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DIVIDED OVER THAKSIN

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DIVIDED OVER THAKSIN

**Thailand's Coup and
Problematic Transition**

EDITED BY

John Funston

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Preface

Thailand's recent political turbulence was closely monitored by the National Thai Studies Centre (NTSC) in a series of seminars and annual Thailand Update Conferences in 2006 (held only ten days after the 19 September military coup) and 2007. This volume includes selected presentations from these events.

The 2006 and 2007 Updates were held at the Australian National University on 29 September and 31 August respectively. The NTSC is most grateful for assistance in presenting these conferences. The Australia-Thailand Institute (ATI) provided generous support, both for administrative costs and assistance with travel funds for keynote speakers. It also provided funding for seminars on governance in Thailand, which enabled visits by Professors Vitit Muntarbhorn and Chaiwat Satha-Anand in August 2007 just prior to the Update. The Centre for Democratic Institutions at ANU, and Thammasat University funded travel for Thailand-based speakers in 2006 and 2007 respectively.

The NTSC is most grateful for all this support, and additional assistance provided during this time by the Royal Thai Embassy in Canberra. Without this, and ongoing support from ANU, it would not have been possible to maintain Centre activities.

Political unrest in Thailand made this time exceptionally busy for the NTSC. This volume reflects only a part of that, and reports of other events may be found on the website <www.anu.edu/thaionline>. I was at that time executive director of the centre, and as usual received invaluable assistance from numerous colleagues. NTSC staff members Jason Hall, Elizabeth Nunrom and David Hunter all made major contributions. Julian Kusa provided valuable editorial advice. Ajarn Chintana Sandilands was, as always, tireless in her contribution to NTSC activities. A special thank you to Sarah Bishop

who had the main burden of preparing this manuscript, and provided skilled editorial assistance.

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Finally, a warm thanks to all contributors. The NTSC is most grateful for their outstanding expertise, and generosity in contributing to the centre's seminars and updates.

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Introduction

John Funston

In August 2006, former Prime Minister Anand Panyarachun warned that Thailand risked becoming a failed state: “If Thai society is ... divided and there is so much hate, and the environment is conducive to prolonging this hate, and to sustaining conflict, it is frightening, very frightening.” If allowed to continue, the government would be unable to administer the country.¹ On 19 September the military staged a coup which promised to resolve these problems and return Thailand to democratic rule. Yet by late 2008 Anand’s prediction appeared close to realization. In November, opponents of former Prime Minister Thaksin Shinawatra had blockaded and shut down Bangkok’s two airports for more than a week, causing chaos to international travellers and immobilizing government. Wearing yellow shirts as a symbol of their loyalty to the monarchy, the People’s Alliance for Democracy (PAD), clashed intermittently with red-shirted members of the United Front of Democracy Against Dictatorship (UDD) aligned to Thaksin. The deadlock was broken only by a court decision banning the ruling party and removing Prime Minister Somchai Wongsawat from office.

The airport blockade was the culmination of a turbulent year in Thai politics. The first elections after the 2006 coup were held in December 2007, and gave an overwhelming victory to the Thaksin-aligned People Power Party (PPP). It won 233 of 480 seats in its own right, and five closely allied parties won 82 seats. A coalition government of all parties was soon established, minus the Democrat Party which won only 165 seats and remained in opposition.

The PPP government, led by controversial veteran Samak Sundaravej, was soon besieged by street protests. In May 2008 a revived PAD, whose

continued protests against the Thaksin administration during 2006 paved the way for the coup, protested against mooted constitutional changes. Those changes were aimed at removing from the charter provisions intended to weaken Thaksin and his allies. Soon the PAD demanded that the government give up power, and when Samak refused, stormed and occupied Government House on 26 August. In September Samak was forced to relinquish power when the Constitutional Court ruled against him, finding that by hosting two commercial television cooking shows he had violated constitutional provisions against conflicts of interest. A new PPP-dominated government, headed by Somchai (Thaksin's brother-in-law) took power and the PAD escalated its campaign. In October the PAD blockaded parliament to try and prevent Somchai from presenting the new government's policy statement. Police moved against them on 7 October, and in the ensuing conflict two were killed and hundreds injured. The PAD then took over Bangkok's airports in a bid to prevent Somchai returning from an overseas trip. On 2 December the Constitutional Court dissolved the PPP (and two coalition allies) and disqualified all party executive members for electoral fraud — invoking Article 237 of the constitution which provides for the dissolution of a party if an executive member is found guilty of violating the election law and the party is found to be complicit in the offence.

