

Thailand's Flawed 2019 Election Confirms the Country's Deep Political Divide

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The Political Context

After having been postponed a number of times and over a number of years, the Thai military dictators (the National Council for Peace and Order, or NCPO, in office after their coup of 22 May 2015) finally allowed elections to be held on 24 March 2019.¹ These numerous delays occurred despite the cost of aborting a newly drafted constitution in September 2015. Clearly, the military dictators wanted to spend more time in power. However, it would be a fundamental misperception to consider this election a return to democracy, or the coup as the beginning and the election as the end of a clearly demarcated period of Thai politics. Rather, both events represent elements of an era that began in earnest with the election of telecom-tycoon Thaksin Shinawatra, chairperson (in fact, owner would be a better description) of the Thai Rak Thai (Thais Love Thai) party on 6 January 2001. At that time, Thaksin was threatened with disqualification from politics altogether having submitted wrong asset declarations when serving as a minister in a previous government. While all other similar cases did indeed see the disqualification of the accused by the Constitutional Court, in Thaksin's case, the court voted 8:7 in his favour in, what one newspaper called, a 'murky verdict' (*The Nation*, 4 August 2001). Obviously, a very high-ranking member of the Thai traditional elite had intervened with the judges as the upper echelons of Thai society still hoped Thaksin would bring a better political-economic future. Moreover, he had out-classed all his competitors in the elections, and was generally seen as a new-generation, visionary political leader.

However, these hopes were rapidly overtaken by a very different perspective. As early as October 2001, another high-ranking member of that elite, former two-times prime minister Anand Panyarachun, ominously warned, "Danger caused by people with dictatorial inclinations has not disappeared from Thailand" (*Matichon*, 8 October 2001). This

1 In the headline of my chapter, I am relatively polite by using the adjective 'flawed'. The Economist, not known for mincing its words, came up with a headline that captured the situation more accurately: "After an ineptly rigged election, Thailand's junta will cling to power" (Anon, 2019c).

was followed, in December 2001, when, in his annual birthday speech, King Bhumibol himself held Thaksin to account. In an editorial, the *Bangkok Post* (7 December 2001) noted

It was nothing short of a slap in the face for Thaksin Shinawatra....[He] was made to face up to reality by the one person who can truly make him listen—His Majesty the King ... He said arrogance, intransigence, disunity, and double standards would be the ruin of this country. The normally defiant prime minister could only sit and smile [before, as viewers could watch on TV, his face turned deep-red, M.N.].

These two statements were followed by a long series of actions designed to uproot what critics called the ‘Thaksin regime’. These actions included multiple mass public protests, the repeated dissolution of Thaksin’s political parties, the confiscation of a big part of his assets and a dubious court verdict that sent Thaksin into self-exile in order to avoid his two-year prison sentence. This process culminated in the military coup of 19 September 2006. Yet, in the 2011 elections, Thaksin made what the conservative elite must have seen as a shock come-back. He nominated his youngest sister, Yingluck, as the Phuea Thai party’s leading candidate, though she lacked any political experience. Nevertheless, after only 49 days of the election campaign, she became Thailand’s first female prime minister. Again, Anand Panyarachun saw the need for issuing a warning. He “called on all Thais to fight against any move to bring the government, court and legislature under the control of one person or group,” otherwise, Thailand could encounter ‘tyranny’ (*The Nation*, 3 October 2011).

Yingluck’s term was overshadowed by a poorly designed and implemented rice-pledging scheme that was basically a subsidy policy, in which the state bought farmers’ rice at a much higher rate than the market price. Furthermore, her term was dominated even more by an amnesty scheme that might have brought Thaksin back to Thailand, something that the conservative elite and people holding strong anti-Thaksin political views could never accept.² Initial protests against the amnesty developed—pushed by Royalist Democrat Party Members of Parliament—into a movement to remove Yingluck and her political party (meaning: Thaksin Shinawatra) from power. She tried to save her government by dissolving Parliament and calling new elections. These elections were strongly sabotaged by the Democrat party’s protest leaders, and finally declared invalid by the Constitutional Court. The People’s Democratic Reform Committee (PDRC), as the protest group was known, even attempted a civilian *coup d’état* (Nelson, 2014). Though this attempt failed, it prepared the ground for the ‘real thing’—a military coup on 22 May 2014, led by Prayuth Chan-ocha.

Chan-ocha’s group of military officers, making up the junta (NCPO), considered the coup of their predecessors in 2006 a waste. One of their standard concerns was that the opportunities for political-legal engineering opened up by their own coup must not be wasted again. First and foremost, this concerned the eradication of any influence

2 It is somewhat ironic that this particular amnesty aroused the moralistic indignation it did. After all, the people responsible for military coups routinely have amnesties for themselves included in the constitutions written under their rule. The NCPO is no exception.

the Shinawatra clan still wielded in Thai politics. However, they also wanted to prescribe the future shape of Thailand by determining a comprehensive policy platform. To start this process, the so-called 'Interim Charter,' in Article 27, established the National Reform Council that was tasked with developing reform proposals in the fields of politics, administration of state affairs, law and judicial process, local administration, education, the economy, energy, public health and environment, mass communication, society and any other areas the council thought needed reform.³ This intention of shaping the future of Thailand found its final expression in the 2017 Constitution, which was prepared by an NCPO-appointed committee (after, as mentioned above, the junta had rejected the 2015 version, which had been drafted by another NCPO-appointed committee). Chapter XVI on 'National Reform' expanded the fields mentioned above by references to law and the judicial process. Moreover, Section 65 mandated the state to develop a 'national strategy', for which a number of legal instruments were devised resulting in a 20-year national strategic planning framework. This strategy, drawn up by the NCPO in the form of its government, and various expert committees, would have to be followed by all subsequent governments. The result would thereby reduce even a fully elected government to some sort of administrative committee that would have to implement the NCPO's policy platform for many years to come. A newspaper comment made in the run-up to the elections described the situation this way,

