

LAW OR POLITICS ? THE CONSTITUTIONAL COURT OF THAILAND^{*}

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Abstract

The Constitutional Court of Thailand was instituted as part of the broader constitutional reforms during the 1990s, with the intent of establishing an autonomous judicial body insulated from political influence. Designed to function as a critical counterbalance to both Executive and Legislative authority, the Court was envisioned as a guardian of constitutional order. Over the past seventeen years, Thailand has experienced recurring political turbulence, marked by cycles of unrest, two military interventions, and judicial interventions that have significantly shaped the political landscape. Amid this protracted contestation, the Constitutional Court has evolved into a pivotal instrument wielded by elite factions to consolidate power and neutralize political adversaries. This article examines four important rulings issued by the Court in its recent history, arguing that these decisions reflect the institution's transformation into a moral adjudicator and de facto safeguard against the authority of elected officials.

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Introduction

Thailand's Constitutional Court was created under the 1997 Constitution, which is commonly known as the "People's Constitution" or the "Reform Constitution" (Kingdom of Thailand, 1997). This foundational legal framework was the outcome of a period marked by political disruption and reform between 1993 and 1997. The process was triggered by the 1991 military coup that removed Prime Minister Chatchai Choochavan from office, followed by the pro-democracy protests of May 1992, during which state security forces killed numerous civilian demonstrators (Bhuchongkul, 1992; Bunbongkarn, 1992; Maisrikrod, 1993). The widespread public outrage that followed these events led to demands for systemic political transformation. These demands culminated in the adoption of a new constitution intended to embed democratic principles and prevent the recurrence of authoritarian governance.

One of the most significant innovations introduced by the 1997 Constitution was the establishment of several independent oversight institutions that had not previously existed in Thailand's political system. These included the Election Commission of Thailand, the Office of the Ombudsman, the National Counter-Corruption Commission, the Human Rights Commission, and the Constitutional Court (Dressel, 2009). According to Uwanoo and Burns, these bodies were designed to address persistent problems in Thai governance. These problems included widespread electoral corruption, the practice of vote buying, the instability of coalition governments, legislative inefficiency, and the abuse of executive authority (Uwanoo & Burns, 1998).

This paper examines the Constitutional Court and the evolution of its institutional role since its formation. Over the past fifteen years, the Court has

become increasingly prominent in Thai politics. It has removed two sitting prime ministers and ordered the dissolution of at least five political parties. Rather than serving as a neutral judicial body within a balanced constitutional system, the Court is now widely viewed as an activist institution. Many observers see it as ideologically aligned with conservative and royalist interests and as employing selective legal reasoning to justify its interventions.

By analyzing several major decisions, including those involving the Future Forward and Move Forward parties and the disqualifications of Prime Ministers Srettha Thavisin and Paethongtarn Shinawatra, this paper argues that the Constitutional Court has expanded its authority beyond its original constitutional mandate. It contends that the Court relies on broad and inconsistent interpretations of the law that reflect deeper ideological motivations. In doing so, the Court undermines democratic accountability and encroaches on the constitutional responsibilities of the legislative and executive branches.

Literature Review

In recent years, the Constitutional Court of Thailand has drawn increasing scholarly attention for its apparent entanglement with political power. Analysts argue that the Court has shifted from its original constitutional function toward serving the interests of entrenched elites. Mérieau (2016a) characterizes the Court as part of Thailand's "deep state," a sphere of influence that operates beyond democratic scrutiny and outside the formal authority of civilian institutions. Her assessment suggests that the Court has been reconfigured to support the military-monarchy alliance, particularly in efforts to suppress reform-oriented movements and progressive political actors.

Dressel and Mietzner (2012) offer a historical framework that divides the Court's development into two distinct periods. The first spans from its

inception under the 1997 Constitution until the military coup in 2006. During this phase, the Court is described as largely fulfilling its constitutional responsibilities, balancing legal principles with political realities while maintaining institutional equilibrium. The second period begins with the 2007 Constitution, drafted by the junta that assumed power after the coup. In this later phase, the Court is portrayed as increasingly activist, issuing rulings that disproportionately target figures and parties associated with populist or anti-establishment agendas. Among the most prominent examples are the disqualifications of Prime Ministers Samak Sundaravej and Somchai Wongsawat, both closely linked to Thaksin Shinawatra, and the judicial environment that preceded the removal of Prime Minister Yingluck Shinawatra.