Later in December the defection of a group from the PPP replacement, Puea Thai, saw the emergence of a Democrat-led coalition government, headed by Abhisit Vejjajiva. It began tentatively, with several cabinet members facing accusations of conflict of interest, and coming under similar pressures from the UDD as its predecessors had from the PAD.²

While the breakaway of a Puea Thai faction might reflect a weakening of Thaksin's influence, this was not clear cut. Thaksin had returned to an enthusiastic Bangkok welcome in February 2008, declaring himself ready to clear his name by contesting legal cases brought against him. On 31 July, however, his wife was found guilty of tax evasion and sentenced to three years jail. The next day Thaksin left the country, and ten days later declared he would remain in exile. On 21 October Thaksin was found guilty of abuse of power and conflict of interest for helping his wife purchase land in Bangkok from a state agency in 2003, and sentenced to two years jail in absentia. Yet even in exile Thaksin kept in constant contact with PPP and Peau Thai leaders, receiving regular delegations at a variety of overseas destinations. He guided the tactics of these parties, and appeared at mass rallies through satellite connections or recorded messages. Mass support in Thailand showed no signs of diminishing — around 30,000 turning out for a rally at the end of January 2009.

By early 2009, rather than returning to democracy as coup leaders had promised, Thai society remained polarized between pro-Thaksin forces on the one hand — comprising remnants of the Thai Rak Thai and other right-wing parties, mass supporters in the north, northeast and some in Bangkok (organized in the UDD), and democrats resolutely opposed to changing government by military putsch — and a more diverse coalition of anti-Thaksin forces. Ranged against Thaksin were members of Bangkok's middle class opposed to Thaksin's alleged corruption, blatant disregard for media freedom, human rights, and the rule of law, and sometimes prickly approach towards the monarchy (supporters of the PAD), Thailand's oldest political party, the Democrats, groups close to the royal family, and the military. The judiciary was also arguably aligned with this group, handing down a series of decisions that went against Thaksin and his followers. Rather than moving towards democracy, Thailand found itself divided between two coalitions committed to destroying the other, by force if necessary, and with a constitution that remained contested and unable to provide a framework for conflict resolution.

How did Thailand reach this point? Why had the September 2006 coup, and the new constitution that resulted from this, failed to heal social divisions and return the country to democracy? The period between 2005 and 2007 is critical — the immediate months leading up to the September coup, the coup itself, and post-coup attempts to forge a new constitution and political framework. That is the focus of this volume.

Thaksin Shinawatra came to office in 2001 during a moment of national optimism, winning elections convincingly under a new “people's constitution” approved in 1997. The constitution was the most democratic ever, including important guarantees of civil rights and an array of independent institutions to enforce these, though at the same time strengthening executive powers to reduce instability associated with weak coalition governments and factional conflicts. Thaksin's Thai Rak Thai (TRT — Thais Love Thais) campaigned under the slogan of “new thoughts, new actions”, promising more reform to protect the interests of the rural poor, strengthened economic dynamism (still constrained by fallout from the 1997 Asian economic crisis) and expanded democratic opportunities.

During his first term in office Thaksin entrenched his position. His populist economic policies, particularly a universal health scheme and village credit, were wildly popular with the electorate. Some in the middle class became worried about Thaksin's apparent tolerance of corruption and disregard for democracy (“Democracy”, he once said, “is just a tool, not our goal.”³). Still, the TRT won an even stronger mandate at elections in 2005.⁴

But at the height of his power and popularity, Thaksin's fortunes began to change. *Michael J. Montesano* argues that government closure of Sondhi Limthongkul's weekly current affairs programme on government-owned television in September 2005 was a critical turning point. Sondhi, a media magnate and former associate of Thaksin turned critic, responded by launching a mass movement, which gained further momentum following the controversial sale of the Thaksin family company Shin Corporation to the Singapore government-controlled Temasek in January 2006. The parameters of debate for the rest of the year were set during this period. Sondhi and his supporters criticized Thaksin for not respecting democratic norms such as freedom of speech and the rule of law; Thaksin responded by invoking the 19 million who had voted for him in the 2005 elections. Sondhi and supporters also requested royal intervention, taking this to a new level with a formal petition to the king. Thaksin sought to overcome opposition by seeking a fresh electoral mandate only a year into his second administration.

