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Peopling Thailand's 2015 Draft Constitution

DUNCAN McCARGO

In the wake of the 22 May 2014 military coup, Thailand began drafting its twentieth constitution since 1932. But the drafting process was dogged from the start by fundamental differences between the military junta and legal experts working on the new constitution. The military wanted to invoke “the people”, yet at the same time suppress their actual political participation. The constitution drafters wanted to create “active citizens” who were loyal to conservative, royalist notions about Thailand’s state and society, hoping they would be mobilized to police those notions, and so undermine those forces supporting a more open democratic politics. In the end, attempts to craft a charter shaped by legalistic ideas of moral citizenship and virtuous bureaucratic rule foundered in September 2015 when the draft constitution was voted down by the National Reform Council, a body whose members had been appointed by the junta itself. This article examines what was at stake in the struggles over the meanings of Thailand’s 2015 draft constitution, arguing that the junta deliberately sabotaged a constitution which embodied a view of the populace that was radically at variance with military preferences.

Keywords: Thailand, constitution, military, people, citizens.

“We hope that this constitution will bring about a paradigm shift.”¹

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Following the 22 May 2014 military coup in Thailand, a committee was appointed to draft a new constitution. This article reviews the competing understandings of the Thai people that emerged during the drafting of the new constitution, and attempts to explain why the draft constitution was rejected by another military-appointed body in September 2015. It argues that during the drafting process, liberal royalists sought to reclaim the people as active citizens in order to create a more moral nation in which elected politicians would be subordinated to the popular will. However, this conception was not shared by the ruling junta, and in the end, the military deliberately sabotaged the new constitution that they themselves had commissioned. The episode offers telling insights into the internal dynamics of Thailand's troubled politics and society.

Thailand's abortive 2015 draft constitution was crafted by two closely linked elites: the retired and serving army generals who formed the core of the National Council for Peace and Order (NCPO), and the civilian legal experts who comprised the thirty-six-member Constitution Drafting Committee (CDC). Both of these elites invoked notions of the populace in support of their visions for the country's future. However, close scrutiny reveals that military notions of *prachachon* (the people) differed significantly from the CDC's idea of *phonlamueang* (citizens). And neither the army nor the legal specialists invoked the generally understood meanings of the people contained in the ground-breaking 1997 "People's Constitution". *Prachachon* was a term used by the army for a depoliticized population, operating under military tutelage. *Phonlamueang* was a term favoured by royal legalists, connoting "active citizens" who were dedicated to monitoring abuses by elected politicians, animated by deep-rooted loyalty to the nation and the monarchy. By contrast, the 1997 Constitution was characterized by extensive consultation and popular participation which gave "the people" a strong sense of ownership. No such participation was envisaged either by the military or by the CDC in 2015. Nevertheless, there were real tensions between the political imaginaries of the NCPO and the CDC, tensions which contributed to the eventual failure of the drafting process.

Thai Constitutionalism

The idea that a new constitution might "reset" Thailand's politics is far from new: variations on this theme were articulated in 1932, 1974, 1997 and 2007. As this author has argued elsewhere, Thailand is at

the opposite end of the spectrum from the monumental, sacralized constitutions of countries such as Japan and the United States: short documents that are rarely, if ever, amended.² Thailand has an iterative constitution, one that is constantly being changed to reflect political vicissitudes. In a talk given at the Foreign Correspondents' Club of Thailand (FCCT) on 8 April 2015, two leading drafters of the proposed new constitution, Borwornsak Uwanno and Navin Damrigan, noted that the Dominican Republic, Venezuela, Haiti and Ecuador have all had more constitutions than Thailand's nineteen. They quickly added: "This is not something to be proud of. But there are reasons behind that."³ Why, then, does Thailand find itself in such unlikely company?

Constitutionalism is a political disease that has long afflicted Thailand. The disease has two main symptoms: legalism and moralism. Most studies of Thai constitutions and constitution-drafting have focused on the ways in which successive drafters have sought to deploy legal engineering to shape politics and society — a "rules of the game" approach. Yet this emphasis on legalism can sometimes occlude the moral dimensions of Thai public life, in which quasi-Buddhist rhetoric about advancing virtue and opposing evil is all-pervasive. The 2015 draft constitution, issued on 17 April 2015, was the first Thai charter in which legal language was overtly overlaid with a discourse of moralism.⁴ While some of this language was removed from the later draft that was voted down by the National Reform Council (NRC) (a 250-member body charged with overseeing the junta's political programmes) on 6 September 2015,⁵ the basic thrust of the rejected version was the same.

Thai constitutionalism reached a high-water mark in 1997, following the bloody events of Black May 1992, when the military fatally shot unarmed protestors who objected to the way in which a coup leader had turned himself into an unelected premier. Over the next five years, an alliance of royalists, bureaucrats and civil society activists sought to ensure that violence like that of May 1992 would never happen again. They attempted to craft a coup-proof constitution, one that would curb abuses of power by elected politicians and allow "good people" to assume high office. Distinguished former royal physician Dr Prawase Wasi, one of the main architects of the 1990s political reform process, dates the origins of that movement back to 1993, when Borwornsak visited him at Siriraj Hospital, telling him that if the current constitution remained in force, bloodshed could result.⁶ Prawase stated that from the outset their objective was to "Rewrite the constitution

to curb the power of bad politicians".⁷ Writing in 1995, Prawase elaborated the shortcomings of Thai politics in eight points:⁸ first, the dominance of money; second, the monopolization of politics by a minority; third, the difficulties faced by good and able people in entering politics; fourth, the dishonest and improper behaviour of elected officials; fifth, parliamentary dictatorship; sixth, political conflict and instability; seventh, the poor quality of administration; and eighth, the lack of political leadership. Twenty years, ten prime ministers, eight elections, five major rounds of mass political rallies, two military coups and two constitutions later, Prawase's eight points still resonate closely with the concerns underpinning the 2015 draft constitution. But the upheavals of the Thaksin and post-Thaksin periods have illustrated the implicit conservatism of this agenda, and the ways it can be abused by those who are opposed to representative politics.

The so-called "People's Constitution" of 1997 drew on an extensive process of popular consultation, but was primarily a compromise between the competing agendas of various elite actors. The primary focus of the document was on establishing more checks and balances in the political system: creating a strong executive, a small number of large political parties, an elected but non-partisan upper house, and a range of new independent agencies including a Constitutional Court, an Election Commission and a Counter-Corruption Commission. For all the hopes invested in it, the 1997 Constitution and the associated project of political reform were unsuccessful in their core goal of stabilizing Thai politics. Instead, they facilitated the rise of the most popular politician in Thai history: Thaksin Shinawatra, a police officer-turned-billionaire telecommunications tycoon whose political career polarized the nation.⁹ By making it possible for an extremely effective prime minister to win unprecedented levels of electoral support, and to exercise tight control over the reins of power, the Constitution ushered in new modes of conflict and contestation, unnerving the very same elite actors who had conceived these political reforms in the first place.