Building on this analysis, Dressel and Tonsakulrungruang (2018) examine the Court's role within Thailand's polarized political landscape, which is often described in terms of color-coded factions. The yellow camp represents pro-monarchy and military-aligned interests, while the red camp is associated with Thaksin-affiliated populist movements. Their study argues that the Court has consistently aligned itself with the yellow faction, thereby compromising its credibility as an impartial judicial institution. Rather than acting as a neutral arbiter, the Court has increasingly functioned as a political instrument that advances conservative agendas and legitimizes authoritarian legal practices under the guise of constitutional authority.

Chanrochanakit (2021) provides a detailed account of the Court's decisions between 2006 and 2021, identifying four distinct phases of judicial intervention. These interventions, which include the dissolution of political parties and the removal of elected officials, have gradually weakened parliamentary supremacy and shifted political power toward unelected institutions. This pattern reflects a broader trend in which legal mechanisms are used to validate authoritarian governance while maintaining the appearance of constitutional legitimacy.

Recent scholarship continues to critique the Court's expanding political role. Teevakul (2022) examines the Court's interpretation of Section 49 of the 2017 Constitution, describing it as an example of "Thai-style militant democracy." According to his analysis, this interpretation enables the Court to restrict fundamental rights under the pretext of protecting the monarchy's symbolic leadership, reinforcing its alignment with conservative forces.

Leelapatana and Asanasak (2022) explore the Court's rulings from 2014 to 2020, focusing on how it negotiates between liberal democratic principles and the dominant cultural narrative of Thai-ness. They argue that the Court selectively applies constitutional norms to reinforce traditional values, revealing an ideologically driven approach that sustains a political order favorable to elite interests.

Taken together, these studies suggest a significant transformation in the Constitutional Court's institutional identity. Rather than upholding democratic principles, the Court has increasingly adopted a politicized and ideologically selective approach to jurisprudence, raising concerns about its role in legitimizing authoritarian practices and undermining democratic accountability.

Ran Hirschl's Hegemonic Preservation: A Theory of Constitutionalism and Politics

Ran Hirschl's theory of hegemonic preservation differs from other mainstream legal scholars such as Thomas Ginsberg and Bjorn Dressel and others significantly. Hirschl argues that law cannot be separated from politics and many times legal frameworks of constitutions embody the interests of actors and their political interests within the context of the time in which constitutions are framed. Across his seminal works (2000, 2001, 2004a, 2004b), Hirschl critiques the conventional liberal view that constitutional reform and judicial empowerment inherently advance democratic or emancipatory goals.

He argues that dominant groups, whether political leaders, economic elites, or judicial actors often embrace constitutionalism not to protect rights in the abstract, but to entrench their influence when faced with potential decline. In this light, constitutions frequently serve as instruments for shielding elite interests from the unpredictability of electoral politics. Essentially, Hirschl argues that law is not a separate field from politics and provides a theoretical framework which bridges the two distinct fields.

Hirschl suggests that the formalization of rights through constitutional mechanisms can offer a strategic pathway for powerful social forces to maintain their dominance and secure preferred policy outcomes, particularly when democratic processes no longer guarantee favorable results (Hirschl, 2000, p. 95). This turn to legal architecture typically occurs during moments of elite vulnerability, when shifting political currents threaten established hierarchies. In such contexts, constitutional courts do not merely interpret law; they become active participants in shaping political outcomes under the guise of legal neutrality. Shambayati and Kirdiş (2009) reinforce this view, arguing that judicial institutions often function as tools for managing political risk, especially when overt coercion is either impractical or politically damaging.