Between March and June 2006 conflict intensified, with royal intervention increasingly becoming a reality. Elections were boycotted by the Democrats and other opposition parties, and showed less support than in 2005, but Thaksin was quick to declare victory. However, as Montesano notes, following a "meeting with the king from which he apparently emerged stunned, Thaksin announced that he would not become prime minister when the newly elected parliament sat." On 25 April the king told newly appointed judges that the one-party election had not been democratic, ruled out direct royal intervention in the absence of a parliament, and called on the judiciary to find a way out of the "mess". That was soon followed by judicial annulment of the elections. Thaksin hit back by alleging a threat to democracy from a "charismatic individual outside the constitution", a reference either to the royal institution or someone closely associated with it.

From July the battle lines sharpened even further. Individuals close to the king, including former prime minister and head of the king's Privy Council, Prem Tinsulanonda, and Anand Panyarachun, made repeated criticisms of Thaksin. The military, estranged by Thaksin's attempts to install his own favourites in top army positions, was increasingly drawn into the conflict. As hope that the situation might be resolved by the disintegration of the ruling Thai Rak Thai or judicial intervention faded, the military intervened.

Montesano notes that a "perfect storm" of factors highlighted the growing role of the monarchy in political developments. The sixtieth anniversary of the king's accession to the throne was celebrated with elaborate pomp and circumstance and enthusiastic public acclaim. The publication of Paul Handley's *The King Never Smiles* and a seminal article on "network monarchy"

by Duncan McCargo attracted widespread academic interest (and followed the 2005 publishing sensation of Pramual Rujanaseri's *Phra Ratcha-amnat*, or "Royal Powers" — arguing that the king retained residual power to intervene in political affairs). Finally, during the prolonged political crisis, the monarchy was repeatedly urged to intervene.

The 1997 constitution had a central role in these developments. *Thitinan Pongsudhirak* outlines the background to this charter, linking it to dramatic events associated with the 1991 military coup and mass demonstrations against military rule the following year. A movement for constitutional reform began in 1993, and eventually formed into a Constitutional Drafting Assembly, which toured the countryside listening to public opinion before finalizing a draft in 1997.

Out of this emerged consensus over the need for an elected prime minister (General Prem never faced the electorate during his rule from 1980 to 1988), and for provisions that would address problems such as electoral fraud, vote-buying and money politics. A number of key provisions specifically addressed these concerns, including compulsory voting, a party-list system for 100 of the 500 members of the Lower House, and single-member constituencies. Candidates had to have a bachelor's degree — intended to keep out provincial "mafia" figures. A number of special courts and independent institutions were set up to guard the public interest, including the Constitutional and Administrative Courts, the Electoral Commission (EC), the National Counter Corruption Commission (NCCC) and the National Economic and Social Advisory Council (NESAC). (The role of the NESAC, both prior to and immediately after the coup, is examined separately by current chairman, *Gothom Arya*.) The charter also promoted a strong executive, particularly the premiership with parliamentary censure requiring support from 40 per cent of the Lower House.

The constitution was initially very popular, and institutions such as the EC and NCCC scored some notable successes, particularly the latter's conviction of Deputy Prime Minister Sanan Kachornprasart for failing to disclose assets. Then, however, Thaksin came to power, and the Constitutional Court failed a critical test when it found the prime minister not guilty of asset concealment, by a narrow 8:7 margin. This, Thitinan sees as the beginning of Thaksin's unravelling. Emboldened by success, Thaksin then moved to exert control over the Constitutional Court and other independent institutions, including the EC and NCCC, ignoring critics who opposed this, and other restrictions on democratic accountability. This provoked a strong reaction, including by many who had supported Thaksin during his court case.

An additional factor that contributed to the coup was the tragic resumption of armed conflict in the predominantly Muslim provinces in the south, which has claimed over 3,000 lives since 2004. Montesano notes that army chief General Sonthi Boonyaratglin raised the possibility of opening talks with the southern insurgents — a proposal that put him sharply at odds with Thaksin, and was identified by several in the international media as directly linked to the coup. Media analysis probably overstates the significance of the Thaksin-Sonthi disagreement — few of the leaders referred to this in coup announcements, and only limited attempts were made to shift policy afterwards. However several articles in this volume argue Thaksin's inability to contain this conflict did undermine the prime minister's authority.