Thaksin was ousted by the military on 19 September 2006 while attending a meeting of the UN General Assembly in New York.¹⁰ In the months that followed, a small group of elite, foreign-trained legal scholars who served as Thailand's professional constitution drafters began to regroup to try and create a "Thaksin-proof" charter. Yet the 2007 Constitution did little more than tinker with the post-1997 rules of the Thai political game, such as the party

list system and the array of independent agencies designed to monitor abuses of power. Pro-Thaksin parties decisively won the 2007 and 2011 general elections, despite the fact that the former prime minister and over 200 of his closest allies had been given five-year bans by the courts from holding political office. The aftermath of the 2006 coup demonstrated that the opposition Democrat Party remained electorally inept: it had failed to win a general election convincingly since 1986.¹¹ The Democrat administrations of Chuan Leekpai (1997–2001) and Abhisit Vejjajiva (2008–11) were formed on the basis of troubling backroom deals, not electoral victories. Pro-Thaksin parties, with their powerful appeal to the urbanized villagers of the North and Northeast who form the country's main bloc of voters,¹² looked destined to continue winning elections for the foreseeable future, unless some ingenious new formula could be devised to undermine their polling successes.

In late 2013, mass street protests by the People's Democratic Reform Committee (PDRC) against the government of Prime Minister Yingluck Shinawatra — Thaksin's sister — forced her to dissolve parliament, and precipitated a sequence of events that culminated in the 22 May 2014 military coup.¹³ This time, the Royal Thai Army (RTA) Commander General Prayut Chan-ocha was determined that Thailand's political instability would be laid to rest permanently.¹⁴ His NCPO was willing to suppress all public criticism and overt dissent in order to "restore national happiness". Three months later, Prayut appointed himself prime minister, and established a thirty-six-member CDC charged with putting into place new legal structures that would break the vicious cycle of political polarization once and for all.

The chair of the CDC, Borwornsak Uwanno, was nominated by the NCPO. Borwornsak — the holder of a French law doctorate, a former Dean of the Chulalongkorn University Faculty of Law, and until late 2014, the head of the King Prachadipok Institute (KPI), the research and training arm of the Thai Parliament — is among Thailand's most prominent public law specialists. One of Chatichai Choonavan's seven-member expert advisory team in the late 1980s, Borwornsak was also Secretary-General to Prime Minister Thaksin from 2003 to 2006. A member of the 1997 CDC, involved in drafting the 2007 Constitution, and chair of the 2014–15 CDC, he was arguably the chief legal ideologue of the monarchical network.¹⁵ Another 20 CDC members were selected from among the members of the NRC; in addition, five each were nominated by the NCPO, the Cabinet and the National Legislative Assembly. The core group, comprising

prominent CDC members with strong anti-Thaksin credentials, included Lt-General Navin Damrigan, a former military attaché to Washington D.C., and official of the National Security Council, who holds a PhD in Chemical Engineering from Northwestern University; General Lertrat Rattananavich, former Deputy Chief of Staff of the RTA; Kamnoon Sitthisam, a former senator and the one-time editor of the newspaper *Manager Daily*; Jade Donavanik, dean of Dhurakij Pundit University law faculty; and Banjerd Singkhaneti, former NIDA law faculty dean. Along with Borwornsak, this small group assumed primary responsibility for presenting the CDC's debates and proposals to wider audiences. Several CDC members, including Borwornsak himself, were known to have attended or participated in anti-government PDRC rallies in 2013–14.¹⁶ Given its military origins, the legitimacy of the CDC was questionable from the outset, and the overwhelming dominance of the committee by conservative older men did nothing to assuage these concerns.

The CDC formally completed its draft of the proposed new constitution on 17 April 2015. Although it was not supposed to be circulated to the public until after it had been reviewed by the NRC, the draft was immediately leaked to the media by some NRC members.¹⁷ Despite calls by the drafters for more active modes of citizenship, the constitution was drafted behind closed doors and opportunities for popular input were virtually non-existent. Constitutional scholar Khemthong Tonsakulrungruang noted the lack of public interest in the CDC's work, and the absence of lively debate, in contrast with the 1997 and 2007 drafting processes.¹⁸ Political parties, for example, were eventually given copies of the draft for comment, but bizarrely told that they were not permitted to organize meetings to discuss it. Those wanting to debate the draft were obliged to create a Facebook page for this purpose. The page, known as *Prachamati*, soon became a virtual meeting place for debates about the new constitution.¹⁹

Legalism

As the late Harvard political theorist Judith Shklar brilliantly argued, legalism is a political ideology, albeit one that is rarely recognized as such. Advocates of legalism like to insist that the pursuit of justice is suprapolitical and thus beyond criticism. Shklar charged that legalism sees politics "as inferior to law".²⁰ Legalism is predicated on the assumption that law is morally superior to politics, and so forms the basis for the persistent denigration of politicians and

representative democracy. This strain of thinking and discourse is pervasive not only in countries such as Thailand, but also in developed countries such as Britain and the United States. Legalists tend to believe that political problems can be solved through legal mechanisms, such as anti-corruption laws or independent agencies. As Tom Ginsburg has sceptically suggested, a proliferation of legalistic solutions risks “politicizing institutions with technocratic bases of legitimacy, over-loading them with tasks they are not designed or prepared to handle”.²¹

Like legalists everywhere, Thailand’s constitution-drafters have consistently assumed that law is superior to politics; and that political actors are inherently untrustworthy in that they are likely to abuse their power unless closely monitored and constrained. Andrew Harding wrote of the 1997 Constitution, “It is hard to imagine a more comprehensive attempt to change social facts by law”; arguably, the 2015 draft constitution represented exactly the kind of unimaginably ambitious attempt to transform reality to which Harding referred.²²

In the Thai context, legalism often appears a natural ally to authoritarianism, and is closely linked to a dominant culture of legal conservatism. Judges, law professors and legal experts — including those who perform advisory roles working with agencies such as the Council of State, for many years the principal arm of Thai legalism — enjoy very high prestige and status. Some of this prestige is derived not from their track records as proponents of justice or the rule of law, but from their willingness to serve power-holders. They were adept at finding legal mechanisms to support the political establishment, not least military regimes that had clearly seized power illegally. The readiness of the legal establishment to collude with coup-makers had been strongly criticized by the Nitirat group, a collective of progressive law academics based at Thammasat University which was initially formed to highlight the illegality of the 2006 coup.²³ According to Nitirat member Piyabutr Saengkanokkul: “Back then [after the 2006 coup] we discussed how nobody from this field opposed the coup at all; everyone indulged it. So we decided to get together.”²⁴ Nitirat accused Thailand’s 2007 constitution drafters of expediency and adopting a highly selective approach to the rule of law. Exactly the same charges could apply to the 2014–15 CDC, which was once again appointed by a military junta.

Legalism has proven invaluable as a mechanism to undermine pro-Thaksin governments. Pro-Thaksin parties were dissolved, and leading members given five-year bans from holding office, in both

2007 and 2008.²⁵ Elections won by pro-Thaksin parties, but boycotted by the opposition Democrats, were annulled by the courts in both 2006 and 2014. Pro-Thaksin Prime Ministers Samak Sundaravej and Yingluck Shinawatra were both removed from office by court decisions; while Yingluck also suffered the indignity of being retrospectively impeached by a military-backed puppet assembly, months after she had left office.