Hirschl identifies three principal groups that tend to initiate constitutional reform: political actors seeking to retain influence, economic stakeholders aiming to safeguard market privileges, and judicial figures pursuing institutional autonomy and prestige (Hirschl, 2004b, p. 90). When these constituencies converge, they often promote legal reforms that preserve existing power structures while presenting them as impartial and principled. The effectiveness of this strategy depends heavily on the perceived legitimacy of the judiciary. Courts are most successful in preserving elite dominance when they are viewed as professional and apolitical. Yet in practice, they frequently reflect the cultural and ideological leanings of the very elites they serve, cloaking strategic interests in the language of constitutionalism.

These dynamics are especially pronounced in Thailand, where the Constitutional Court has become a central actor in the ongoing struggle between reformist and conservative forces. Since the military's seizure of power in 2006, the Court has adopted an increasingly interventionist stance, issuing rulings that have reshaped the political landscape. These include the dissolution of parties affiliated with former Prime Minister Thaksin Shinawatra and the removal of several elected leaders. Through broad and often inconsistent interpretations of constitutional provisions, the Court has repeatedly acted to constrain populist and reformist movements. This pattern closely mirrors Hirschl's account of judicialization as a mechanism for elite preservation in the face of democratic disruption.

Thailand's experience, however, introduces a more complex variant of hegemonic preservation. Rather than defending a static elite position, conservative-royalist networks—comprising the military, judiciary, and monarchy—have used constitutional tools to reclaim authority they perceive as having been eroded since Thaksin's electoral rise in 2001. In this case, constitutionalism functions not only as a shield but also as a vehicle for restoring elite control. The Thai example illustrates a reactive form of legal restructuring, one aimed at reasserting dominance over an electorate that has consistently supported populist alternatives. Hirschl emphasizes the strategic nature of such efforts, noting that:

“elites comprise the urban intelligentsia, the legal profession, and the managerial class [which] represent historically hegemonic enclaves of political and economic power holders. Interest-based empowerment is likely to occur when the judiciary's public reputation for professionalism, political impartiality, and rectitude is relatively

high; when judicial appointments are controlled to a large extent by hegemonic political elites; and when the courts' constitutional jurisprudence predictably mirrors the cultural propensities and policy preferences of these hegemonic elites”

Thailand's political configuration also complicates Hirschl's categorization of elite actors. In contrast to Western contexts where political, economic, and judicial elites may operate in distinct spheres, Thailand's power structure is deeply interwoven through what scholars describe as a “network monarchy.” Authority circulates through overlapping institutions tied to royal, military, judicial, and bureaucratic domains. This elite coalition has consistently opposed redistributive and democratizing reforms associated with Thaksin and his successors. Meanwhile, Thaksin's political base combines economic resources with mass mobilization, forming a hybrid challenge to traditional hierarchies. As a result, the Constitutional Court and the broader constitutional framework become arenas of contestation, where legal rulings and institutional appointments are used to reinforce elite interests.

Hirschl's framework ultimately reveals how legal institutions can be mobilized not to deepen democracy, but to reinforce existing power structures. In Thailand, the strategic use of constitutional law by conservative networks demonstrates how judicial authority can be repurposed to reconfigure political dominance under conditions of democratic uncertainty. The ongoing disputes over constitutional interpretation, judicial selection, and the role of independent agencies reflect a broader struggle over the distribution of power and the future trajectory of Thai governance.

The Constitutional Court Rulings on Upstart Progressive Political Parties

Thailand's 2019 general election marked a turning point in the country's political landscape with the unexpected success of the Future Forward Party (FFP), led by businessman Thanathorn Juangroongruangkit. The party's reformist agenda, which aimed to curtail military influence and dismantle entrenched economic monopolies, resonated with voters and secured 80 seats in the House of Representatives. The rapid legal proceedings that followed—culminating in the party's dissolution and bans on its leadership (Bangkok Post, 2020; Constitutional Court, 2019)—illustrate the dynamics of elite entrenchment described in Ran Hirschl's theory of hegemonic preservation. Hirschl (2000, 2004b) argues that when dominant groups perceive democratic processes as a threat, they often turn to constitutional law and judicial institutions to safeguard their position.

