

The Coup One Year on: Thailand's "Ugly German" Constitution

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A year after becoming a military dictatorship once more, Thailand's new constitution – the 20th since 1932 – is taking shape. In it, the arch-conservative charter drafters stipulate that future elections will be conducted using a variant of Germany's mixed-member proportional representation system. Their hope is that the resulting coalition governments will prevent future administrations from turning into populist one-man shows. The drafters may be hoping in vain.

"May the world find convalescence in the German essence," or "am deutschen Wesen mag die Welt genesen" – whenever a critic wants to comment negatively on Germany's seemingly having a mission in the world, one does not have to wait long for that ironic catchphrase to come up. Most recently it was used to condemn the promotion of German-style austerity in Southern Europe. For a country that has wreaked global havoc twice in the last century, references to its Teutonic zeal should not be all too surprising. It has been forgotten, however, that the original author of the phrase, the poet Emanuel Geibel, was not referring to a German essence per se but to the German polity which, in Geibel's time, was still a disparate assemblage of states whose unification would make Europe more peaceful, or so he hoped. However, its reinterpretation and use by the Nazis made the slogan infamous until it was used as a critique of assertive German foreign policy.

Without knowing it, people in an unlikely place are currently working hard on Geibel's rehabilitation. That

place is Thailand. In studying how the German polity is constituted, and by adopting parts of it, the drafters of the next Thai constitution seem to be hoping for a transmission of Germanness to the Southeast Asian country. Their declared aim is to foster unity and peace. In March, a Thai delegation, headed by Constitution Drafting Committee (CDC) Chairman Bowornsak Uwanno, even spent five days in Germany on an official visit to examine the country's electoral system, speaking with German Constitutional Court officials, among others.

Ironically, the German constitution itself has only a handful of lines discussing the holding of elections and says nothing at all about mixed-member proportional representation. But the Thai visitors were impressed enough by that system to write at least 13 sections about it – spanning six pages (sections 103 to 115) – into the draft charter which is currently being deliberated. No wonder that, if adopted, the charter would be the longest Thailand has ever had.

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Symbiosis between King and Royalists under Threat

The detailed provisions are indicative of the paternalism that was the driving force behind the drafting process and behind the military coup that set it in motion last year. Thus, Germany and Thailand may soon share a similar electoral system, but not the spirit that underlies their constitutions. Where the German basic law stresses people's basic right to protection against state oppression but otherwise allows for a certain degree of flexibility, the Thai draft constitution speaks a rigid language of mistrust of the country's political leaders and the people who elect them. Its old and grey drafters tried to impose their elite perspective on how to run the kingdom in every detail, as if a constitution alone could create desirable subjects and their desirable political representatives.

This mistrust finds its ugliest expression in section 172 of the draft charter, which allows for the appointment of an unelected prime minister from outside parliament if chosen by a two-thirds majority. The clause will be an imminent and ever-present peril faced by an elected premier, who must fear being replaced by an outsider through backroom dealings in the House of Representatives. That outsider would have no popular mandate but the backing of Thailand's royalist and military-adoring elites. Section 172 seems intended to ensure that a future PM does not stray too far from Thailand's well-trodden paths of Bangkok- and elite-centric politics. There is also a chance that the provision will be used to extend the term of Thailand's current dictator, Prayuth Chan-o-cha, or to propel into office another military-affiliated prime minister if and when elections are eventually held.

The reason for all this is clear. In handpicking the members of the CDC, the military and its backers have exerted their influence over the drafting of a charter that aims to reduce the influence of former prime minister Thaksin Shinawatra. Thaksin and the proxies through which he has governed Thailand since winning the premiership in 2001 – and every election since – are the

nemesis of the country's royalist old guard. With enormous popular backing, the former business tycoon had started to side-line the military, the monarchy and Bangkok's traditional bureaucracy as the focal points around which the Thai polity revolved.

In responding with redistributive policies to the growing material aspirations of the poor and of the lower middle classes, Thaksin posed a threat. With his wildly popular measures – such as a one-million-baht-per-village program, an agrarian debt moratorium and a universal healthcare system – he exposed the vulnerability of King Bhumibol's exalted position. The monarch had for decades been promoted as the country's greatest benefactor. Thus promoted, the king's charismatic authority had been used in turn by royalists across the social spectrum to legitimize their own interests and agendas. In that sense they were “working towards the monarchy.” This carefully calibrated system of mutual support between the king and his followers was threatened by an imminent loss of royal authority in favor of Thaksin. And this is what antagonized royalists, together with Thaksin's increasingly authoritarian leadership style while in office. It did not help him that he was also known to be a sponsor of Crown Prince Vajiralongkorn, evoking the danger of the next king being linked with the Shinawatra family. With the king on his deathbed, control over the royal succession has become a factor in Thailand's political struggle as well.