Moralism

A distinctive feature of Thai legalism is its purported affinity with notions of moralism, which are inextricable from a belief in the shining virtue of the monarchy. Book 2 of the April 2015 draft constitution is entitled, “Good leaders and a system of good representation”. The explicit aim here was to institutionalize virtue and prevent “bad people” from gaining and retaining political office. The language of virtuous rule was evident in the debates surrounding the drafting of the 1997 Constitution. Dr Prawase Wasi was among those who talked extensively of the need to ensure that “good and capable people” were able to play prominent roles in the political system.²⁶ The 1997 Constitution divided elected representatives into three groups, in descending order of virtue: apolitical senators; credible figures from party lists to serve as ministers; and lower-level politicians who were limited to the status of mere constituency members of parliament. But in 1997, the language of virtue was not writ large in the text of the Constitution itself; and the same applied when the 2007 Constitution was prepared in the wake of the 2006 coup. The April 2015 draft was the first Thai constitution that dared directly to speak the name of virtuous rule, allowing the language of moralism to figure prominently in numerous articles.

A centrepiece of Book 2 was the creation of a National Morality Assembly (NMA), which was charged with first preparing and then policing a code of ethics.²⁷ These ethics would apply to all election candidates, to everyone holding a national or local political position and to all those holding leadership positions in the public sector. Article 73 stated that:

Political leaders at both the national and local levels, who dedicate themselves to performing public duties, shall be good citizens: self-sacrificing, honest, and responsible in the performance of their duties to the country and the people, adhering to ethics and governance, demonstrating loyalty to the nation, religion and the King, and serving the people to the utmost degree.²⁸

This article is interesting both for repeating the classic Thai mantra of “nation, religion and King”, and also for swiftly appending a reference to “serving the people”. As Michael Montesano has argued, invoking “the people” reflects a relatively recent shift in Thai elite thinking. He sees it as part of an “inclusionary” rhetoric which is actually aimed at de-politicizing the Thai populace and subordinating it to the will of the centre.²⁹ Good leadership is constructed in terms of duty, honesty, ethics, loyalty and service, rather than, say, working to advance freedom or justice, or for the empowerment of the marginalized and disadvantaged. This highly conservative definition of what constitutes good leadership seems to offer little space for those who might wish to challenge vested interests, to fight inequality or oppose rigid hierarchies.

The composition of the NMA was not discussed in the draft; nor were the Assembly’s selection procedures, powers, duties or “inquisitional method”, all of which were to be specified in future secondary legislation.³⁰ But according to earlier media reports, the NRC had already finished the secondary draft legislation: the NMA was to comprise fifty-five members. Five so-called “Council members” were to be picked by the Senate;³¹ these Council members would then set a selection committee to appoint the remaining fifty members.³² This procedure illustrated the enhanced power of the Senate under the 2015 draft.

Those office-holders who violated the Code of Ethics could be reported to the NMA, which would then conduct an investigation and pass on the results to the House of Representatives, Senate, Cabinet, and the relevant local assembly and provincial Citizens’ Assembly (another set of bodies to be created under the 2015 constitution).³³ The draft constitution stated that these bodies must take appropriate action “without re-investigation”: apparently, the judgements of the NMA were to be final and binding. In cases where the Code of Ethics has been seriously violated, the NMA may propose that the Election Commission eventually remove the offender from elected office, and/or to deprive him/her from holding office for five years. This decision had to be ratified by a popular recall vote at the next general election.

Borwornsak and Navin explained that this rather unusual retrospective recall vote method was preferable to holding additional ballots to remove politicians from office mid-term, which would be prohibitively costly to administer.³⁴ Where appropriate, those removed from office might then face criminal charges or impeachment on the grounds of corruption or malfeasance. The option of disqualification

on ethical grounds was designed to be more straightforward than sending all violators through a full judicial process involving “voluminous paperwork and legal technicalities”.³⁵ In effect, the NMA was an additional independent agency, designed to operate in a low-cost, no-frills manner, fingering ethical violators for disqualification from office. Curiously, however, the final decision rested with the electorate. It was easy to imagine cases in either pro-Thaksin or pro-Democrat heartlands where voters would continue to endorse well-known candidates from the locally dominant party, despite their having been accused of ethical violations by the NMA. While the draft clearly stated that the NMA’s creation did not prejudice the judgements of the Supreme Court’s Criminal Division for Political Offenders, the establishment of the NMA implicitly challenged the Supreme Court’s role as the ultimate guardian of public morality.³⁶ By establishing the NMA, the CDC was not only expressing a deep mistrust of elected politicians, but also revealing a lack of faith in the judiciary to oversee those politicians.

The drafters placed maintenance of morality in the hands of “empowered citizens”,³⁷ who seemed to embody an alternative to the conventional organs of the nation-state — leading *The Economist* to dub the new draft as a “babysitters’ charter”.³⁸ But the babysitter trope fails to capture the nuances of the CDC’s thinking, which illustrated a particular Thai imaginary about the nature of citizenship that was repeatedly articulated during the 2013–14 PDRC protests. Like its precursor, the People’s Alliance for Democracy (PAD), the PDRC explicitly claimed to embody the Thai people. The PDRC linked this claim to a rhetoric of democracy, despite the fact that it enjoyed only minority popular support, and was working to subvert representative electoral politics.

One prominent CDC member, Jade Donovanik, argued that:

We need to make the charter one that reflects the people’s power. In that way, politicians won’t dare to violate or abuse the people otherwise they will be expelled by the people. ... in the hands of those who know how to use it, a leaf can turn into a magic sword.³⁹

This almost mystical terminology reflected the strong sense of personal mission felt by the CDC. Moralism was closely linked with superstition, and a belief on the part of the CDC that the stars were aligned with the forces of virtue represented by the new constitution.

As Michael Connors has argued — and Montesano has elaborated — the CDC's notion of citizenship had its origins in the rhetoric of *ratchapracha-samasai*, best translated as “king–people mutuality”, which dates back to the 1950s, the early years of the present King's reign.⁴⁰ According to the principles of what Connors terms “royal liberalism”, royalist civilian elites deploy the idea of “the people” as a means of by-passing and marginalizing representative politics and elected politicians. Connors names Borwornsak Uwanno as the primary legal theorist who developed these Thai elite understandings of the relationship between “the people” and the monarchy as long ago as the early 1990s.⁴¹ The 2015 draft constitution was Borwornsak's attempt to codify these ideas into Thailand's basic law. Montesano has described the 1997 “People's Constitution” as “a blueprint for continuing domination of the Thai political order on the part of a royalist, civilian technocratic elite in a climate of partial depoliticization”⁴² — a blueprint that never properly materialized. The 2015 draft might best be seen as an attempt by the 1997 drafters to revisit their earlier agendas. By contrast, the 1991 and 2007 constitutions, both commissioned by military juntas, were overseen by veteran legal expert Meechai Ruchuphan. When Borwornsak's royalist liberal 2015 draft was rejected, the NCPO turned to the more conventionally conservative Meechai to rescue the situation.