In this case, the Constitutional Court's rulings on Thanathorn's financial dealings and media shareholdings, despite limited evidentiary grounding, functioned as a mechanism to suppress political opposition (Constitutional Court, 2020). The Court's reasoning—such as treating inactive shareholdings as a future violation and applying questionable interest rate calculations—demonstrates how legal frameworks can be manipulated to serve elite interests under the guise of constitutional enforcement. This selective use of judicial power aligns with Bhengsri's (2021) analysis of Thailand's politicized judiciary, which frequently deploys legalistic justifications to contain reformist movements. The dismantling of the FFP thus reflects the judiciary's role in reinforcing conservative dominance by restricting democratic alternatives.

This pattern intensified following the 2023 general election, when the Move Forward Party (MFP), which emerged from the FFP's legacy, won the largest share of the vote and secured 151 parliamentary seats (Jones, 2023; The

Standard, 2023). The party's proposal to amend Article 112 of the Criminal Code, which governs lese-majeste, provoked strong resistance from conservative institutions. Despite its electoral mandate, the MFP was barred from forming a government, revealing the limits imposed on democratic change by entrenched power structures (Bangkok Post, 2023; Cogan, 2023; Jones & Rhein, 2023). Within Hirschl's framework, the Court's actions against the MFP exemplify constitutional fortification, whereby judicial authority is used to obstruct progressive reforms that threaten elite control (Shambayati & Kirdiş, 2009).

Two legal challenges were brought against the MFP. One focused on party leader Pita Limjaroenrat's media shareholdings, while the other accused the party of attempting to undermine the democratic monarchy through its policy platform. These cases led to a series of judicial decisions that resulted in the party's dissolution and political bans for its leadership (Tanakasempipat, 2024; Strangio, 2024a). The Court's verdict, which claimed that any effort to revise the lese-majeste law endangered national security and the sanctity of the monarchy, effectively removed the monarchy from the realm of democratic deliberation and legal reform (Constitutional Court of Thailand, 2024; Kingdom of Thailand, 2017). This judicial posture is further protected by legislation that prohibits public criticism of the Court (Bangkok Post, 2018), reinforcing Hirschl's concept of constitutional entrenchment, in which courts act as custodians of elite interests by shielding themselves and the constitutional order from popular scrutiny (Hirschl, 2004a).

Constitutional Court and Ethics Contestation: The Law and Politics of 'Good People'

The 2014 military coup, led by General Prayut Chan-ocha, was built upon the narrative of Thailand needing to be reformed so that it could be

protected from corrupt politicians and ruled by ‘good people’ (Baker, 2016; Jatusripitak, 2024; Keyes, 2015, p. 15). Regardless of ulterior motives, this is a strong and enduring narrative of Thai politics finding roots in a history of authoritarianism. Ferraro finds that the arch prototype of this narrative can be found in the rigid authoritarianism of Sarit Thanarat as the ‘good authoritarianism’ (Ferrara, 2015; Sopranzetti, 2016). The NCPO junta regime indeed carried through on Sarit’s lineage of authoritarianism by stifling rights through a dictatorial regime of junta orders followed through upon by the judiciary (Dressel & Tonsakulrungruang, 2019; Thai Lawyers for Human Rights, 2017). In a military-controlled referendum with low turnout, Thai people voted by 61% to approve the junta-drafted constitution (Head, 2016). The 2017 Constitution, which will be the focus of this section and analysis, has impacted Thai politics directly in the removal of two prime ministers in consecutive years, 2024 and 2025.

Section 160 (5) of the 2017 Constitution stipulates that a prime minister must

(๔) มีความซื่อสัตย์สุจริตเป็นที่ประจักษ์

(๕) ไม่มีพฤติกรรมอันเป็นการฝ่าฝืนหรือไม่ปฏิบัติตามมาตรฐานทางจริยธรรมอย่างร้ายแรง ทางจริยธรรมอย่างร้ายแรง (Kingdom of Thailand, 2017).

Directly translated to English, these articles state

(4) Be evidently honest.

(5) Does not exhibit behavior that seriously violates or fails to comply with ethical standards.