However, the coup that ousted Thaksin from power in 2006, forcing him into exile, and the anti-democratic maneuverings that followed were not enough to diminish his popularity among vast sections of the electorate. Hopeless attempts to criminalize and discredit him and to replace his policies with their own set of populist measures were made by royalists, the military, a dependent judiciary and the Democrats, Thailand's oldest political party, which has not won a national election since 1992 and hence desperately joined the anti-democratic, anti-Thaksin alliance. These political plots notwithstanding,



parties affiliated with Thaksin came in strongest in every election held since the 2006 coup, leading his sister Yingluck to become prime minister in 2011.

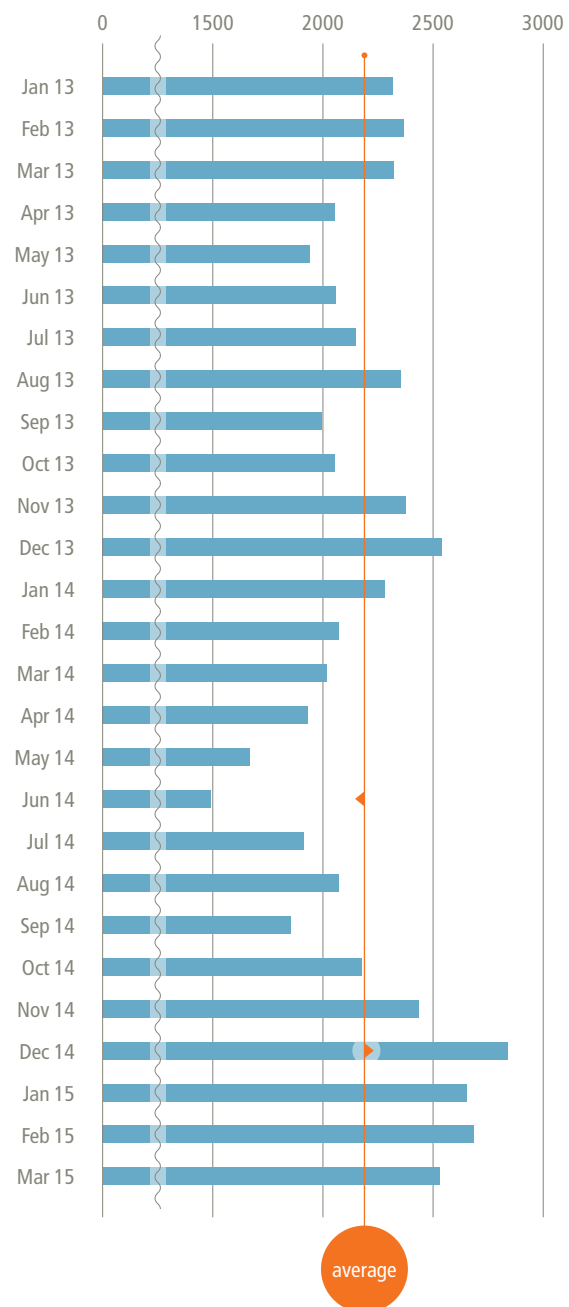
Her attempts at appeasement of the military and royalists were dealt a blow when her administration clumsily tried to push an amnesty bill through parliament. That ill-advised move incited the anger of her backers and opponents alike. It seemed the Shinawatras had underestimated the yearning for justice among supporters of both sides of the political divide, who wanted to see those responsible for past violence and political crimes held accountable rather than being let off the hook. The ensuing rage against the Yingluck administration enlivened the anti-Thaksin front again.

What followed were months of violent street protests, an early general election marked by boycotts and the use of anti-government thugs to prevent people from voting, political meddling by the judiciary leading to Yingluck's removal from office and, on May 22, 2014, a coup against the Shinawatra-affiliated caretaker government. The leader of the coup, General Prayuth Chan-o-cha, has enforced an eerie political calm since taking power. His government is arbitrarily detaining people, dragging civilians before martial courts, rigidly applying the lèse majesté law to protect the monarchy from defamation, threatening reporters with death and enforcing martial law, which was lifted in April only to be replaced by section 44 of the interim constitution which gives Prayuth near absolute power to deal with unrest.