No matter what policies they [the political parties] campaign on, winning parties that form the government must enforce the junta-dictated national strategy otherwise they can be impeached. In this light as an exercise of the people's will, the election is meaningless. (*The Nation*, 30 January 2019)

Moreover, from the beginning, the NCPO had emphasised that elections, meaning the end of their direct rule, did not signify a return to democracy. Rather, the elections would usher in what they called a 'transition period' of at least five years. Only afterwards, people could start thinking about moving towards a greater degree of democracy. To implement this scheme, the NCPO had its constitution drafting committee add an appointed Senate (250 members) to the elected House (500 members, comprising 350 constituency MPs, and 150 party-list MPs) in a mixed-member proportional system, or MMP, called 'mixed-member apportionment [MMA] system' in the Thai case, with a single vote for the constituency MPs, and no threshold. This Senate, handpicked by the NCPO, was empowered to vote with the House on who would become prime minister. In practical terms, this meant the NCPO-Senate only needed 126 elected MPs to push through its preferred prime minister, coup leader Prayuth, although as far as the House was concerned, this would lead to a minority government. And since the Senate term was set at five years, while that of the House was four years, the same Senate could be used in this way twice, bringing the possible domination of post-election Thai politics by the NCPO to eight years. Therefore, observers of Thai politics calculated that the NCPO, in one way or another, would continue to wield substantial power for at least one more decade after its direct rule of five years (2014 to 2019) had come to an end.

3 Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014) (unofficial translation prepared by the Foreign Law Bureau, Office of the Council of State; this office is the government's legal advisory body, it also screens all legislation).

Consequently, probably the most outstanding phrase of the anti-NCPO forces in this election was to prevent the NCPO from a ‘prolongation of power’ (*kansuebthot amnat*). Thus, in the election campaign discourse, there was a distinction between political parties that were in favour of such a prolongation, and those who opposed it. This was mirrored by the view that this election represented a struggle between two camps, such as ‘democracy versus NCPO’, or ‘pro or versus NCPO’ (in terms of political ideologies, ‘conservatism versus liberalism’). The liberal mass circulation *Khao Sod* (7 January, 2019) summed up a column on the issue by saying, “The question then is whether or not one wants the ‘NCPO’ (Anon, 2019a). Related distinctions connected with the key goal of the NCPO mentioned above were ‘Prayuth versus Thaksin’, or ‘NCPO versus Thaksin’. In a more general sense, an academic commentator observed that the election was not merely about who will be in government “but (about) the very form of Thailand’s political system,” with the trend suggesting the voting would lead to a “semi-authoritarian regime” (Prajak, 2019).⁴

The Political Party Landscape in the 2014 Elections

Obviously, it poses a problem for a military regime if it wants to keep as much of its power as possible, while also benefiting from the increased local legitimacy and international recognition that come with elections. Relatively early in the process leading to the elections, in May 2018, the secretary-general of the Bhumjaithai Party, Supachai Jaisamut, “believed [that] Prime Minister Prayut Chan-o-cha [who doubled as the chief of the junta, NCPO] would definitely enter politics. One reason for this, he suggested, was that the NCPO is now concerned its efforts over the past four years may come to naught if it is not permitted to keep pulling the strings as a major political player in the future” (Aekarach and Prasit, 2018). This ‘major political player’ could only take the shape of a political party. This party was called Phalang Pracharat, which roughly translates as ‘People-State Force’, ‘Pracharat’ being the name of the NCPO-government’s version of populist policies, to which all major parties were committed, some more, some less.

Phalang Pracharat Party (PPRP)

In other words, the NCPO established its own electoral vehicle, hoping it would gain enough MPs in the elections enabling it to become the core party in creating a coalition government (any other kind of government being prevented by the MMP election system). In doing so, the NCPO followed the example of previous military regimes, the latest having been the Samakhi Tham Party that was established by the 1991 coup group that called itself the ‘National Peace Keeping Council’ (NPKC). The aim was to enable then-coup leader, Suchinda Kraprayoon, to assume the premiership after the election

4 It might be noted in this context that the phrase previously in vogue, ‘transition to democracy,’ has all but disappeared from academic writings on Thai politics. In Thailand, the form of government is sometimes put as ‘semi-authoritarian, or as ‘Thai-style authoritarianism,’ meaning a ‘hybrid system’ that combines authoritarianism with electoral and democratic elements. Internationally, one might categorize the country’s political regime as ‘electoral authoritarianism.’

of 22 March 1992. The method of assembling such parties was similar, as dictated by Thai political structures. That is, government ministers and former PDRC activists recruited a number of leaders of regional political cliques that each commanded a good number of former MPs. Since there were three such leaders, the Thai press liked to refer to them as 'the three amigos', or *sam mitr*, suitably emphasising the entirely informal nature of this procedure (after the election, the newspaper Prachachart Thurakit, 14 April 2019, identified ten factions or cliques in the PPRP (Anon, 2019b). The former MPs in the *sam mitr* cliques were supposed to command secure networks of vote canvassers (*hua khanaen*) and solid voter banks in their respective local areas that would guarantee their re-election under the new party banner. At the same time, these cliques would poach MPs from existing parties to fill up the new party's ranks of prospective MP candidates with good to excellent electoral prospects (it might be mentioned in passing that Thaksin Shinawatra, though not a coup leader, employed a similar method in creating his Thai Rak Thai electoral juggernaut).