Underpinning the 2015 draft, like the 1997 Constitution on which it sought to build, were national anxieties about what would happen to Thailand following the eventual death of King Bhumibol Adulyadej. Prawase said as much in a public speech at the Siam Intercontinental Hotel in 1995.⁴³ A constitution was thus needed to strengthen the political system in order to withstand the shocks and aftershocks of the succession. Twenty years on, the King remained on the throne, but could no longer intervene in the same way as before. Borwornsak and Navin were surprisingly explicit about this in their FCCT presentation:

His Majesty, the soul of our nation, being hospitalized, could not play any mediatory role in our ten year long conflict. The institution has been unfairly criticized by those who are republican for not condemning the military. But if the Crown had done so, the institution itself would have been in grave danger and perhaps this would have led the country into a civil war.⁴⁴

The picture the constitution drafters painted was of a vulnerable, fragile monarchy unable to resist the overweening power of the

military for fear of jeopardizing the survival of the Crown itself. During earlier political crises, their argument goes, the monarchy was able to mediate conflicts and intervene on the side of virtue. “If the military rule lasted long [sic] than necessary, the Principal Secretary would carry the Royal Message to the leaders that a new charter was needed.”⁴⁵ However, when royal interventions had become impossible — as in 2006 and 2014 — military coups were the result: “This is the Thai political culture that we inherited from the past and we cannot change it overnight by preaching the doctrine of Democracy.”⁴⁶ Borwornsak and Navin have asserted the King was not happy about these coups. This is because for the period prior to the promulgation of an interim constitution:

All laws and regulations were issued by the ruling power without Royal Assent. No one in this situation would like to see his power seized either!⁴⁷

Legally-minded royalists were deeply uneasy about the interregnum between a military seizure of power and the promulgation of an interim constitution, since during such periods the monarchy had no formal standing. Borwornsak and Navin took great pains to point out that the King would be willing to support the government of the day — as he did during the failed April Fools’ Day coup in 1981 — but once any coup became a *fait accompli*, “the legal principle of effectiveness prevails” and he is forced to recognize the power transfer.⁴⁸ In this passage, the drafters put a clear distance between themselves and the generals, hinting at a deep ambivalence about military coups.

According to this narrative, as the monarchy grew less able to handle the country’s raucous political conflicts, this role was increasingly taken over by the military. This was despite attempts by civilian elites to create legal mechanisms (in 1997 and 2007) that could do the job without the need for further coups, and despite the King’s exhortations in 2006 for the judiciary to assume the role of putting Thailand’s political problems to bed. By 2015, a new babysitter of last resort had to be hired. The 2015 constitution gives the job to the citizenry themselves, the very same *prachachon* who have long enjoyed a relationship of mutuality with their ruler, the King. Mediation and moral enforcement are now the duties of ordinary people. While Borwornsak and Navin state that, “This draft turns ‘Thai subjects’, followers of those who rule into ‘Active Thai citizens’ who engage in the political life of the country”,⁴⁹ in

reality the draft constitution constructed the people as loyal subjects, whose citizenship was entirely subordinated to the imagined royal will. Thais were enjoined not to follow elected politicians, but to remain faithful to royalist ideas of the nation.

The evolution of royalist thinking (for want of a better term) thus went something like this, in terms of the dominant mechanisms by which moral order was supposed to be maintained in times of crisis:

1. Royal interventions (pre-1997)
2. Legal mechanisms and judicial interventions (1997–2006)
3. Military coups (2006–present)
4. People/subject/citizen interventions (2015 onwards)

The third of these mechanisms represented a failure of the original project of royal liberalism, while the fourth might be seen as a last-ditch attempt to redeem the entire project from collapse. In practice, these four mechanisms overlapped and co-existed for much of the period in question, though their relative importance changes over time. This range of mechanisms reflects the diverse and heterogeneous components that this author has termed “network monarchy”: members of the royal family form the core, but are closely allied with military hardliners on the one hand, and with “liberal” reformers on the other. As the centre of the network has grown less active, the initiative has been taken up alternately by liberal reformers (1997, 2007, 2015) and by the military (2006, 2014).

“People” versus “Citizens”

Seen in this light, the 2015 draft was an attempt to re-centre the network monarchy, carried out by de-centring it. By decoupling nation, religion and King from the person of the King himself, the essence of Thai-ness can be retained with a new emphasis on “the people”. The 2015 draft rhetorically assigns to the people three new roles. First, citizens will serve in Citizens’ Assemblies, Provincial Civic Scrutiny Councils and the NMA by monitoring ethical violations.⁵⁰ Second, through the Multi Member Proportional (MMP) voting system, citizens will be empowered to re-order party lists and demote “capitalists and party VIPs” from automatic entitlement to seats. Third, referendums will be introduced for constitutional amendments and other important issues, including regional or local disputes on matters such as dam projects.

The April 2015 draft shifted the emphasis away from law (the terrain of courts and independent agencies) and onto ethics (the terrain of both the monarchy and the people). There were close parallels between the definition of good leadership in Article 73, and the extended definitions of citizenship provided in Articles 26 and 27. Article 26 states that citizens must “uphold righteousness as well as good values and discipline, be responsible for citizens’ duties, be accountable to society and the people, and be in harmony, pertinacity and self-reliance”. By contrast: “No citizen shall act in advocacy of national or religious hatred or constitute any incitement to discrimination, hostility or violence.” However, citizens are also directed to “preserve the rights and liberties of others and the principle of equality” — responsibilities that are not assigned so directly to their leaders.

Borwornsak and Navin explained that “active citizenship” was one of the major principles underpinning the draft constitution, a key element of the paradigm shift envisaged by the drafters. But the kind of active citizenship laid out in the draft emphasizes the role of citizens as moral enforcers, echoing the literal whistle-blowing celebrated by the 2013–14 PDRC demonstrations, in which mass rallies of protestors called time on the Yingluck government. Citizens were supposed to uphold the nation, religion and King, defend the country, pay their taxes and “exercise political rights in good faith and for the benefit of the public”.⁵¹ Active citizenship seemed to resemble a form of public mobilization, in which the primary function of citizens was to monitor and check abuses of power by elected politicians. This responsibility was embodied in the roles they were to perform in various newly-created agencies, including the NMA, Provincial Citizens’ Assemblies and Provincial Civic Scrutiny Councils.⁵²

The associated turn towards the people, seen both in the language of the draft constitution and in the earlier rhetoric of the NCPO, was not entirely new. While Montesano rightly notes that the rewriting of the slogan “nation, religion and King” by the military to include “the people” dates back well before 2014, the important 1980 military anti-communist Order 66/2523 is not the most salient document here.⁵³ By the 1990s, the army believed that it was on the side of the people because it had fought an anti-communist “people’s war” several decades earlier and because it believed that that war had been a success. The military’s belief that it was on the side of the people was inextricably connected with a certain view of the people and their political role: a corporatist and depoliticized one.

Following the public backlash against the military after the events of Black May 1992 — in which Thai soldiers shot dead dozens of unarmed civilian pro-democracy demonstrators — members of the armed forces were reluctant to wear their uniforms in public for fear of hostile reactions. This antipathy came as a shock to the army, which had long believed itself to be on the side of the people. During the tenure of General Wimol Wongwanich, who was handpicked as RTA commander to improve the image of the armed forces, the army began using the slogan “nation, religion, King and the people”. This slogan was formally announced in 1998, during General Chetta Thanajaro’s time as army chief.⁵⁴ The relevant army orders carefully detailed the responsibilities of the military towards the people. The most important of these was to: “Behave respectfully to the people and society, by demonstrating sincerity when engaging with the wider society, so as to create the feeling that the army belongs to the people and is ready to take the side of the people in all situations.”⁵⁵ The net result was to promote what might be termed “army-people mutuality”, allowing the military to be the conduit directly connecting the public with the monarchy. This 1990s invocation of the people cannot be divorced from earlier notions of mutuality rooted in the experience of counter-insurgency: both sorts of mutuality were ultimately *völkisch* projects of depoliticization, in which the populace operated under close military tutelage.⁵⁶ The army would act in *loco parentis* on behalf of the monarchy.

