure. The Senate is to be a supportive mechanism for a royalist government and at the same time act as a destabilizing force against a popular-based government.

While the new Constitution will expand the size and power of the Senate, the size of the House of Representative will become smaller. It will aim at creating a factional parliament and a weak government. Electoral candidates will not have to be affiliated to a political party which will mean that parliament will be filled with many small parties and with independents. Since the inclusion of this clause in the 2007 Constitution obviously failed to deter victories of Thaksin's parties, the new Constitution can be expected to have measures that are more stringent than before.

According to the 2007 Constitution, the House of Representative had 500 members: 375 of whom were elected by voters and the other 125 appointed according to party-list proportional representation. The new Constitution, according to Borwornsak Uwanno, the chief of the CDC, the total number of MPs will not exceed 480 members, and 200 of these will be party-list MPs. Borwornsak has also proposed a new system for proportional calculation of the party-list MPs, claiming that the new system will favour smaller political parties.⁵ The Democrat Party will certainly be the beneficiary of this new system.

Furthermore, the judiciary and independent organizations such as the National Anti-Corruption Commission, are expected to continue as political tools counteracting democratization. Double standards will remain their practice, and noisy calls among pro-democracy scholars and voters for true reform of these organisations will not be heard by the CDC. Public participation in the charter drafting process has been a sham. The royalist elite have realized full well that their Constitution will fail to gain majority support from Thai voters. Therefore, Vishnu Krue-ngam, one of the key charter drafters and a deputy prime minister, has explicitly opposed a public referendum for the final draft of the new charter.⁶

OLD WINE IN NEW BOTTLE

The new game that the conservative powers are creating is like old wine in new bottle, however. It bears the signature of 1980s Thailand under the premiership of General Prem Tinnasulanond (1980-1988), who is currently chief advisor of the King. The constitution of 1978 allowed non-elected MPs, including a serving military officer, to be a prime minister. Parliament thus came to be filled with numerous small and factional political parties. Prem became a prime minister when he was still an army commander. Though he retired from the army in August 1981, his entrenched influence in the armed forces as well as his being the palace's favourite were key factors keeping weak political parties subservient to his command.

⁵ “กมธ.ยกร่างฯเคาะหลักการรธน.ใหม่เพียบผู้สมัครส.ส.ต้องโชว์ทรัพย์สิน” ASTV ผู้จัดการออนไลน์.

27 December 2014,

<http://www.manager.co.th/Politics/ViewNews.aspx?NewsID=9570000148929&Html=1&TabID=3&>

⁶ “Public interest should determine need for referendum”, The Nation, 13 November 2014.

The Senate also acted as a protective shield for Prem's government. All 225 members of the Senate were selected by him and dominated over by members of the armed forces and top bureaucrats. The number of senators was at least 3/4 of that for the house of Representatives, but interestingly, the House Speaker came from the Senate. Senators also held similar power to that of MPs. Throughout his eight-year term, Prem never faced a single no-confidence motion in parliament. Because of his image as Mr. Clean and a staunch royalist image, the royalist elite and the middle class believe Prem's period was a golden period for Thailand, when corruption was low and the communist threat was in decline. His policy of Export-oriented Industrial Strategy led to the country's impressive economic growth in the late 1980s. Though Thailand is termed a semi-democracy under him, and the military dominated the parliamentary system, the royalist intelligentsia and the Bangkok middle class are still nostalgic about Prem's era.

Even though the new Constitution will certainly produce a pseudo-democracy, it will offer legal legitimacy, as weak as that may be, for the old centres of power. Be that as it may, the new electoral system and new Constitution will be enough to encourage western communities to grant recognition to the new system and to normalize relations with it. This is indeed needed to steer Thailand out of economic stagnation.

A LONG-TERM STAY FOR MILITARY

Based on the above revelation by the CDC's members, it should not be surprising for Thailand to have a retired military leader as a prime minister after the next election. It should not be surprising either for the NCPO to continue to exist and the martial law to remain in place after the election. The NCPO's interim constitution says nothing about the dissolution of the NCPO. So far the media have not raised the question to the junta leaders either. Recently, the junta leaders insisted that the martial law will stay indefinitely.⁷ After the election, they may claim that martial law and the security forces are necessary tools to assist the elected government in running the country. They are possibly well aware that a new Constitution alone will not be enough for them to hold on to power because the anti-coup populace will not recognize its legitimacy. Without the repressive martial law to help them, they will face protests from various groups, including pro-democracy activists, the Red Shirts, southern farmers and even the pro-coup PDRC and PAD. The last two groups have grudged that after their heavy-invested campaigns to topple the Shinawatra governments, they were left without a fair share of the cake.