On 30 January 2019, the party officially invited Prayuth Chan-ocha to be its prime ministerial candidate (the constitution mandated parties to name up to three such candidates; they did not need to run as MPs in the election). A columnist commented

"The whole business about the party's leaders who are his [Prayuth's] former staff extending a formal invitation for him to be their prime ministerial nominee appears overly theatrical. Do these leaders want people to really believe that each of them is acting independently and never planned it beforehand? This is on the eve of an election. They shouldn't play people for fools." (Atiya, 2019)

While the four ministers at the core of establishing the PPRP resigned their positions, Prayuth remained the fully functional (meaning: not merely caretaker) prime minister.⁵ Partly to avoid legal problems, Prayuth did not join the party's election campaign, and he attended none of the numerous election debates among the PM candidates. He conducted his very own campaign, camouflaged as the PM visiting the people or inspecting government activities. Government budget also kept flowing towards the people, an activity that in earlier times (such as during the Thaksin government) would have been heavily criticised as vote buying. Prayuth only made a brief appearance at the PPRP's final big election event in Bangkok.

Phuea Thai Party (also spelt Pheu Thai; PT)

Phuea Thai was the core party of the 'Thaksin camp'. After previous incarnations—Thai Rak Thai and Phalang Prachachon—had been dissolved by the Constitutional Court. This camp had won all elections that were held since 2001 (2008, 2007, and 2011; they also won two elections that the Constitutional Court declared invalid, in 2006 and 2014).

5 Prayuth also remained the head of the military junta. In this position, he was the bearer of absolute sovereignty above the state. As the PM, he occupied a formal position within the state, and below his position as the chief of the junta. The NCPO-engineered 2017 constitution stipulated that only a post-election government assuming office would make him lose the position as the PM and abolish the NCPO. Thus, even after the election had been held, Prayuth still variously used his absolute power as the junta chief, based on the infamous article 44 of the 'Interim Charter.'

Phuea Thai's main competitor, the conservative-royalist Demo-crat Party, were simply unable to compete in the electoral field. This was one major reason why the traditional establishment, via the military, used the means of military coups in 2006 and 2014 to remove a political camp from access to power that they intensely disliked.

With the NCPO-engineered constitution of 2017, an attempt was made to reduce the number of MPs that PT could gain through changes in the electoral system. The previous mixed-member majoritarian election system (MMM) always provided PT with a disproportionate number of MPs. Phuea Thai won many constituency MPs, and through a second party-list vote (PT mostly gained many more party-list votes than its constituency MPs received combined), they also gained high additional numbers of party-list MPs. To prevent this from happening again, the NCPO-appointed drafters of the 2017 constitution, changed MMM to MMP. Thereby, a party's total seat claim would depend on the number of votes that its constituency MPs received. Consequently, the party leaders were worried they would not get any party list MPs, because PT's total proportional seat claim was anticipated to be lower than the number of its winning constituency MPs.

In order to circumvent this attempt to reduce its number of MPs by stipulating MMP,⁶ Phuea Thai chose to establish one major branch party, Thai Raksa Chart (TRC). Other parties connected to PT were Phuea Chart, mainly collecting previous Red Shirt politicians, and Pra-chachart, a group of Muslim politicians who stood in the southern Ma-lay-Muslim provinces. TRC had the task of bringing in party-list MPs by standing in constituencies where PT thought its candidate was not strong enough to win. In practice, this meant that PT fielded candidates only in about 250 of the altogether 350 constituencies. The remaining 100 constituencies were left to TRC. This plan took a decidedly spectacular turn when TRC registered as its prime ministerial candidate none other than the elder sister of the present king, Ubonratana (this could not have been done without Thaksin Shinawatra's leading participation). Technically, she was eligible since she had married an American and had lived in the United States for many years. Thus, she had lost her royal status, in theory becoming a commoner. After her divorce many years ago, she returned to Thailand, received a low-status nobility title, took part in royal activities, was generally seen as a normal member of the royal family and referred to as Princess Ubonratana. She did not apply in person. Her application form, with picture, was brought to the registration venue by the TRC leaders. She declared that she wanted to use her rights as an ordinary citizen.

This happened in the morning of 8 February 2019. It took until the evening when a unique intervention by the king led to the collapse of this attempt to gain electoral advantage. Rama X issued a Royal Command (phraratchaongkan), published in the Royal Government Gazette, denouncing the drawing of his sister into politics—when the monarchy should be above politics—as a 'highly inappropriate action.' This prompted

6 This might sound as if the author is against MMP. I am not. However, I decidedly prefer the German system with two votes, and a threshold. My critical position here is informed by the fact that this constitutional engineering was not used to arrive at the most appropriate and just election system. Instead, the system was used as a tool in the political struggle by the military regime against an electorally superior antagonist.

the Election Commission (EC) to disqualify the princess. Calls for the dissolution of TRC followed almost immediately. These calls were based on Article 92 of the Political Party Act that stipulated, in case the EC had sufficient evidence that a political party acted in a way that could be seen as “being hostile to the democratic regime of government headed by the king,” it must petition the Constitutional Court to dissolve that party. The EC, within a few days, evaluated the TRC’s nomination of the princess in this way and petitioned the Constitutional Court (CC) to dissolve the party. According to the same article of the Political Party Act, the CC must investigate the case, and if it found ‘credible evidence’ of wrongdoing has to dissolve the party and withdraw the rights of the concerned party leaders to stand as candidates in elections. Unsurprisingly, on 7 March 2019, the CC issued its verdict to dissolve TRC (for the central verdict, see Khamwinitchai, 2019). However, since no actual harm had been done, since the party executives involved did not intend to be hostile to the democratic regime and had apologised to the public, and since they professed to support constitutional monarchy, their rights to stand in elections were only withdrawn for ten years (it could have been a life-long disqualification).⁷

As a result, Phuea Thai lost the possibility of fielding candidates in the constituencies previously given to the TRC, because the registration period had already ended. Of course, it also lost the votes that TRC candidates were supposed to gain in order to add to the PT camp’s number of party-list MPs.