In the years after 1998, the Thai language slogan “nation, religion, King” on display at key locations such as the gates of military compounds was changed to read “nation, religion, King and the people”. By early 2013, an English version of the slogan began appearing outside army bases, on the orders of General Prayut, supposedly as part of Thailand’s efforts to rebrand itself internationally in preparation for the creation of the ASEAN Economic Community. In this English version, “religion” was rendered as “religions” — a curious gloss given that the Thai original is unambiguously singular. The pluralization of “religion” apparently reflected an attempt to present a more liberal and tolerant image to the wider world, deflecting potential foreign criticism that Thailand was a *de facto* Buddhist state.

Thailand’s 2013–14 political crisis abundantly illustrated the limitations and shortcomings of the existing system of checks and balances: contentious issues were bounced between the government, the Senate, the Election Commission, the National Anti-Corruption

Commission, the Administrative Court and the Constitutional Court, bodies with apparently overlapping and at times contradictory jurisdictions. Far from helping to resolve the country's political problems, some of these agencies seemed intent upon either shirking their responsibilities or even exacerbating ongoing tensions: the Election Commission, for example, proved remarkably reluctant to hold any elections.⁵⁷ The April 2015 draft's insertion of additional checks into the political system, including a stronger and even less accountable Senate and the extra oversight of the NMA threatened to boost the potential for stalemate and make Thailand increasingly ungovernable. Legal academic and Nitirat founder Worachet Pakeerat has argued that the policy-making powers of the independent agencies will lead to questions as to what the remaining roles of ministers would be, and who would be accountable in case of policy failures.⁵⁸

At least three different imaginaries of "the people" may be seen in Thailand's recent constitutional travails. One is the view of the people held by the military, as a depoliticized and unified mass that can readily be mobilized in the service of "nation, religion and King". A second is the view of the people espoused by the 2015 drafters, who imagined virtuous "active citizens" demonstrating both their citizenship and their activism through demonstrations of profound loyalty, and assuming the role of ethical overseers to prevent elected politicians from abusing their powers. A third view of the people was widely shared by those who contributed to the drafting of the 1997 Constitution, but has since faded: citizens as independent-minded agents of their own destiny, empowered both to assert their rights and to advance their individual and collective interests. Only this third view seems compatible with a liberal and democratic order.

These three distinct notions of the populace are frequently blurred and confused. Few people recognized the extent to which the CDC held a different view of the Thai population from that of the NCPO. At the same time, while trying to evoke the positive participatory image of the 1997 Constitution, the CDC did not really seek to empower ordinary citizens, but rather to create an elite class of moral guardians who would be charged with working on citizens' behalf. The CDC's invocation of an "active citizenry" was largely empty, since only selected virtuous citizens were expected to assume such roles.

Charter Struggles

In the wake of the May 1992 crackdown, two different elements of the network monarchy sought to lay claim to and embrace the Thai people. The royalist liberals crafted a “People’s Constitution” in which King–people mutuality would be legally codified and thus firmed up. Meanwhile, the military revamped its rhetoric to strengthen its longstanding claims that the army was on the side of the people; King–people mutuality would be mediated through the benevolent agency of the armed forces. The political crisis of 2006 — during which royal pleas for the judiciary to rescue the situation came to naught — demonstrated the abject failure of the constitutionalists.⁵⁹ However, the continuing political crisis that followed the 2006 coup further illustrated both the futility of military interventions, and the inability of the 2007 coup-drafters to prevent the resurgence of pro-Thaksin forces. Despite talk of a paradigm shift, there is evidence to suggest that the 2015 draft constitution was designed simply as a stop-gap measure to bridge the period leading up to an eventual royal succession. Asked how long he expected the constitution to last, Borwornsak acknowledged to foreign journalists that based on past charters, it was likely to enjoy a shelf-life of ten to fifteen years.⁶⁰ Given that the 1997 Constitution lasted nine years and the 2006 Constitution lasted only eight, the 2015 charter was never expected to endure much more than a decade.

After the 2014 coup, the military yet again found itself in an awkward embrace with the professional constitution-drafting fraternity, despite the ideology and rhetoric of the two sides not being in complete accord. For the military, Thailand’s political divides were expected to be wished/washed away by rebranding the entire population as “the people”, subordinated to the greater needs of the nation, religion and monarchy, and acting under military tutelage. Military groupthink about the over-riding need for unity could not accommodate the realities of Thailand’s deeply divided society. The constitution-drafters had a more sophisticated, if equally unrealistic, view of the populace: “the people” were to be upgraded to citizens, and thereby implicitly removed from the mobilizing impulses of the military. But as “active citizens”, they would be expected to play a major role in policing the political order and especially in exercising ethical leadership at all levels of both state and society. The entire activated citizenry would be

recruited into the network monarchy, ensuring that further military interventions were no longer necessary.

The April 2015 draft contained provisions for a National Reconciliation Promotion Commission, with an ambitious agenda to bridge the deep gulfs in Thai society. These provisions, watered down in the July version, included the possibility of proposing royal pardons for those who had been sentenced for offences relating to their political actions. Though replete with the language of moralism — pardons were reserved for those who were “remorseful”, or redeemed themselves by giving useful information to the Commission — the possibility of pardons offered a source of hope for pro-Thaksin figures who still faced politically-related charges. Given the shortcomings of Thailand’s two previous reconciliation commissions, there were many reasons to be sceptical about how effectively this new body would be in performing the tasks assigned to it under the constitution. Nevertheless, there was an urgent need to find ways of bridging the country’s serious political divides.

From the outset, it seemed likely that the April 2015 draft would be met with criticism from pro-Thaksin politicians. More surprising was the widespread opposition to the draft expressed by the Democrat Party, conservative figures in Thai society, and even by members of the military-appointed National Legislative Assembly. Former Prime Minister Abhisit Vejjajiva stated that the draft constitution was fraught with flaws, as the constitution drafters had come up with the wrong solutions that would only snatch democracy from the people.⁶¹ He added that bureaucrats are inherently conservative and so have never initiated serious reforms anywhere in the world. Theeraphat Serarangsarn, who had served as a minister during the 2006–7 post-coup administration, strongly criticized the draft, asserted that the approach was outdated and did not address the root causes of Thailand’s problems. Theeraphat termed it a logically inconsistent “Srithanonchai Draft Constitution”, a reference to a mythical Thai trickster.⁶² Wittayakorn Chiengkul declared that the draft represented an elite belief that government officials were better than politicians, which was not always true. He also questioned whether Citizens’ Assemblies would really work in practice because the people would not be genuinely empowered.⁶³

Outspoken CDC member and former senator Paiboon Nititawan promptly proposed a compulsory referendum on the Constitution within ninety days of it coming into effect.⁶⁴ This proposal was soon supported by Borwornsak himself, and eventually a provisional referendum date was set for 10 January 2016.⁶⁵ Holding a referendum

was risky in various ways, not least because it might not pass: the 2007 referendum on the last military-initiated constitution had won only 58 per cent approval, and was rejected in twenty-four provinces in the North and Northeast. The 2015 draft was much less credible than the 2007 Constitution. Even if the draft did pass, there would be large numbers of votes against it; as a result, the NCPO would not easily be able to sustain its empty claims that the coup had restored unity and national happiness to the population. Finally, even if the draft was convincingly endorsed in a referendum, it would lack popular legitimacy. The 2007 Constitution never gained the same legitimacy as the 1997 Constitution, despite the referendum; everyone knew that the charter came from the military, and many of those who voted yes did so simply in the hope of a rapid return to political normalcy. Nevertheless, for most constitution drafters, a referendum was desirable, as a minimal form of legitimation; whereas for the military, the public were to be invoked but not heard from, either at the ballot box or otherwise.