Broader aspects of the southern conflict are addressed in four chapters. *Chaiwat Satha-Anand* provides an overview of the conflict, focusing particularly on why the conflict has been so difficult to resolve — highlighting official vested interests in its continuation, conflicting perceptions on conflict origins, and Thai society's unwillingness to recognize Bangkok policies towards Malay Muslims as constituting a form of internal colonialism. *Michael K. Connors* argues that there is a stateless "nation" in the south, describing Malays there as a language and ethnic community in the process of re-mobilization and regeneration. Recognition of another nation ("in whatever political form") should be the starting point for peace-building. *John Funston* argues that decentralization, as proposed by southern Thai academic and activist Wan Kadir Che Wan (based on provisions for decentralization set out in Chapter 9 of the 1997 constitution) and in the government appointed National Reconciliation Commission report (building on existing institutions that constitute a *de facto* form of decentralization), could help alleviate conflict. *Joseph Chinyong Liow* examines aspects of Islamic education in the south, in particular the role of controversial educator Ismail Lutfi Japakiya, and argues that a more nuanced understanding of his teachings is warranted.

Did economic factors contribute to the coup? *Peter Warr* does not argue for such an interpretation, though he does note that economic recovery under Thaksin was only moderate, averaging around 5 per cent per annum. Like neighbouring countries, Thailand failed to do better because it failed to stimulate private investment. More controversially, Warr rejects the view that Thaksin's policies successfully addressed the needs of the poor. There were, he agrees, some benefits, including the 30 baht (US\$0.83) universal health scheme, the freeze on repayment of loans by farmers, and the village credit scheme. But in general the results were unremarkable. Poverty reduction, which made large gains during the high growth periods of the 1980s and early 1990s, was "below the long-term average" under Thaksin.

Turning to the immediate aftermath of the coup, *Chairat Charoensin-o-larn* notes a sharply divided society. Included among opponents were an educated elite who opposed coups in principle, and lower income people who feared losing the economic benefits Thaksin had extended. Supporters included members of royalty, the old elite, armed forces, the middle class and urban intellectuals. Many among this group saw the coup as a “last resort” after all other measures had failed. As members of Bangkok’s public came out to garland soldiers in tanks, some saw it as a “special” coup with a human face.

However a year after the coup, Chairat argues, the proclaimed goal of healing divisions in Thai society had made no progress. The military had proven themselves unable to govern. The economy had declined. Civil liberties were curtailed, and the coup group was unable to provide a democratic alternative to Thaksin’s authoritarianism.

Until May 2007 coup leaders remained uncertain about how they would deal with the Thaksin legacy. They set institutions in place to address this, appointing new members to the NCCC, modifying the Constitutional Court (and renaming it the Constitutional Tribunal), and establishing an Assets Scrutiny Commission (ASC) as the main body to investigate alleged instances of corruption. On 30 May a second period began when the Constitutional Tribunal controversially dissolved the ruling Thai Rak Thai, and imposed a five-year political ban on 111 of its executives. Less than two weeks later the ASC froze 52 billion baht of Thaksin’s assets (later increased by a further 20 billion baht), and laid a series of charges against the former premier. Even so, Thaksin’s continuing influence was shown by the strong vote against the constitution during the referendum on 19 August 2007 — a majority of voters in the north and northeast opposed it, and overall the government fell well short of its desired 70 per cent majority.

Chairat agrees that the 2007 constitution does give additional power to the people in some areas, but overall its main focus is on controlling the government and little else. The military still regards itself as the “guardian” of democracy, and will be able to use this constitution — together with the new Internal Security Bill passed in December 2007 — to ensure the reimposition of a security state and bureaucratic polity.