Besides, telling the Thai military to stay professional and stop interfering in politics does not make any sense to them. They have always believed that the armed forces are vital for the country's peace and security. Prem's New Year praise for General Prayuth and armed forces chiefs clearly shows the military mindset in Thailand. He said that the May 22 coup was a

⁷ "Thailand's martial law to stay 'indefinitely'" BBC, 24 November 2014, <http://www.bbc.com/news/world-asia-30140596>

contribution to the national interest called for by the situation. He even encouraged Prayuth to proceed with courage because soldiers would never abandon the people.⁸

Re-establishing military power in politics is essential for the future of the armed forces, especially when Thailand is going through a transition from a long reign of King Bhumibol to the tenth king of the Chakri dynasty, Crown Prince Vajiralongkorn. A claim of being a true defender of the throne has always been the *raison d'être* of the armed forces. In return, the endorsement of the highly revered King Bhumibol is essential for the coup makers to claim sovereign legitimacy. But such a *raison d'être* may not be sustainable with a less popular monarch.

The 2006 coup paved the way for the military to reclaim their role and legitimacy after they lost them in the violent suppression of the people in 1992. The latest coup provides a greater opportunity for them to entrench their power in the social and political lives of Thai society. Defence budgets have skyrocketed, reportedly increasing 135% since 2004. Before the 2006 coup, defence budget increases fluctuated around 3% to 5%. After the 2006 coup, the defence budget rose sharply from 85.93 billion baht in 2006 to 170.17 billion baht in 2009 and to 184.74 billion baht in 2014. Purchases of new weaponry faced no scrutiny, nor objection from political parties.⁹ After the 2014 coup, many high-ranking military officers were awarded positions in the cabinet, the National Legislative Assembly, the National Reform Committee and the board committee of many state enterprises. The armed forces have indeed been the biggest beneficiary of the coups. It is therefore fair to say that they will not fade from politics easily or voluntarily.

On the contrary, martial law will prevent the anti-military movements from regaining momentum. Besides, history informs us that to topple governments, either military ones (as in 1973 and 1992) or elected ones (as in 2006 and 2014) massive support from the Bangkok middle class is required. The fact is that rural people are the majority in Thailand but their actions have never been able to bring down a government. Even the biggest popular movement of the Red Shirts, which staged a three-month protest in Bangkok in March-May 2010 failed to force the government of Abhisit to dissolve parliament. Instead, they were mercilessly cracked down upon.

Unfortunately, the Bangkok middle class people currently still supports the junta despite its poor performance. Some analysts believe that a severe economic slowdown is likely to hit Thailand in 2015 and be a great challenge for the NCPO. Economic hardship may turn the pro-coup middle class into an anti-military movement. However, history tells us that economic hardship is not always a sufficient factor for triggering Thailand's middle class uprisings. When the country was hard hit in 1984 by economic crisis, which led to the baht devaluation by the government of Prem Tinnasulanond, and in 1997 by the financial crisis, they did not yield a popular uprising. Corruption charges and self-serving dictatorial rulers tend to be crucial factors effectively mobilizing the middle class to topple the government.

⁸ "Privy council leader praises Thai PM for leading the May 22 coup", Bangkok Post, 29 December 2014, www.bangkokpost.com/news/politics/452902/privy-council-leader-praises-thai-pm-for-leading-the-may-22-coup.

⁹ "Military spending surges after 2006 coup d'état", Prachatai English, 10 July 2014, <http://www.prachatai.com/english/node/4213>

Besides, in the current view of the conservative middle class, the NCPO's dictatorship should be excused for its failings because it is a necessary method for wiping out the Shinawatra family's power and for leading the country through a thorough reform. This does not mean that the middle class will remain loyal to the NCPO forever, though. Serious mistakes by, and corruption charges among the elite are needed before the middle class can get enlightened.

CONCLUSION

The prospect for Thailand's democracy is dim. The conservative middle class and its movements have helped usher the old powers, especially the military, back on to the centre stage of Thai politics. The longer Thai society remains deeply divided, the more expansive military's power will be. The new Constitution, the new electoral system, the judiciary and the armed forces will help them retain their domination. Thailand will evolve into a full authoritarian regime in disguise. This is not one of the reasons the NCPO claimed for staging a putsch but it is the great consequence that Thai society will have to live with.

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