International Doubts about Thai Economy

It is important for politicians, investors and tourists alike to understand that Thailand's dictatorship is far from benign. It should not be given the benefit of the doubt. The present government has proven unable to deal with the many problems the country is facing. Instead, it is harassing its own people. Since the putsch in May of last year 690 people have been summoned for questioning, 399 ar-

Figure 1: Number of foreign tourists visiting Thailand (in thousands)



Source: Department of Tourism, Ministry of Tourism and Sports, Thailand

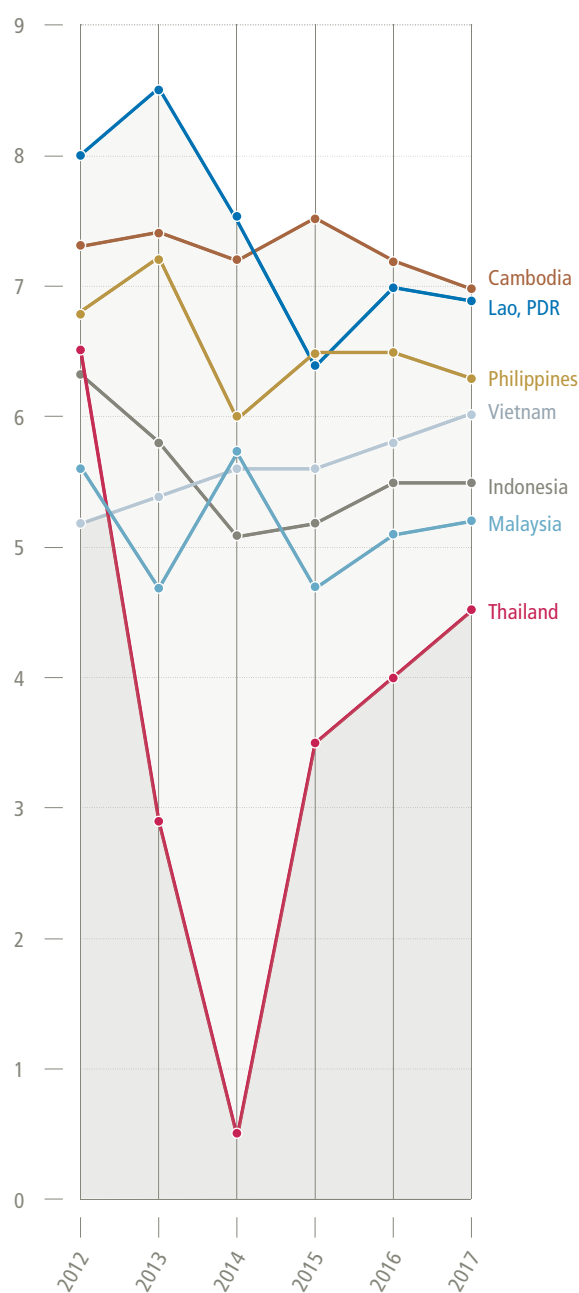


rests have been made, including 144 at peaceful protests, and at least 47 new cases have been filed to prosecute people for defaming the monarchy under the country’s draconian lèse majesté law, according to iLaw, a Thai NGO. Nonsensical orders have been issued after the coup, criminalizing the consumption of sandwiches in public, openly reading Orwell’s 1984, flashing the three finger salute from the dystopian novel and movie series “The Hunger Games,” as well as participating in walking demonstrations. Under these circumstances the desperately needed open and inclusive discussion of Thailand’s future has been made impossible.

Tourists travelling to Thailand should bear in mind that they are visiting a country where the political opposition lives in fear and freedom of expression is suppressed. This makes relaxation at palm-lined beaches a little harder. According to the UN World Tourism Organization (UNWTO), Thailand is already feeling the consequences (Figure 1) as it slipped on the list of international tourist arrivals to 14th in 2014 from 10th the year before, with a total drop in arrivals of 6.7 percent. In 2014, Bangkok also lost to London its spot as the top destination city on the MasterCard Global Destination Cities Index. Although the number of tourists visiting Thailand has started to rise again recently, that is no cause for relief because the growth has mainly been driven by Chinese tourists who do not spend as much. Given that tourism makes up the equivalent of 10 percent of Thailand’s GDP, this is bad news.