The Democrat Party

The Democrat Party (DP) is Thailand’s oldest political party. It was founded in 1946 with the expressed aim to further the interests of the royalist camp after the absolute monarchy had been overthrown in 1932. Up until today, the DP has a conservative-royalist political orientation, but also follows liberal economic approaches. The DP is member of the Liberal International. The Democrat Party’s leader at the time of the elections was Abhisit Vejjajiva. In 2010, after having achieved the position of prime minister through political trickery and military intervention in 2008, he was politically responsible for using the military to perform a violent crackdown on anti-government (‘Red Shirt’) protesters, costing the lives of almost one hundred people, mostly unarmed protesters. While his military predecessors, who did the same in 1973 (Thanom Kittikachorn), and 1992 (Suchinda Kraprayoon), were socially and politically stigmatised as a result of their actions, it had not been a problem for Abhisit to remain chairperson of the DP.

However, some time before the election, the DP called on all its members to elect a new chairperson rather than having a much smaller circle of leading politicians make the decision. Abhisit prevailed over his main competitor, Warong Dechgitvigrom, who belonged to the PDRC faction of the party. Since this faction was expressly pro-Prayuth, it did not take it lightly when Abhisit, shortly before the election, started a public relations drive in which he declared that with him, the Democrats would never support a

7 For an initial interpretation of the verdict, see Mérieau (2019). Interestingly, she mentions that the Thai CC, in arguing its case against the TRC, had also referred to the concept of ‘militant democracy’ (wehrhafte Demokratie), which was included in the German Basic Law in Article 21 (2).

Prayuth-led government (in fact, this had been his stance since at least November 2018, when he had declared that he would not join the Phalang Pracharat Party in returning Prayuth to the position of PM). Months earlier, Abhisit had already declared that he would never enter into a coalition with the Phuea Thai Party (because, from his perspective, it embodied the corrupt and despised ‘Thaksin regime’), and that he expected the Democrats to win at least 100 MPs. Furthermore, the party would only be part of a coalition government if it could be its core component. If he could not achieve these goals, he would step down from the chairpersonship of the party. Obviously, this was a very tall order. Indeed, this strategy almost necessitated that his party would be in opposition as he had excluded joining coalition governments with both parties that were expected to gain the highest numbers of MPs, PT and PPRP. The Democrats found themselves in a role they were not accustomed to: instead of being a major competitor in the electoral race, the DP had become an ‘also ran’, or, as the Thai press called it, a ‘variable party’ (*phak tuaprae*), meaning one of those parties needed to fill up the numbers for forming a coalition government led by a core party.

As if this was not enough to make life difficult for the Democrats, a new and formidable player appeared on the scene—the Future Forward Party.

Future Forward Party

The Future Forward Party (FFP) was launched in March 2018 by the scion of Thailand’s largest auto-parts manufacturer, Thanathorn Juangroongruangkit, a billionaire who had long been a participant in activities dealing with causes of social and political reform. The co-founder was Piyabutr Saengkanokkul, a well-known young critical law-lecturer at Thammasat University, and a key member of the progressive Nitirat group (‘Enlightened Jurists’) at the university’s Faculty of Law (McCargo and Peeradej, 2015). Piyabutr had long campaigned for reforming the country’s harsh lese majesty law, without, for political reasons, pursuing this issue further in the new party. Using European standards, the party’s political orientation could perhaps best be described as liberal-democratic, with a modestly progressive outlook, or somewhat centre-left. The party appealed to the younger and mostly urban generation of people who were fed up with the old political options—including PT, the Democrats, certainly PPRP—and that harboured feelings of “rising discontentment with the extant political order” (Kasian, 2019). Future Forward had a decidedly critical policy platform that could not but anger the powers-that-be, including proposals to abolish conscription, to drastically reduce the number of generals in the armed forces, to roll back policies initiated by the NCPO, and to substantively rewrite the NCPO’s constitution. However, it was for even more fundamental reasons that some observers felt that FFP was a bigger threat to the ruling establishment than even Thaksin, who they had fought for so long. Voranai Vanijaka, a well-known columnist, expressed it this way

“Thaksin’s alleged crime was his attempt to change the power dynamic among the elites. That’s just rich people bickering against each other, while using poor people in the streets. It’s a tale as old as time. Thanatorn’s alleged crime is fermenting a revolution of the mind that could lead to the changing of social hierarchy and traditional

status quo. That ... is what we called a people's revolution. As old as time, it's a tale most feared by the traditional establishment. ... If the people no longer adhere to traditions, then the generals lose control of the hearts and minds of the people. And if the generals lose control of the cultural mindset, then the generals lose control of the country, even if they win the elections." (Voranoi, 2019)

Similarly, columnist Wasant Techawongtham stated,

"The main point that draws the wrath of the junta loyalists is this: Mr Thanathorn dares to challenge the military's historical and present supremacy over Thai society, the bureaucracy's centralised power and the oligarchy's dominance over Thai life and economy. His party's priority aims to restructure the country's archaic power structure. It's something no political parties, past or present, have dared to vocalise or highlight." (Wasant, 2019)

Given this positioning of the FFP, it was unsurprising that, both before and after the elections, the party came under heavy attack by right-wing forces. The FFP leaders were accused of being "hostile toward the country's democratic system in which the King is revered as the head of state", the reason for which TRC was dissolved, (*Bangkok Post*, 6 April 2019), and being "a threat to national security and the monarchy" (Thana, 2019). Prominent critical journalist Pravit Rojanaphruk felt that things had become so bad that they resembled "Witch hunt, paranoia and hysteria," and he warned, "Let's Not Succumb to Political Hysteria" (Pravit, 2019).