Ethics in Thai constitutionalism as a principle is not new. It can be traced to the reform period of the 1990s and the 1997 Constitution, which was drafted with the background ethos of integrity, transparency, anti-corruption, and government with ethical principles (Rohr, 2014). This was seen with the introduction of university education requirements for members of the House of

Representatives, a more powerful executive, and the establishment of independent constitutional bodies (Klein, 1998; Uwanno & Burns, 1998). There is ample scholarly literature on the subject and motivations from the period, which note the nexus of business, bureaucracy, and elected politicians being the core of corruption. The weak link in the triumvirate is argued as elected politicians using the democratic system for personal gain and being the vehicle for other associated private interests that use politics for benefit rather than the public (Chinwanno & Sirisrisornchai, 2015; Nithiwaratsakul et al., 2023).

The issue of ethics is not one of principle or value but one of legality and precision. In the same time frame, the NCPO junta regime also drafted an ethics blueprint for the Thai Civil Service (Chokprajakchat & Sumretphol, 2017). The junta also drafted the Ethics Act, which is vague in outlining core principles and values that guide the notion of ethical service, which is defined as

- (2) to have honesty, integrity, a good conscience, and responsibility;
- (3) to be courageous in making decisions and acting morally;
- (4) to think more of the common good than of one's own individual gain and have a public mind;
- (5) to have result-based determination;
- (6) to perform duties fairly and without unfair discrimination;
- (7) to be a good role model and maintain the good image of public service (Ethical Standard Act B.E. 2562 (2019), 2019).

The 2019 Act is buttressed by the 2009 Civil Service Code of Ethics, which is more specific in its approach by focusing on conflicts of interest, following chains of command, and not following unethical and illegal orders (Office of the Civil Service Commission, 2009). Civil servant ethics are also operationalized in fine detail in ministerial regulations, council of minister decisions, and other bureaucratic procedures, which are beyond the scope of this analysis. However, for the sake of parsimony, it must be noted that ethics

and ethical conduct are quite defined in the Thai Civil Service beyond the vagary of the 2019 act.

The NCPO regime during its tenure laid the foundations for ethics intervention without precision. Namely, the junta constitution injected a vague principle without clear associated guidelines as to what constitutes an ethics breach or ‘serious ethics breach.’ This open channel is left to the Constitutional Court to build upon in rulings and legal measures of principles, tests, etc., in cases brought on Article 160. The following section will analyze three important Constitutional Court rulings that have Article 160 as their cornerstone. The author will demonstrate that the court, while couching its rulings and reasoning in law, lacks an ethical ‘compass’ for its decisions, making its verdicts arbitrary, especially when viewed from the perspective of political science.

The Case of Deputy Agriculture Minister: Thammanat Prompao

Former Army Captain Thammanat Prompao is a longtime political fixer and increasingly influential political player in Thai politics. Previously, he operated in the ‘shadows’ of power, behind the scenes. However, after the 2019 election, he was elevated to a ministerial post due to his close relations with General Prawit Wongsuwan. Consequently, a lot of Mr. Prompao’s previous dealings came to the surface once again. He was accused and arrested but never convicted of murder in Thailand in the mid-1990s for the beating to death of a media figure who was investigating his influence in gray businesses (Nanuam & Sattaburuth, 2019). In 2008-09, he was accused of being behind the burning out of squatters, which resulted in several deaths on a prime plot of real estate. The incident occurred as a result of a prolonged standoff between the Port Authority of Thailand and local squatters who would not voluntarily vacate land that had been scheduled for clearance and prime development.

The Port Authority hired a firm, Legal Professional Company, to clear the land and evict the squatters. Legal Professional Co. was chaired by Thammanat Prompao (King, 2011, p. 159). The most serious criminal case was his admitted previous conviction for heroin smuggling in Australia, for which he pleaded guilty and served prison time (Ruffles & Evans, 2021).