It did not help Thailand’s popularity among Western travelers when Prayuth Chan-o-cha criticized tourists for wearing bikinis. His comments followed the murder of a young British couple on the island of Koh Tao in September 2014 – one of several cases of homicide on Thailand’s beaches that made headlines last year. In one of his infamous televised speeches, Prayuth jokingly said: “Tourists think that Thailand is beautiful, safe and that they can do anything they want here. That they can put on their bikinis and go anywhere they want. I ask, can you get away with wearing bikinis in Thailand? Unless you are not beauti-

Figure 2: GDP data and forecasts for Southeast Asia



Source: World Bank



ful?" In short, a woman who decides to wear a bikini in Thailand should not be too surprised if someone tries to kill her; after all, it is her fault for thinking the country is beautiful and safe. Although Prayuth later apologized and stressed that he merely wanted to remind tourists to be careful, the damage had been done. The British press was already busy reporting on the tasteless joke the dictator had made in relation to the tragic death of two young people in the country he governs.

The tourist sector is only one of many economic flash points in Thailand. Under Prayuth's leadership, a sluggish economy recovering at a painfully slow pace is being further aggravated by low consumer confidence, which hit a nine-month low in March. 2014 hardly saw any growth at all. Exports continue to underperform, while investments were 20 percent lower in 2014 than the year before. And Thailand's outlook remains grim (Figure 2). Measures to boost jobs and spending – like the implementation of infrastructure megaprojects, which Yingluck had been criticized for but which were swiftly adopted and adapted by the junta itself – are lagging behind schedule. While the central bank recently cut its growth forecast to 3.8 percent, Kasikorn Research Centre estimates even weaker growth of 2.8 percent. The country will most likely remain the region's slowest growing economy.

Caught in a textbook middle-income trap, and with an educational system that stresses nationalist indoctrination and rote learning rather than the creative and critical thinking needed to move towards a higher value-added economy, Prayuth's Thailand will continue to lose its dynamism to more vibrant competitors in the neighborhood. The dictator has made it compulsory for school children to repeat the junta's twelve core values on a daily basis, among them upholding the monarchy, being grateful to parents and treasuring tradition. This orientation towards an imagined past does not bode well for Thailand's future. The current skepticism on the part of investors and consumers seems to confirm general doubts about the direction Thailand has been taking after the coup.

The international community shares these doubts. Immediately after the coup, the European Union took steps to make its worries known by shelving its free-trade negotiations with Thailand. Brussels' move came at a precarious time. After the departure of the country from the EU's Generalized System of Preferences (GSP) this year and the loss of the corresponding tariff privileges, the conclusion of an FTA with Europe has become more pressing for Thailand's traders. The EU is their third largest export market. The increased tariffs following the GSP cut apply to crucial goods such as automotive parts, meats, precious stones, rubber products, seafood and textiles. So far the EU stands by its post-coup announcement that no agreements will be signed with Thailand unless a democratically elected government is in place. But as much as European defenders of democracy might want to read this as a sign of Brussels' commitment to human rights and democratic values, the motivations of the European negotiators are more complex and more mundane. According to a source in the European Commission's Directorate General for Trade, the EU is mainly worried about the technical consequences of an FTA concluded at this point in time because a future civilian administration might retroactively reject agreements made by an unaccountable military government. Behind Brussels' rhetoric of democracy lies a sobering pragmatism. Be that as it may, the economic consequences for Thailand of the halted negotiations are real.

As the largest investor in Thailand, Japan has also urged Prayuth to restore democracy as soon as possible, reminding him that investments could be redirected to regional competitors if the junta's now shelved measures promoting economic nationalism were actually implemented. Another vital foreign friend, the United States, is becoming more and more vocal about its discontent with the military government. On his visit to Bangkok in January, US Assistant Secretary of State for East Asian and Pacific Affairs Daniel Russel called for a more inclusive political process and voiced his concern over the suppression of civil freedoms in Thailand and the politically moti-



vated treatment of Yingluck Shinawatra before the courts. In April, the US even scrapped the meeting to prepare for the annual Cobra Gold military exercise held in Thailand, the largest of its kind in the Asia-Pacific region. Officially, the meeting was postponed, but the Thais were not given a replacement date. The move represents a further sign of disapproval after the suspension of military assistance to the Thai army and a previous downsizing of Cobra Gold following the coup.