However, before the FFP could become the target of widespread hate speech on social media, it had to overcome rather practical electoral problems. In his pre-election assessment of the party's electoral prospects, Duncan McCargo pointed out that the party "lacks local organization, including networks of the vote canvassers (*hua khanaen*) who play a crucial role in mobilizing the electorate at the constituency level" (McCargo, 2018). In any event, it seemed that FFP decided to forgo the use of these traditional means of local voter mobilisation altogether. McCargo also noted that the FFP lacked people "with enough name recognition" (McCargo, 2018). However, as the election campaign period proceeded, the FFP—and especially Thanathorn himself—developed into such a public sensation that one could speak of a "Thanathon phenomenon," or even "Thanathon fever" (*Matichon*, 24 February 2019). The party, especially Thanathorn, gained such an extremely high public media presence that it could mainly rely on it in order to gain votes.

These were the four political parties that received the most public attention during the election campaign, and that were thought to win the biggest portion of MPs. However, there were a number of other, mostly regional or personality-centred parties that were supposed to gain more modest numbers of representatives, such as Bhumjaithai, Chart Thai Pattana, Chart Pattana, Seree Ruam Thai, and New Economy. Some special interest was given to the Action Coalition for Thailand Party, because it was informally led by the former leader of the PDRC, Suthep Thaugsuban and because its main areas of contestation overlapped with the main stronghold of the Democrat Party in the (non-Muslim) South of Thailand. Altogether, a record number of 81 political parties stood in this election, of which 77 received votes (number 77 received 183 votes nationwide).

This high number can be attributed to the new MMP system without threshold. Most of these groups could not really be called political parties. They did not represent any aggregated societal interests beyond the desire of an individual (mostly male) person to be called and treated as a party leader for a few months. These types of parties did not have noticeable political activities before or after the elections.

The election results

From the perspective of democracy idealists, the Thai voters should have been happy to shake off the yoke of five long years of military dictatorship and decisively reject the candidates running under the banner of the NCPO party, Phalang Pracharat, which promoted military dictator Prayuth Chan-ocha as the future parliament-backed prime minister. However, we knew that, in Thailand, authoritarian political culture did not only have a long history, but also the backing of a large sector of the population. This included a considerable number of civilian experts, who were only too willing to help to actively push the NCPO's 'reform agenda' as members of the junta's various committees, among them, what they pretentiously called the 'National Legislative Assembly'. Nevertheless, it was a bit surprising that PPRP gained the highest number of votes (8,433,137), followed by PT (7,920,630), FFP (6,265,950), Democrats (3,947,726), and Bhumjaithai (3,732,883). The other parties received fewer than one million votes each, with Seree Ruam Thai having the highest number at 826,530 votes (preliminary figures according to an untitled Election Commission PDF file, dated 28 March 2019). The numbers looked somewhat different when we turn to the constituency MPs that the parties won. Here, Phuea Thai won by far the highest number of seats with 137 seats (but down from 204 in the 2011 election), followed by Phalang Pracharat with 97, Bhumjaithai with 39 (up from 29 in 2011), and the Democrats with 33 MPs (down from 115 in 2011). The surprisingly high 30 constituency seats for Future Forward were, in part, due to vote transfers from the disbanded TRC. Since Phuea Thai did not stand in these constituencies, FFP was the next best option for followers of PT/TRC. After these parties, there was a big gap to Chart Thai Pattana and Prachachat that each won six seats, and the Action Coalition and Chart Pattana with one MP each. Since an MMP/MMA system was in operation, these constituency MPs were still to be complemented by party-list MPs.⁸

As a result, things became problematic, compounded by the fact that, in terms of electoral camps, and seats given to 'variable parties', the election did not produce a clear winner. Since Phuea Thai won the highest number of MPs, Thai parliamentary tradition prescribed that it had the first shot at forming a coalition government (although PPRP tried to argue that its highest 'popular vote' should give it this right). To pre-empt any moves by PPRP, PT pressed ahead, and, on 27 March 2019, called a press conference to

8 For some analytical remarks on how the parties fared in Thailand's regions, including maps, see the website <https://www.thaidatapoints.com>, which was operated by Joel Selway and Allen Hicken. At the time of writing (23 April 2019), they have pieces on Phuea Thai, Future Forward, and the Democrats. They also planned to do a simulation of how many votes/seats PT could have gained, had it not established TRC as a separate entity.

present its coalition of six 'pro-democracy' parties to the public, including the signing of a formal accord among those parties (Jintamas and Asaree, 2019). Besides Phuea Thai, these parties included Future Forward, Seree Ruam Thai, Prachachart, Phuea Chart, Phalang Puangchon Thai, and New Economy. This coalition had a paper-thin majority of 253 seats (importantly, this number included the party-list MPs) in the 500-seat House. The PPRP-camp in the narrow sense had only 123 seats, while the 'variable parties' thought to tend towards joining PPRP commanded 70 seats. Consequently, the Democrat Party, with 54 seats, held the key for this camp. If the DP MPs decided to join the opposition in the House, the PPRP could never hope to form a coalition government that had a majority in the House. Yet, the Democrats were divided. Reportedly, perhaps as many as 35 MPs, belonging to the PDRC faction, were prepared to join a Prayuth-led coalition government whereas, after the resignation of party-leader Abhisit, the remaining MPs preferred to regenerate the party while serving in the opposition. At the same time, the New Economy Party's six MPs also showed signs of doubt as to whether they should really be in the PT-led coalition.