Vitit Muntarbhorn examines the 2007 constitution in more detail, and comes to similar conclusions. There are, he agrees, some notable innovations compared to 1997, including strengthened controls over the executive, stronger provisions for protecting human rights, and greater powers to the courts, independent institutions and the general public. There are, however, many “grey areas” in a constitution drafted by a small elite, without public

participation. The military was “the unwritten power behind the constitutional process”, and stood to gain from a constitutional amnesty extended to their putsch, along with other moves to consolidate their influence. The judiciary had been enhanced, changing its relationship with the legislature, and executive. The constitution reveals a deep distrust of politicians, resulting in an electoral system that will favour weaker parties and enhance the prospect of unstable coalition governments. The partly appointed Senate (74 of 150) is likely to come under government influence, and human rights and civil society provisions will prove difficult to implement in practice.

Suchit Bunbongkarn is more optimistic. He argues that the 2007 constitution expands civil and political rights, while restricting the power of politicians and ensuring more effective checks and balances. In retrospect, he argues, the 1997 constitution went too far in entrenching the executive. The new constitution makes the executive more dependent on parliament. Contrary to other analysts, Suchit argues against the military continuing to play a major role. Since the coup, the military had demonstrated that it could seize power but it could not rule. The constitution placed strict limits on military involvement in politics, and it would have no option but to withdraw from the political arena.

The other post-coup issue discussed in this volume is the economy. *Bhanupong Nidhiprabha* sees the coup and post-coup government as extremely detrimental to economic growth and a threat to the long-term future. Unlike earlier coups, this one destroyed the confidence of the business sector and consumers. Political uncertainty and policy blunders made the Thai economy the regional laggard, and its 4.5 per cent growth rate was even below the world average (5.1 per cent).

Slow growth was not related to a lack of foreign demand or supply constraints. Like Warr, Bhanupong attributes slow growth to shortfalls in investment, along with a decline in consumption. A series of policy changes deterred foreign investors — including attempts to amend the alien business law, and above all an ill-fated attempt to impose capital controls in December 2006. Although capital controls were quickly relaxed, the action damaged confidence in Thailand’s open-door policy.

Government changes adversely affected particularly the poor. Slow growth has limited capacity to reduce poverty, and an increase in defence spending has diverted resources away from more productive economic sectors. The poor made known their objections by voting against the military-imposed constitution and subsequently supporting the PPP when it promised to act as a successor to the TRT.

Glen Robinson, a businessman, however finds differences between “perceptions” of what happened in Thailand during a period of political uncertainty, and the reality. Media reports, he noted, suggested that FDI had dried up, foreign business was withdrawing from Thailand, and international tourists were giving Thailand the cold shoulder. Statistics, he argues, did not bear this out — FDI was steady, investment applications to the Board of Investment increased, and Australian tourists arrived in increasing numbers.

But if foreign business was not overly concerned by an uncertain political environment, Thais were unimpressed. Why appointed Finance Minister MR Pridiyathorn Devakula, a noted technocrat and former governor of the Bank of Thailand, should stumble over currency controls and a Foreign Business Act remains a mystery, but it contributed to an impression of a government that was out of its depth. In addition, the attempt to replace Thaksin’s populism with the king’s proposal for a “sufficiency economy” met little enthusiasm. While this arguably led to limited change in practice, many suspected that it would eventually mean a reduction in benefits extended under Thaksin.

Nonetheless it was political shortcomings of the military-installed interim government under Prime Minister Surayud Chulanont that made transition to a promised new democracy so problematic. It proved unable to convince the broad public that allegations against Thaksin — particularly those relating to corruption — had substance. It made no progress in addressing the violence in the south. It presided over the drafting of a new constitution that few were happy with. And it left Thai society even more polarized than when the coup was conducted. That contributed to the continuing political crisis since elections in 2007, and presents an enormous challenge to future governments.

NOTES

1. “Thailand ‘at Risk of becoming Failed State’”, *Bangkok Post*, 31 August 2006.
2. Civil unrest flared anew in April 2009, when UDD demonstrations aborted an ASEAN-East Asia summit meeting in Pattaya, and was followed by armed confrontation between the UDD and army in Bangkok. Dispersal of demonstrators in Bangkok bought the Abhisit government time, but the UDD remains a force to be reckoned with.
3. “PM’s Declaration: ‘Democracy is Not My Goal’”, *The Nation*, 11 December 2003.
4. For discussion of politics at this time, see John Funston, ed., *Thaksin’s Thailand: Populism and Polarisation* (Bangkok: Institute of Strategic and International Studies; Canberra: National Thai Studies Centre, 2009).