Given the level of dissent, it soon became clear the NRC would not approve the draft in its original form: the July version re-submitted to the NRC after a sixty-day period of consultation differed from the April draft in various ways.⁶⁶ Most controversially, provisions for a “Strategic Committee for National Reform and Reconciliation”, which had been mentioned only obliquely in the April draft, were elaborated in Articles 259 and 260: the new committee — soon popularly dubbed the “Crisis Council” — would help prevent domestic conflict and promote reconciliation. The largely appointed crisis council would include the heads of the three branches of the armed forces as *ex-officio* members, suggesting a continuing military role in the governance of the country. At the same time, the widely-criticized NMA was dropped in the revised draft. The changes reflected the range of competing agendas that informed the drafting process. As Borwornsak later asserted: “The draft was not my ‘dream’ constitution. I had to listen to the opinions of the 35 other CDC members, the National Council for Peace and Order, the cabinet, and others including the people throughout.”⁶⁷

Despite these concessions, the NRC voted down the draft constitution by 135 votes to 105 on 6 September 2015. Borwornsak announced that he would play no further role in the drafting process; and veteran legal specialist Meechai Ruchuphan, widely viewed as the only other person qualified for the task, was duly recruited by the NCPO to head a completely new CDC. The reasons behind the rejection remained somewhat murky. Since members

of the NRC were all handpicked by the junta, and many could be expected to do its bidding, the only compelling explanation was that the NCPO had cold feet about passing a draft constitution that was very likely to be rejected at the referendum stage, and so had lobbied sympathetic blocs of NRC members to vote the draft down.⁶⁸ The rejection of the draft demonstrated that the CDC, the NRC and the NCPO were not one and the same: the military and the professional constitution drafters differed in the ways they understood the problems facing the country.

Conclusion

The biggest difference between the April 2015 draft constitution and the 1997 and 2007 charters was its emphasis on ethics, rather than simply on legal mechanisms. It was not simply, as Michael Nelson has termed it, the “abusive constitution-making of an authoritarian regime”, but the product of complex tensions with that regime itself, reflecting sharply divergent understandings of the relationship between citizen and state.⁶⁹ The 2015 draft implicitly gave failing grades to the military, the judiciary and the independent agencies, none of which had so far proved able properly to implement the royal will. None of these components of the post-1997 Thai state was able to ensure the triumph of “good people” over “bad people”, the moral imperative behind the earlier charters. Since laws, courts and agencies have proved unable to promote the forces of morality, the solution was to hand this task to the citizenry themselves. Nevertheless, this emphasis on citizens was essentially rhetorical; in practice, the NMA and counterpart provincial level bodies would monitor abuses on behalf of the citizenry. Following criticism of the April draft, much of the charter’s radical emphasis on the citizenry was toned down, and the flagship NMA was dropped altogether; this illustrated the extent to which the CDC’s view of Thai citizens diverged from the military’s desire to invoke “the people”, while keeping the country’s population politically pacified.

Considerable creativity, energy and expense went into the crafting of the 2015 draft constitution, yet the document met with widespread scepticism and was finally voted down by the NRC in September the same year. For all the CDC’s rhetoric about citizens’ empowerment, this was a constitution crafted under the eyes of an authoritarian military regime. As such, whatever its strengths, the document lacked real legitimacy: and as became clear in 2007, a military-ordered constitution cannot become legitimate even if it

is approved in a popular referendum. The draft proved unpopular with various groups for different reasons. The military found it too idealistic and unlikely to reduce political polarization. PDRC supporters thought it was insufficiently tough on politicians, while politicians of all persuasions found it overly ambitious, meddlesome and anti-democratic. Much of the public was uneasy about the empty, paternalistic moralism that underpinned it; the more explicitly the constitution-drafters articulated an agenda of virtuous rule, the less popular support the resulting document could command. In the wake of the 2015 draft's rejection, there was a strong case for postponing any more new charter writing until citizens felt more genuinely empowered to participate in their own political future. A better interim option might be to revisit the relatively well-liked 1997 "People's Constitution", perhaps with some minor amendments. The failed 2015 Thai charter-drafting process illustrated the dangers of an over-reliance on legal and constitutional mechanisms to address complex political problems.

NOTES

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- ¹ See Borwornsak Uwanno and Navin Damrigan, "Constitutional Drafting in Thailand", p. 26. This unpublished, undated twenty-six-page English-language paper was circulated at a presentation given by Borwornsak, Navin and three other members of the CDC at the FCCT on 8 April 2015. Thanks are due to Chris Baker for making the document available. Parts of the paper substantially resemble an earlier article published under Navin's sole name, entitled "The Road to 'True Democracy': FAQs on the Draft Constitution", *Bangkok Post*, 28 March 2015.
- ² Duncan McCargo, "Alternative Meanings of Political Reform in Contemporary Thailand", *The Copenhagen Journal of Asian Studies* 13 (1998): 5–7.
- ³ Borwornsak and Navin, "Constitutional Drafting", op. cit., p. 1. The Dominican Republic has had 32, Venezuela 27 (not 26, as they state), Haiti 24 and Ecuador 20 constitutions. These figures are somewhat misleading, since Venezuela unveiled its first constitution in 1811, the Dominican Republic in 1844, Haiti in 1801 and Ecuador in 1830 — but Siam not until 1932. Thailand still tops the tables for constitution-changing frequency over the past century. See Kris