As if this situation was not already complicated enough, it was made worse by the unexpected weeks-long debate about how to correctly (with respect to both the constitution and the election law) calculate the party-list MPs that parties should be allocated. This was far from being a merely technical issue. Rather, how it would be resolved would decide if the PT camp still had a majority or would lose it. At the centre of this question were the party-list MPs of the Future Forward Party. In the initial calculation, the FFP had received 57 such MPs, adding to the 30 it had won in the constituency contests. The recalculation obviously favoured by the Election Commission would reduce the FFP's number of party-list MPs by seven to only 50, instead giving those seats to single-MP parties, which would have made the House comprising 26 or 27 political parties, of which eleven would only have had a single party-list MP.

Nonetheless, this would have deprived the PT camp of its majority. At this point, it needs to be added this majority, in any case, would have been largely, but not only, symbolic. As mentioned above, the 250 junta-appointed senators were empowered to take part in the vote for prime minister. And they would certainly have voted for the Phalang Pracharat camp. Since the total number of members of the National Assembly was 750, any House majority that wanted to be sure of forming the government would have needed at least 376 MPs. Phuea Thai and the parties allied with it were very far from reaching this goal. Thus, the main purpose of achieving a House majority was to claim popular legitimacy to form the government. After all, the MPs were elected by the people, while the senators (whose names, at the time of writing on 25 April 2019, had not yet been made public) were products of a closed selection by the junta, basically by a handful of its most influential members, among them Prayuth. So, how could millions of votes cast for a majority of MPs in the House simply be invalidated by such a handful of junta power holders via their senators? Such a situation could only confirm the election was 'rigged', as described in *The Economist* article quoted above (Anon, 2019c). The House majority could argue that the election was 'stolen' by the junta, meaning by its Phalang Pracharat Party, in conjunction with its very own 250 senators (some newspapers had referred to them as the NCPO party). In a political sense, the question would then be whether the people, who had voted for the House majority, could accept being

cast aside by the powers-that-be, making it appear as if they had taken part in a fake election. In a legislative sense, relying on the senators would have created a minority government as far as the House was concerned. This would have made it difficult for the government to pass the national budget (to the point of being unable to pass it at all), as well as ordinary laws, because in these cases senators were not empowered to join the voting. It was for these two reasons that the Phalang Pracharat camp also wanted to have a majority in the House. It would provide its government under Prayuth Chan-ocha as the prime minister with at least a certain appearance of democratic legitimacy, and it would make it possible to handle the legislative process more easily.

Yet, the Election Commission was unable, or unwilling, to come to a conclusion about how the party-list MPs should be correctly calculated⁹. Although a number of academics had presented the commission with what seemed to be calculations that conformed to both constitutional and election law, the commission insisted that its calculation did comply with the election law. However, in so doing, the EC perhaps contradicted the constitution (Section 91 of the constitution stipulated how the calculation had to be done; Article 128 of the election law repeated this Section, though it added one more paragraph). In order to solve this problem (or pseudo problem, as many observers believed), the EC petitioned the Constitutional Court for a decision about this matter. The EC argued that the CC was empowered to do so based on the constitution's Section 210, paragraphs 1 and 2. This is not the place to go into detail about the interpretation of these two paragraphs. Suffice to say, neither seemed to have obvious applicability to the EC's problem (for the EC's position on this case, see *Khao samnakngan khanakammakan kanlueaktang*, 2019).

On 24 April 2019, the Constitutional Court rejected the Election Commission's petition. First, the nine CC judges unanimously decided that regarding the question of whether the Organic Law on Elections contradicted the Constitution, the EC could not petition their court directly, but had to go through either the courts of justice or the Ombudsmen. Second, regarding the problem of calculating the party-list MPs, in a vote of seven to two, the judges were of the opinion that this issue belonged to the duties and responsibilities of the EC. However, its petition did not show that the agency had already acted on its duties, and therefore, a problem in the exercise of the EC's powers and duties had not yet occurred (*Khao samnakngan san rattathammanun*, 2019). Needless to say, these decisions by the CC threw a bad light on the EC's legal competence. Furthermore, the decisions also meant that the EC was on its own in deciding which of the formulas for calculating the party-list MPs it should use, and it would have to deal with any political, public, and academic repercussions. Meanwhile in some constituencies, the EC worked on electoral complaints, the re-counting of votes, re-runs, or even re-elections. Due to these circumstances, even four weeks after the election had been held on 24 March 2019, the final result remained unknown, and therefore it could not yet be said which camp had, in fact, won the election, and how the first post-coup government could be formed, and by whom.