A case was brought by the parliamentary opposition to disqualify Mr. Prompao for being prohibited from holding public office due to prior criminal convictions in violation of Article 98 (10) as well as ethical breaches of Article 160 (6). The court ruled that Mr. Prompao was not in violation of Article 98 (10) or prohibited from holding public office due to his conviction not being adjudicated by a Thai court. The court held that the principle of state sovereignty was the anchor to which Article 98 (10) hinged, noting that no foreign court has jurisdiction over Thai courts. Furthermore, since there did not exist a treaty of reciprocity and international law principles hold that verdicts are only applicable in their domestic jurisdictions, Mr. Prompao's actions abroad did not constitute a violation of the constitution (Case 13/2563 [๑๓ / ๒๕๖๓], 2023). It has been further noted that due to foreign jurisdiction and a lack of case files, "the Court would not be able to assess whether the principle of the rule of law as well as rules on the due process of foreign courts were complied with" (Wilartratsami, 2022 : 339).

Removal of Prime Minister Srettha Thavisin

The Constitutional Court's decision to remove Prime Minister Srettha Thavisin from office was based on a finding of severe ethical misconduct, citing Article 160 (4 and 5) of the 2017 constitution, which was enacted under military influence (Constitutional Court of Thailand, 2024b). This constitutional clause prohibits individuals with a history of corruption or criminal convictions from serving in ministerial roles. The controversy originated from the government's

attempt to appoint Pichit Chuenban as a minister attached to the Prime Minister's Office.

The allegation of impropriety by the PM stemmed from Mr. Chuenban having been previously convicted in 2008. Mr. Pichit had been found in contempt of court ๔๕๙๙/๒๕๕๑ for trying to bribe judges by bringing large amounts of cash in brown paper bags to the court during a land case involving Thaksin Shinawatra's wife in the Supreme Court Division for Political Office Holders (Case No. 4599/2551 [๔๕๙๙/๒๕๕๑], 2008). Mr. Chuenban was convicted of civil charges stemming from the attempted bribery. The court's verdict went beyond a simple ethical reprimand, culminating in Srettha's immediate dismissal and the disbanding of the entire Cabinet (Al Jazeera, 2024).

The court's decision was based on the reasoning that Mr. Chuenban's conviction for actions that brought disruption to the court and Thai judicial system was of particular concern. Additionally, the court noted that the case and conviction had been publicized widely, thus negating the argument that the PM had no knowledge of Mr. Chuenban's problematic legal history. The court held that Mr. Chuenban was a person prohibited from holding office, and as such, PM Srettha was disqualified from holding public office and removed as PM (Case No. 12/2563 [๑๗/๒๕๖๗], 2023).

Removal of Prime Minister Paethongtarn Shinawatra

On June 18, 2025, Cambodia's former prime minister, current Senate president, minister mentor, and Southeast Asia's longest-serving autocrat released a secretly recorded audiotape of a 17-minute private conversation he had with Thailand's PM Paethongtarn Shinawatra. In the secretly recorded tape, the PM is heard referring to Hun Sen as 'uncle' and asking what he wants regarding the border tensions between Cambodia and Thailand. She further highlights the rifts between the military and civilian PT-led government, stating

that they are on opposite sides from one another (Bangprapa & Tangsathaporn, 2025). The tape ignited a firestorm in Thailand, with Thaksin's enemies calling for the PM to immediately resign and the second largest party in the coalition government, the Bhumjaitai Party, quitting the coalition (Jones, 2025). The recording provoked a group of senators to file charges against the PM with the Constitutional Court for violations of Article 120 (4) and 160 (4) (5), which the court took, meanwhile suspending the PM from duties (Public Relations Department, 2025).

The court ruled on 29 August 2025 that PM Paethongtarn had violated Article 120 (4) and 160 (4). In the instance of 120 (4), the majority ruled that only the PM was liable and was now prohibited from holding office under Article 160 (4) (5), thus removing PM Paethongtarn from office (Case No. 18/2568 [๑๘/๒๕๖๘], 2025).

Interesting in the judgement were the observations that PM Paethongtarn did not commit treason as her accusers had intimated but rather had exercised poor judgement in the discharge of her duties as PM. They further noted that PM had discredited and impugned the country's honor internationally in her private dealings as revealed in the phone call. Additionally, the judges noted that the discharge of her duties as revealed in the tape demonstrated the PM had put personal interests above collective interests of the state in her dealings with the former Cambodian leader (Ibid).