- Bhromsuthi, “Charter Drafters Face the Heat at FCCT Event”, *The Nation*, 9 April 2015.
- ⁴ An unofficial English translation of the April 2015 draft constitution done by the Council of State is available at <<http://www.student-weekly.com/pdf/200415-constitution-en.pdf>>. The original Thai April version is available at <<http://www.student-weekly.com/pdf/200415-constitution-th.pdf>>.
- ⁵ For the text of the final July version, see <http://www.parliament.go.th/ewtcommittee/ewt/draftconstitution/ewt_dl_link.php?nid=633>.
- ⁶ Prawase Wasi, “An Overview of Political Reform”, in *Reforming Thai Politics*, edited by Duncan McCargo (Copenhagen: Nordic Institute of Asian Studies, 2002), p. 22. Borwornsak apparently feared that bloodshed could result from a botched royal succession process overseen by an illegitimate or incompetent civilian government.
- ⁷ *Ibid.*, p. 23.
- ⁸ Prawase Wasi, *การปฏิรูปทางการเมือง: ทางออกของประเทศไทย* [Political Reform: The Way Out for Thailand] (Bangkok: Mo Chao Ban, 1995), p. 3.
- ⁹ On Thaksin, see Duncan McCargo and Ukrist Pathmanand, *The Thaksinization of Thailand* (Copenhagen: Nordic Institute for Asian Studies, 2005); Pasuk Phongpaichit and Chris Baker, *Thaksin* (Chiang Mai: Silkworm, 2009).
- ¹⁰ For analyses of the 2006 coup, see the special issue of *Journal of Contemporary Asia* 38, no. 1 (2008).
- ¹¹ The Democrats formed a government following the September 1992 election as the largest single party in parliament with 79 seats, compared with closest rival Chart Thai’s 77. In 1986 the Democrats won 100 seats; Chart Thai was the runner up with 66.
- ¹² For the concept of “urbanized villagers” in Thailand, see Naruemon Thabchumpon and Duncan McCargo, “Urbanized Villagers in the 2010 Thai Redshirt Protests: Not Just Poor Farmers?”, *Asian Survey* 51, no. 6 (November 2011): 993–1018.
- ¹³ For a relevant discussion, see Duncan McCargo, “Thailand in 2014: The Trouble with Magic Swords”, in *Southeast Asian Affairs 2015*, edited by Daljit Singh (Singapore: Institute of Southeast Asian Studies, 2015), pp. 337–58.
- ¹⁴ See, for example, his public statement on 26 May 2014: “You will need to be as patient as we have been. For nine years we have witnessed conflicts that have damaged the nation. Now we will bring back happiness to the Thai people and the country, take care of foreigners, and establish social, economic and psychological stability”, available at <<http://www.prachatai.com/english/node/4033>>.
- ¹⁵ For this widely-used concept, see Duncan McCargo, “Network Monarchy and Legitimacy Crises in Thailand”, *The Pacific Review* 18, no. 4 (2005): 499–519.
- ¹⁶ See ใครเป็นใครใน ‘กรรมาธิกรรกร่าง รธน.’ พบหลายคนแนวร่วม ‘นกหวีด’ [Who’s Who in CDC: Various Members Aligned with the ‘Whistleblowers’], *Prachatai*, 11 November 2014, available at <<http://prachatai.org/journal/2014/11/56344>>.
- ¹⁷ See มาถึงแจกไม่เศษ ร่าง รธน.ต้องให้สปช.ถกใน10 วันก่อน [Manit Announces No Distribution of Draft Constitution, Must Let NRC Discuss for 10 Days First], *INN Online*, 16 April 2015, available at <<http://www.innnews.co.th/shownews/show?newscode=612268>>.

- ¹⁸ See Khemthong Tonsakulrungruang, "Turning Back the Clock: Thailand's 2015 Constitution", *Prachatai*, 3 March 2015, available at <<http://www.prachatai.com/english/node/4825>>.
- ¹⁹ ประชาชาติ or "Referendum", available on Facebook at <<https://www.facebook.com/prachamati.org>>.
- ²⁰ Judith Shklar, *Legalism* (Cambridge, Massachusetts: Harvard University Press, 1986), p. 111.
- ²¹ Tom Ginsburg, "Constitutional Afterlife: The Continuing Impact of Thailand's Postpolitical Constitution", *I-CON* 7, no. 1 (2009): 84.
- ²² Andrew Harding, "May there be Virtue: 'New Asian Constitutionalism' in Thailand", *Australian Journal of Asian Law* 3, no. 3 (November 2001): 236–60.
- ²³ For a discussion, see Duncan McCargo and Peeradej Tanruangporn, "Branding Dissent: Nitirat, Thailand's Enlightened Jurists", *Journal of Contemporary Asia* 45, no. 3 (July 2015): 419–42.
- ²⁴ Author interview with Piyabutr Saengkanokkul, 14 December 2012.
- ²⁵ On party banning, see Aim Sinpeng, "Party Banning and the Impact on Party System Institutionalization in Thailand", *Contemporary Southeast Asia* 36, no. 3 (December 2014): 442–66.
- ²⁶ For the first known application of the term "virtuous rule" to Thailand, see Duncan McCargo, *Tearing Apart the Land: Islam and Legitimacy in Southern Thailand* (Ithaca, New York: Cornell University Press, 2008), p. 15. It has been elaborated in David Streckfuss, *Truth on Trial in Thailand: Defamation, Treason and Lese-majeste* (Abingdon, Oxon.: Routledge, 2010), pp. 152–55.
- ²⁷ สมัชชาคุณธรรมแห่งชาติ, see details in Article 74.
- ²⁸ My own translation here differs in several respects from the unofficial Council of State version, notably in translating "prachachon" as "the people", not "the public".
- ²⁹ Michael J. Montesano, "Praetorianism and 'the People' in Late-Bhumibol Thailand", online paper 10 prepared for the European Union SEATIDE project on "Integration in Southeast Asia: Trajectories of Inclusion, Dynamics of Exclusion", 2015, p. 12, available at <<http://www.seatide.eu/?content=activitiesandresults&group=3>>.
- ³⁰ Article 74, April 2015 draft constitution.
- ³¹ The Thai term used is คณะมนตรี.
- ³² For details, see กลอด "55 สมัชชาคุณธรรม" ปรานักการเมือ [Creating "55 Morality Assembly" to Punish Politicians], *Daily News*, 23 February 2015, available at <<http://www.dailynews.co.th/politics/303180>>.
- ³³ Article 74, April 2015 draft constitution.
- ³⁴ Borwornsak and Navin, "Constitutional Drafting", p. 8.
- ³⁵ Ibid.
- ³⁶ The group Thai Lawyers for Human Rights argued that the relationship between the National Morality Assembly and other agencies was highly problematic. They called for the CDC to be dissolved and a new popularly representative body established to draft a constitution. See ศูนย์ทนายความเพื่อสิทธิฯ เสนอคว่ำร่างรธน. จัดตั้ง สสร. จากประชาชนใหม่. [Thai Lawyers for Human Rights Calls for Halt to Drafting, Set