9 For a critical assessment of the EC's performance in the election, see Khemthong (2019).

Conclusion

With its five years in power and with the elections, did the NCPO achieve its *raison d'être* to eliminate Thaksin Shinawatra's influence on Thai politics? Prominent columnist Thitinan Pongsudhirak seemed convinced it did, with an article headline declaring, "Election augurs end of the Thaksin era" (Thitinan, 2019a). Moreover, he repeated this in a later piece, headlining it, "Thaksin era fading, but Thailand's troubles linger" (Thitinan, 2019b). Obviously, the Phuea Thai Party did not fare as well as in previous elections. This was partly because of the gamble in establishing the Thai Raksa Chart Party, and the nomination of Princess Ubonratana as prime ministerial candidate having badly misfired. In addition, with the junta's Phalang Pracharat, and with the Future Forward parties, PT had new electoral competitors to whom it certainly lost votes. Thaksin himself made the situation much worse by the fact that the princess attended the wedding of one of his daughters in Hong Kong on 22 March 2019 and was pictured in a very close embrace with Thaksin. The reactions followed swiftly. On 28 March 2019, the military's top brass lined up in a rather theatrical fashion (though some found it to be threatening) to declare that Thaksin "did not know his place," and had "disrespected the high institution [the monarchy, M.N.] and failed to maintain his honour and was deservedly stripped of his armed forces alumni awards" (Wassana, 2019). On 30 March, a royal announcement was published in the Government Gazette: "His Majesty the King has recalled the royal decorations bestowed on former prime minister Thaksin Shinawatra" (*Bangkok Post*, 30 March 2019). As Thitinan remarked, "The withdrawal of royal decorations is tantamount to being disowned, a pariah, or *persona non grata*" (Thitinan, 2019a). Therefore, Phuea Thai could be forced to try and stand on its own feet. A long time before the elections, prominent historian and columnist, Nidhi Eoseewong, had urged Phuea Thai to loosen its bond with Thaksin, and stated,

"The obligation of a party that received such overwhelming political success can be nothing else but the commitment it has to the enormous number of people supporting the party, and because of that they must be the frontline in the battle for the rights and freedoms of the people." (Nidhi, 2018)

Under the prevailing conditions in April 2019, a less than 'overwhelming political success' in the elections, a lack of fresh and attractive faces at leadership level, and a small membership basis meant that the repositioning and institutionalisation of the party looked like being an uphill struggle. This would not become any easier if the NCPO managed to put together a government with a majority in the House and stay in that position for a full four-year term. Certainly, the memory and influence of Thaksin would decrease even more.

The other major anti-NCPO party, Future Forward, had a problem that was of a more fundamental kind. As mentioned above, the military probably considered Future Forward a bigger threat to the given political order than Phuea Thai as it presented a new model of political culture to the electorate. However, it was not really a new model. One needs to keep in mind that the Thai political order had long been characterised by two competing models of how this order should be structured. In terms of Weberian ideal types, the hegemonic model had been promoted by the traditional power elite, with the

key components of the monarchy and the bureaucracy in both its military and civilian branches. The highest value of the hegemonic model was the official state ideology of ‘Nation, Religion, King’. This model had a collective and paternalistic understanding of the ‘national good’, emphasising an elite-controlled national unity based on obedient and conformist people. This model had been challenged by an understanding that put the people on top, with the key component of equal citizens, and the highest value attributed to the constitution. This model’s key claim to legitimacy was not the elite-defined ‘national good’, but popular sovereignty determined by individual, pluralistic, and diverse independent citizens in a liberal democracy (for details, see Nelson, 2012, 2016). It was this model that the Future Forward Party emphatically, and with youthful vigour, embodied and promoted. In contrast, the NCPO strictly adhered to the traditional model in its present version of an expansive monarchy in alliance with a military-led state apparatus. In this sense, one could certainly say that the NCPO had failed “to induce political obedience from [a large part of] the people” (Kasian, 2019), although it had certainly been successful in its sustained suppression of open dissent.

From this perspective, the FFP represented a bigger threat to the status quo than did the Phuea Thai Party that represented a mix of loyalty to Thaksin, to personalised constituency-level networks of influence and to democratic values. The FFP were more of a threat because, as Voranai put it above, the party stood for “fermenting a revolution of the mind that could lead to the changing of social hierarchy and traditional status quo” (Voranai, 2019). Its electoral success, especially among the young generation of “voters awakened by forces of political populism” (Kasian, 2019), was certainly a cause for serious concern for the NCPO. Shortly after the election, the junta (that still existed with full arbitrary powers, even after the election had been held) brought charges of ‘sedition’ (which had languished in its files since 2015) against FFP leader Thanathon. These charges stemmed from perfectly legitimate protests against the military coup. The NCPO action was called in an editorial in *The Nation*, “A military assault on a political enemy” (*The Nation*, 16 April 2019). Shortly afterwards, the NCPO also brought charges of “contempt of court and importing information that may undermine national security or public order into a computer system, which is a violation of the Computer Crimes Act” (*Bangkok Post*, 17 April 2019) against Piyabutr Saengkanokkul, the FFP’s secretary general. These charges stemmed from a statement on the occasion of the Constitutional Court’s verdict to dissolve TRC, which Piyabutr had read and distributed as a video clip. Angkhana Neelapaijit, a member of Thailand’s National Human Rights Commission, was in attendance when Piyabutr reported to the police and noted, “those campaigning for democracy are [not] above the law, but the authority should ensure that the treatment was not judicial harassment or a strategic lawsuit against public participation (SLAPP)” (Kas, 2019). Both Thanathon and Piyabutr demonstrated what they thought of the NCPO’s charges by raising their arms in the, ‘three finger salute’ – a gesture used to protest against the Thai military junta.

The political divide mentioned in the title of this chapter was therefore about these two ideal types of political order that competed in Thailand: the hierarchical, top-down rule by the traditional power elite, and the equality-based, bottom-up rule by the people in a democratic system of government. In the words of Seksarn Prasertkun, a

prominent member of the Octobrists¹⁰, there was a 'contested area' in Thai society with two currents of thought, the conservatives and the progressives. Both camps tried to convince the people that their respective political worldviews were correct. The conservatives needed to instil thoughts, beliefs, and values from the past in a society that had changed. The progressives, on the other hand, experienced that bringing ideas from the outside world to Thailand was not an easy task at all (Seksarn, 2018). Unsurprisingly, the election of 24 March 2019 demonstrated that the societal forces representing each of these two models, ideal types, currents of thought, or political cultures—that had previously been involved in the protests of the 'yellow shirts' (on the traditional, conservative side) and the 'red shirts' (on the democratic, progressive side)—still existed. These societal forces had produced an electoral outcome in which neither side could claim to be the clear winner, though an advantage was given to the side of 'Thai-style' or 'electoral' authoritarianism.

