

An Uphill Battle for a Constitutional Amendment in Thailand

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In the [afternoon of 17 November](#), thousands of young protesters arrived at the Thai national Parliament in Bangkok, where a debate on constitutional amendment was taking place. They were greeted with water cannons, tear gas, and rubber bullets. At one point, the police even let anti-democratic mobsters assail protesters, some as young as 13. This level of violence came as a surprise to protesters who only wished to approach the Parliament but not enter it. Many were injured before the police retreated hours later. The protest was called off shortly after nightfall. The next day, the parliament reconvened to reject the amendment proposal, signed by over 100,000 voters. Infuriated, the largely teenage protesters promised a larger protest, in spite of the violent reaction by the police.

Thailand is approaching a constitutional crisis. The protest is a rejection of the 2017 Constitution and, in effect, the legacy of the 2014 *coup d'etat*. It is a manifestation of the public's fury about the undemocratic state of affairs. However, the current government of Prayuth Chan-ocha, the former junta leader and present prime minister, afraid of losing control, has invoked all constitutional mechanisms to resist any change. The deadlock can easily escalate from a call for a charter amendment to toppling the entire regime.

The Unpopular 2017 Constitution

Thailand has been broiling with protests since July. Across the country, youths demanded that (1) Prayuth Chan-ocha resigns, (2) the security forces stop harassing pro-democratic activists, and (3) the 2017 Constitution must be revised. The government was adamant in resisting all three demands. Thailand is known as a constitution graveyard, with a record of 20 charters. But the government's resistance is not an admirable display of constitutionalism to safeguard the supreme law against the temporal ignorance of the majority. Rather, this resistance is to impose an oligarch rule.

The 2017 Constitution has been [unpopular](#) since its conception. The 2014 *coup d'etat*, which abolished the 2007 Constitution, domineered the drafting of the 2017 Constitution. Public forums were staged. The constitutional referendum was problematic because the junta forbade any criticism and misrepresented the charter. Moreover, per King Vajiralongkorn's request, the junta amended the draft after it was voted in the referendum. The 2017 Constitution can thus hardly be described as a social contract or general will of the people. The final product is a rule that offers a charade democracy. An electoral system favours the junta's proxy party. The court and watchdog agencies are appointed by the junta, too. The fully-appointed senate had power to select a prime minister and consider a constitutional amendment.

Biased agencies and bad rules helped Prayuth win the 2019 election. As a result, the junta also appointed the senate which in turn voted for Prayuth to be the prime minister. Now he can claim himself a democratically elected civilian leader although his regime still arrests dissidents without any legal basis. One of his affiliates publicly and merrily declared that the 2017 Constitution was drafted to benefit Prayuth. The final chapter of the Constitution indicated that the regime may continue for the next 20 years via the 20-year national reform plan which would also bind policy-making of any incoming government.

What the protesters are demanding now is to regain control over the constitution. They ask for a fair electoral rule, an impartial and reliable judiciary, as well as a new group of senators. Ultimately, they demand a more participatory constitution drafting.

From a broader perspective, the call for an amendment stems from the democratic decay that has continued since 2006. In 2006, the Thai army staged a coup to oust the civilian government of Thaksin Shinawatra. Since then, Thai politics turned to tribalism. Radical conservatives invoked hyper-nationalism and hyper-moralism to suppress the majority. Subsequent civilian governments faced violent right-winged mobs and judicial attacks which undermined the popular mandate. As a result, Thailand has been under the control of army generals, well-connected businessmen, and bureaucrats – all of which have enriched and entrenched their families into politics. A constitutional amendment would be the first step to break that oligopoly.

Rigid Rules of Amendment

But the road to an amendment is not easy. Although the sight of tens of thousands of protesters across the country suggests that this is Thailand's constitutional moment, the parliament is still captured by the junta. With backing from 250 senators and half of the 500 Members of Parliament, the government can easily outvote the opposition. It therefore remains unsympathetic to the demand. Fully aware that the 2017 Constitution would not be welcomed by the public, the drafters entrenched the charter by designing a rigid rule of amendment. The first reading requires absolute majority from the Parliament, with a special requirement of at least one-third of the senate votes. The third and final reading requires absolute majority from the Parliament with a special one-third requirement for the senate as well as 20 percent of the opposition MPs. This high bar in the badly fractious legislature means amending the Constitution is almost impossible.

There were seven [amendment proposals](#) on the table on 17 November. One was submitted by the government, five by different opposition parties, and the last one was a petition signed by over 100,000 voters – an impressive milestone for a popular initiative in Thailand. The people's proposal, known as the iLaw draft after the NGO organizer, was the most comprehensive but the parliament overwhelmingly rejected it. Some senators even claimed that iLaw was an agent saboteur commissioned by Americans and Jews to turn Thailand into a republic, a conspiracy theory popular among right-wing radicals.

Only the government draft and one opposition draft were accepted. The proposed changes were minimal. They would create a constitution drafting panel but any change must not affect the monarchy. Currently, the proposal is under consideration by [the parliament committee](#). Signs of trouble emerged soon enough when some senators filed a [complaint](#) to the constitutional court that the amendment proposal would overthrow the democratic government with the king as the head of state. This is a *déjà vu*. An amendment is subject to judicial review by the constitutional court which, [between 2011 and 2014](#), struck down all amendment proposals, arguing that a popular call to amend the 2007 Constitution would undermine the basic structure of that constitution. Similarly, the 2007 Constitution was the product of the 2006 coup. The majority of the constitutional court bench were appointed by the junta and have a record of siding with the Prayuth government.

Amendment and Revolution

Even if the amendment takes place, it will not bring any real change in the foreseeable future. The parliament will be occupied with recruiting legal experts to form a drafting council and months of debates and hearings and other bureaucratic red tape – until everyone is lost. The process would take months, perhaps even a year, and burn millions of Thai bahts, for virtually nothing. It is clear that the government is simply buying time to draw out the protest.

The protesters have already broken many taboos in the Thai society. They question the king's political meddling and demand accountability from the mighty army. They do not mind breaking more taboos, even to dare pondering about a republic of Thailand. Yet, protest leaders try to contain that anger and maintain peace by humbly asking for a charter change. A promise to rectify the constitution is a first good step toward a peaceful transition and reconciliation. Should the government opt not to heed the polite demand for constitutional amendments, a peaceful assembly could eventually turn into a full-blown revolution.