- Up New CDC from the People], *Prachatai Online*, 30 April 2015, available at <<http://www.prachatai.com/journal/2015/04/59041>>.
- ³⁷ Phonlamueang, พลเมือง.
- ³⁸ “A Baby-Sitters’ Charter”, *The Economist*, 25 April 2015, available at <<http://www.economist.com/news/asia/21649542-thailand-takes-big-constitutional-step-backwards-baby-sitters-charter>>.
- ³⁹ Jintana Panyaarvudh, “Power to the People”, *Sunday Nation*, 16 November 2014, available at <<http://www.nationmultimedia.com/opinion/Power-to-the-people-30247785.html>>.
- ⁴⁰ See a detailed discussion of ราชอาณาจักรไทย, see Michael K. Connors, “Article of Faith: The Failure of Royal Liberalism in Thailand”, *Journal of Contemporary Asia* 38, no. 1 (February 2008): 143–65.
- ⁴¹ Connors, “Article of Faith”, op. cit., pp. 150–51.
- ⁴² Montesano, “Praetorianism”, op. cit., p. 6.
- ⁴³ McCargo, “Alternative Meanings”, op. cit., pp. 15–17.
- ⁴⁴ Borwornsak and Navin, “Constitutional Drafting”, op. cit., p. 2.
- ⁴⁵ Such a message was apparently delivered in 1972. It is unclear if similar royal requests were made at any other juncture.
- ⁴⁶ Borwornsak and Navin, “Constitutional Drafting”, op. cit., pp. 1–2.
- ⁴⁷ Ibid., p. 2. This could be read as a critical reference to the unusual two-month period from 22 May to 22 July 2014, during which the NCPO ruled without an interim constitution. In 1991, the junta announced an interim constitution on 1 March, just six days after the coup. In 2006, an interim constitution was announced eight days after the coup, on 27 September. By contrast, more than a year elapsed between Thanom Kittikachorn’s self-coup in November 1971, and the promulgation of the 1972 interim constitution the following December.
- ⁴⁸ The 1981 case is rather more complicated than the authors suggest. First, then Prime Minister General Prem Tinsulanond was a close royal confidante. Second, the King and Queen took an active decision to accompany Prem to Korat, and publicly express their support for his government; had they not done so, the coup might have become a *fait accompli*. In 1991, 2006 and 2014, the monarchy did not take any comparable action to support an elected government.
- ⁴⁹ Borwornsak and Navin, “Constitutional Drafting”, op. cit., p. 6.
- ⁵⁰ The Rural Doctors’ Group has been pushing for these assemblies since the drafting of 1997 Constitution as a “political mapping of the citizen’s sector”. See <https://www.facebook.com/permalink.php?story_fbid=1057870517573438&id=142436575783508>.
- ⁵¹ The CDC’s views closely resemble the royal conception of citizenship discussed by Michael K. Connors. See Michael K. Connors, *Democracy and National Identity in Thailand* (Copenhagen: Nordic Institute of Asian Studies, 2007), pp. 132–33.
- ⁵² Article 28 of the April 2015 draft constitution.
- ⁵³ คำสั่ง ตำรวจนครบาลที่ ๖๖/๒๕๒๓ เรื่อง นโยบายการต่อสู้เพื่อเอาชนะคอมมิวนิสต์, 23 April 1980. Order 66/2523 marked the beginning of the Thai military’s “political offensive” against communism, in effect a recognition that the insurgency could not be

- defeated by security approaches alone. While the 1980 Order did invoke “the people”, it did not introduce a change in the national maxim. For an analysis, see Chai-Anan Samudavanija, Kusma Snitwongse and Suchit Bunbongkarn, *From Armed Suppression to Political Offensive* (Bangkok: Institute of Security and International Studies, 1990), especially pp. 127–63. The authors’ discussion of military preferences for “selection and protection of ‘suitable’ premiers and governments” and for a “strong appointed Upper House” (p. 154) remains remarkably up-to-date.
- ⁵⁴ For the official order announcing the change, see *อุดมการณ์กำลังพลกองทัพบก* [Guiding Principles for Army Troops] (Bangkok: Royal Thai Army, 12 February 2541 (1998)).
- ⁵⁵ “ง) ให้เกียรติกับประชาชนและสังคม โดยการเข้าสมาคม กับประชาชนทั่วไปด้วยความจริงใจ เพื่อให้เกิดความรู้สึกว่ากองทัพบกเป็นของประชาชนและพร้อมที่จะยืนเคียงข้างประชาชนในทุกสถานการณ์.” *อุดมการณ์กำลังพลกองทัพบก* [Guiding Principles for Army Troops], p. 13.
- ⁵⁶ I owe this invaluable point to Michael Montesano, personal communication, 9 May 2015.
- ⁵⁷ Prominent legal academic and leading Nitirat member Worachet Pakeerat argued that independent agencies under the new constitution would lack accountability to the people. See วรเจตน์ ภาคีรัตน์ *วิจารณ์ร่างรัฐธรรมนูญ (1) “หนักกว่า 2550”* [Worachet Pakeerat Critiques Draft Constitution (1): “Tougher than 2007”], *Prachatai*, 29 April 2015, available at <<http://www.prachatai.com/journal/2015/04/59035>>.
- ⁵⁸ See วรเจตน์ ภาคีรัตน์ *วิจารณ์ร่างรัฐธรรมนูญ (2): ‘ประชาธิปไตยแบบไทย’ เข้มข้น* [Worachet Pakeerat Critiques Draft Constitution (2): Intensified ‘Thai Style Democracy’], *Prachatai*, 1 May 2015, available at <<http://www.prachatai.com/journal/2015/05/59064>>.
- ⁵⁹ Duncan McCargo, “Competing Notions of Judicialization in Thailand”, *Contemporary Southeast Asia* 36, no. 3 (December 2014): 417–27.
- ⁶⁰ Kris Bhromsuthi, “Charter Drafters Face the Heat at FCCT Event”, *The Nation*, 9 April 2015.
- ⁶¹ “Draft Charter Steals Democracy”, *Bangkok Post*, 9 March 2015, available at <<http://www.bangkokpost.com/lite/topstories/491554/draft-charter-teals-democracy>>.
- ⁶² จุดยืน! สภาพพัฒนาการเมือง ไม่เห็นชอบร่างรธน.” *ธีรภัทร์*” อัด เนื้อหาดีหลัง-ศรีธนญชัย [Principles! Political Development Council Disagrees with Draft Constitution, Theraphat: Proposals Dated, Srithanonchai], *Matichon*, 9 May 2015, available at <http://www.matichon.co.th/news_detail.php?newsid=1431153365>.
- ⁶³ วิทยากร สะท้อน รธน.ฉบับอุดมคติ (เกิน) และเสียงถึงคนรุ่น ฉันทจึงมาหาความหมาย [Withayakon says Draft Constitution Over-idealistic, Meaning Obscure], *Matichon*, 11 May 2015, available at <<http://m.matichon.co.th/readnews.php?newsid=1431244770>>.
- ⁶⁴ ไพบูลย์ ชงแก้บทเฉพาะกาล ทำประชามติหลังใช้ รธน. 90 วัน [Paiboon Proposes Technical Amendment, Hold Constitutional Referendum After 90 Days], *Thai Rath Online*, 6 May 2015, available at <<http://www.thairath.co.th/content/497202>>. Paiboon was known for making provocative proposals; although generally regarded as highly conservative, he had also recently supported immediately pardoning all redshirt prisoners.
- ⁶⁵ ‘บรรพศักดิ์’ ย้ำต้องทำประชามติรัฐธรรมนูญฉบับใหม่ [Borwornsak Repeats Need for Referendum on New Draft Constitution], *Prachatai*, 8 May 2015, available at <<http://www.prachatai.com/journal/2015/05/59182>>.

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- ⁶⁸ For four rather less convincing reasons offered by NRC member Dr Niran Pitakwatchara, see *นิรันดร์’ โว 4 เหตุหลักทำ สปช.คว่ำร่างฯ* [Niran: 4 Main Reasons NRC Rejected Draft], *Thai Rath*, 6 September 2015, available at <<http://www.thairath.co.th/content/523328>>.
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