Comparative Analysis of Ethics Judgements

The least controversial of the three cases highlighted above is perhaps the PM Srettha case. The facts of the case are straightforward, and the court ruled in line with a strict reading of the relevant constitutional arguments. However, the court went further, noting that Mr. Chuenbans' status as a convict was something so obvious that วิญญูชน would know. วิญญูชน translated refers to

a reasonable person or person of ordinary prudence. This statement is an interesting one at its core. The court assumes general knowledge of an ordinary and informed person of personal history, which is at the time fifteen years old. This may be prudent with regard to a PM or state chief executive. The legal maxim of *ignorantia juris non excusat*, or ignorance is not an excuse, is a relevant one when applied to the highest office of state and points to allegations that Mr. Srettha was a nominee or exercising executive power on behalf of someone else. However, the language used intimates a knowledge base from which some reasoned test can be derived. To the author's knowledge, there does not yet exist a legal test of public knowledge and recollection of what a reasonable person should know.

The cases of Mr. Prompao and PM Shinawatra are interesting parallels of ethics interpretation. In the prior case, the courts' legal reasoning was based on the dichotomy of foreign and domestic jurisdiction and the issue of national sovereignty. The court reasoned that without access to all court documents, they could not determine a baseline for rule of law and procedural conformity, further stating that without a reciprocal treaty, there were no transferable precedents for a Thai court to rule. On the surface this is a fair judgement. However, if one is to consider the spirit of Article 160 in its entirety, it is to allow the court to remove persons who would tarnish or bring disruption to high public office by having demonstrated character flaws of a criminal nature.

Mr. Prompao admitted to being imprisoned for the offense in Australia, which Thailand has an equivalent for in its criminal code. They could have asked whether having this conviction, albeit in another jurisdiction, brought into question Mr. Prompaos' character to serve in high public office in the public interest. The court could have asked a sampling of วิญญูชน from Mr. Prompaos' home province of Payao or any other province as to whether they would have negative perceptions and be against having a person with such a record serve in

government. This would be a broad interpretation of Article 160, but it would serve the public in a more basic sense of providing guardrails to prevent persons of disrepute from holding office.

In the case of PM Shinawatra, the parallel of a foreign entity is present as before. The court held the PM legally liable for breaking diplomatic protocol and using a private phone line to speak with Hun Sen, who is not a head of government, about state affairs. While the PM did breach diplomatic protocol by not using an official phone line with dual interpreters, which would have been recorded, this is a protocol that *should* be followed, not *must*. The PM was perhaps guilty of being a novice and naïve, but this matter is one for the public and parliament as their representatives to deal, not necessarily a court matter. Second is the broad interpretation of interests being served that the court noted. The court noted that the PM engaged in this for personal benefit without stating what the exact benefit was to be had.

The Problem of Ethics as a Constitutional Issue

This article has argued that ethical standards for public officials are not a bad concept per se. Instead, it argues that the vagaries to which ethics and ethical standards are delineated in the current constitution are deficient. Furthermore, there is not a comprehensive set of codes that clearly define what are ethics violations and how these are to be differentiated at the political office holder level. Thailand has had a fixation on regulating the ethics of politicians as a group for decades, establishing special courts such as the Supreme Court Division for Political Office Holders and instituting constitutional articles to regulate ethics. However, to date the best example of a definable code of ethics is the 2011 Code of Ethics for Constitutional Court Judges. Atipiboonsin (2024) has argued that these articles have been used in the removal of PM Srettha and that a reading of the code itself is one that mixes

ethics and constitutional democracy. Put simply, the code is an attempt to mix ethics and politics from a legal perspective. However, given the court's comments on PM Shinawatra prioritizing personal over national interests, which would be in contravention of No. 7 (as was the case with PM Srettha). It is unclear how one derives an understanding of acts and intent and then impugns this as one of personal benefit in the cases of PMs Srettha and Shinawatra.