References

- Aekarach Sattaburuth and Prasit Tangprasert (2018) Pheu Thai insider says ex-MPs 'hunted' Urged to defect to Phalang Pracharat. *Bangkok Post*, 15 May.
- Anon (2019a) Column. *Khao Sod*, 7 January.
- Anon (2019b) Column. *Prachachart Thurakit*, 14 April.
- Anon (2019c) After an ineptly rigged election, Thailand's junta will cling to power. *The Economist*, 28 March.
- Atiya Achakulwisut (2019) Angry PM's martyr act is wearing thin. *Bangkok Post*, 5 February 2019.
- Bangkok Post*. Newspaper (various issues).
- Constitutional Court (2019) Khamwinitchai san ratthathammanun. *Decision of the Constitutional Court*, 3/2562, 7 March.
- Constitutional Court (2019) Khao samnangkang san ratthathammanun. *News from the Office of the Constitutional Court*, 7/2019, 24 April.
- Jintamas Saksornchai and Asaree Thaitrakulpanich (2019) Pheu Thai Announces Coalition With 6 Parties. *Khao Sod English*, 27 March 2019.
- Kanokrat Lertchoosakul (2017) *The Rise of the Octobists in Contemporary Thailand*. Chiang Mai: Silkworm Books.
- Kas Chanwanpen (2019) Victimisation of rivals dangerous, junta warned. *The Nation*, 18 April 2019.
- Kasian Tejapira (2019) Elite realignment, a populist moment: Reflections on Thailand's 2019 general elections. In: *New Mandala*. Available at: <https://www.newmandala.org/elite-realignment-a-populist-moment-reflections-on-thailands-2019-general-elections>: 4 April (accessed 26 November 2019).

10 This expression refers to those student activists involved in the protests of 1973 that brought down Thanom Kittikachorn, to the massacre of students at Thammasat University by right-wing forces in October 1976, and the subsequent flight of most of these students into the jungle to join the Communist Party of Thailand; see Kanokrat (2016).

- Khemthong Tonsakulrungruang (2019) Thailand's tainted Election Commission. In: *New Mandala*. Available at: https://www.newmandala.org/?q=Thailand%E2%80%99s+tainted+Election+Commission&post_type=post: 18 April (accessed 26 November 2019).
- Maticchon. Newspaper (various issues).
- McCargo D (2018) Thailand's Changing Party Landscape. *ISEAS Perspective*. 63.
- McCargo D and Peeradej Tanruangporn (2015) Branding Dissent: Nitirat, Thailand's Enlightened Jurists. *Journal of Contemporary Asia*. 45(3): 419-442.
- Méreau E (2019) What's the role of a Constitutional Court in a military dictatorship? On the dissolution of Thai Raksa Chart. In: *New Mandala*. Available at: <https://www.newmandala.org/whats-the-role-of-a-constitutional-court-in-a-military-dictatorship-on-the-dissolution-of-thai-raksa-chart/>: 5 April (accessed 26 November 2019).
- Nelson MH (2012) Some Observations on Democracy in Thailand. *SEARC Working Paper Series, No. 125*, Hong Kong: Southeast Asia Research Centre, City University of Hong Kong.
- Nelson MH (2016) Authoritarian Constitution-Making in Thailand, 2015-16: Elite (aphichon) Capture Turns a 'Dual Polity' into a 'System of Elite Rule with Elections,' or a 'Thai-style Authoritarianism.' *SEARC Working Paper Series, No. 188*, Hong Kong: Southeast Asia Research Centre, City University of Hong Kong.
- Nidhi Eoseewong (2018) An open letter to Pheu Thai: Will the party be a part of the battle for democracy? *Prachatai*, 8 May.
- Office of the Council of State, Foreign Law Bureau (2014) *Constitution of the Kingdom of Thailand (Interim)*, B.E. 2557 (unofficial translation).
- Office of the Election Commission (2019) Khao samnakngan khanakammakan kan-lueaktang: *News from the Office of the Election Commission*. 46, 11 April.
- Prajak Kongkirati (2019) Why Thailand's generals fail to co-opt elections. *New Mandala*. Available at: <https://www.newmandala.org/why-thailands-generals-fail-to-co-opt-elections/>: 15 January (accessed 26 November 2019).
- Pravit Rojanaphruk (2019) Let's Not Succumb to Political Hysteria. *Khao Sod English*, 13 April.
- Seksarn Prasertkun (2018) Prathet Thai nai khwamkit khwamkit nai prathet Thai. *Puey Ungphakorn Lecture*, 16, 9 March.
- Selway J and Hicken A (2019). <https://www.thaidatapoints.com>. (Various articles)
- Thana Boonlert (2019) Future Forward in hot water over lecture: Party dubbed 'a den of anti-monarchists'. *Bangkok Post*, 2 April.
- The Nation. Newspaper (various issues).
- Thitinan Pongsudhirak (2019a) Election augurs end of the Thaksin era. *Bangkok Post*, 5 April.
- Thitinan Pongsudhirak (2019b) Thaksin era fading, but Thailand's troubles linger. *The Straits Times*, 16 April.
- Voranai Vanijaka (2019) *The Generals vs Thanatorn Juangroongruangkit*. Available at: <https://voranai.com/>: 3 March (accessed 28 November).
- Wasant Techawongtham (2019) Why Thanathorn makes PPRP uneasy. *Bangkok Post*, 2 March.

Wassana Nanuam (2019) Top brass: Thaksin has shown disrespect for high institution.
Bangkok Post, 28 March.