Some analysts argue that there prevails a double standard of rulings depending on which party is in power. This is fairly generous reading, as judgments based on ethics, as analyzed above, have been moving targets, with the court searching for an anchor (Mérieau, 2016b; Tonsakulrungruang, 2018). This judicial action takes on broader political meaning when viewed through Ran Hirschl's hegemonic preservation framework. Hirschl argues that ruling elites, when their dominance is challenged, use constitutionalism as a means to protect their power. They strategically transfer authority to insulated legal bodies, such as courts, to bypass majoritarian democracy and maintain their control (Hirschl, 2000, 2004b). In this case, the Constitutional Court's broad interpretation of Article 160 can be seen as a calculated move to limit the executive authority of political figures associated with the Pheu Thai Party, a movement perceived as a threat to the status quo. The Court's ruling effectively disqualified the Prime Minister by association, despite Pichit Chuenban's disbarment not being a criminal conviction, thereby strengthening the elite's control over who is considered a legitimate political actor (Mérieau, 2022). The case of PM Shinawatra was more controversial, as the court assigned intent of action to the PM. Listening to the audio tape itself and then correlating this to the actions of the PM and government of the time, one cannot find a quid pro quo where the PM benefited personally from Hun Sen in any way. In fact, the opposite would be the case as the issue flared into open military conflict.

Furthermore, this intervention by the judiciary constitutes a significant encroachment on executive powers, as the Court effectively assumes a gatekeeping role over ministerial appointments—a function traditionally belonging to the executive branch. This dynamic serves as a textbook example of Hirschl’s concept of “constitutional fortification,” where legal mechanisms are used to shield entrenched interests from popular or electoral challenges (Hirschl, 2000). The Court’s decision, therefore, is not merely a legal ruling but a political act of hegemonic preservation, which reinforces the existing order by limiting the ability of reformist or populist leaders to exercise real power (Kanchoochat, 2016). This incident contributes to a growing body of evidence of judicial activism in Thailand, where courts increasingly function as arbiters that selectively interpret the constitution to uphold the interests of established elites, thus undermining democratic governance and deepening political divides.

Conclusion

The Constitutional Court of Thailand has emerged as a pivotal institution in the ongoing contestation between entrenched elites and emergent political forces advocating reform. Through its expansive and often politically charged interpretations of constitutional provisions, as exemplified in the removal of Prime Minister Srettha Thavisin and the dissolution of reformist parties such as Future Forward and Move Forward, the Court operates not merely as an impartial arbiter of legal disputes but as a strategic instrument of hegemonic preservation. Drawing on Ran Hirschl’s theory, these judicial interventions can be understood as deliberate efforts by dominant political and social elites to maintain their hegemony by utilizing constitutional mechanisms to constrain and delegitimize opponents who challenge the prevailing power structures. This deployment of constitutionalism reveals the Court’s function in

insulating elite interests from democratic pressures and majoritarian governance, thereby complicating the democratic trajectory of Thai politics. Consequently, the Thai Constitutional Court's role transcends traditional judicial boundaries, embedding it deeply within the political arena as a key factor in sustaining the status quo amid a volatile and contested political landscape.

A pertinent question is what can be done to establish a more reasonable balance between the court and other branches of government, or more specifically the political system writ large. Given the politicized nature of the court in last decade the court is undoubtedly reflecting a decreased status of legitimacy in the eyes of the general public. The answer is not easy. Any wholesale constitutional reform to do away with the court is highly unlikely given the power centers which the court is perceived to serve. Further is the appointment of constitutional court judges which is the purview of the Senate. The previous Senate election of 2024 produced a deeply problematic body which is alleged to be internally rigged by the Bhumjaitai party which allegedly manipulated Senate selection. The Senate is responsible to appointment of all independent constitutional organs, including the constitutional court as the court is seen to serve conservative parties it is highly unlikely that the Bhumjaitai party would vote against its own interests. That being said since the fall of Paethongtarn Shinawatra as PM, constitutional reform is on the agenda via political negotiations which brought current PM Anutin Charnvirakul to power. In the agreement PM Anutin agreed to hold a referendum on constitutional reform which will coincide with the next general election in March of 2026. If this referendum item is passed constitutional reform will take place. The degree and depth of reform is of course unknown and will a highly contested issue but at least the door will open to change.

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