Lately Washington seemed to send yet another signal by appointing Glynn Davies, formerly an envoy to North Korea, as its new ambassador to Thailand, pending his approval by the Senate. Some have interpreted the choice of a seasoned expert on crisis diplomacy as meaning that the United States wants to press the junta to return to democracy. It would have been an even stronger signal, however, not to appoint a new ambassador at all at this point. But Washington is walking a tightrope between making its dissatisfaction with the military dictatorship known and trying not to antagonize Thailand in a way that would push the country into the welcoming arms of China. In recent months, the junta has already tried to make its friends in the West nervous by holding high level meetings with Russian and Chinese counterparts. Deeper defense ties with China were being discussed while Russian Prime Minister Dmitry Medvedev visited the kingdom in April as the first Russian PM to do so in 25 years. Given Thailand's long-standing ties with the West, it is unlikely that such theatrical displays of diplomacy will usher in a fundamental shift away from its democratic partners. But they seem sufficient to deter Washington from getting tough with one of its oldest, yet most disappointing allies in Southeast Asia.

Draft Constitution Provides No Relief

Given the dire situation Thailand has maneuvered itself into, investors are right to adopt a wait and see strategy. The kingdom's future direction remains unclear, its stability and predictability are in serious doubt. If the draft

constitution that was unveiled in mid-April was supposed to provide more clarity, it has utterly failed to do so. Given the excessive number of checks and balances on the government that the constitution would establish if adopted in its present form, an effective administration of the country would become nearly impossible. The outlandish "National Moral Assembly," whose duty it would be to judge the ethical standards of politicians, is only one of a host of appointed councils that would meddle in the affairs of elected representatives. Together with the prospect of having an unelected prime minister, Thailand would become a democracy in name only, a development that is further exemplified by the composition of the future upper house consisting of 200 senators, of which only 77 would be elected. A decade ago, the makeup of Thailand's Senate was still fully based on popular will.

The Germany-inspired mixed-member proportional representation system for the election of parliamentarians is also intended to weaken the administration. The charter's drafters were eager to prevent the return of a strong prime minister affiliated with Thaksin. Therefore, they looked into the electoral systems of other countries and found the German system to produce coalition governments that are broad enough to dilute the agenda of any future prime ministers. Coalitions, they hope, will provide a check on the prime minister who will have to compromise to keep his or her partners in government happy. But Thailand already had its share of coalition governments in the 1990s before the onset of the 1997 Asian financial crisis, none of which provided for effective government. Bickering, bargaining and defections were the order of the day. It is likely that Thailand will end up with extremely unstable coalition governments that will be hard pressed to get anything done.

Moreover, given Thaksin's lasting popularity, it is unclear if the new electoral system will prevent his Phuea Thai Party from winning a majority yet again. Of the 450 to 470 members of the future House of Representatives, 250 will be elected on a constituency basis and up to 220



through the party list. One of the drafters' hopes is that the greater share of party-list seats will benefit the opponents of Thaksin, since his parties have performed better at the constituency level. Even though this may indeed lead to a slight weakening of Phuea Thai, it will most likely still win the party a comfortable number of seats in parliament.

The draft constitution's shortcomings aside, it remains to be seen if the document – or a revised version of it – will be adopted at all, adding to the uncertainty surrounding Thailand's future. After producing the document in mid-April, the Constitution Drafting Committee (CDC) handed it over to the National Reform Council (NRC) for initial discussion. The CDC and the NRC form the so-called “five rivers of reform,” together with three other key bodies installed by the junta – namely the National Council for Peace and Order (NCPO, i.e. the junta itself), the Cabinet and the National Legislative Assembly (NLA). All of them can suggest changes to the initial draft, which will then be edited by the CDC until a final version of the constitution is handed over to the NRC for approval in early August. However, if the NRC rejects the final charter, it will be dissolved and the constitution drafting process will start all over again. Thailand could become stuck in an endless loop of charter drafting. Meanwhile, it would remain under Prayuth's iron fist.

Conclusion

In a seminal article about the constitutional design for divided societies, political scientist Arend Lijphart recommended proportional representation as the electoral system most suitable to accommodate diverse interests. “For divided societies,” he wrote, “ensuring the election of a broadly representative legislature should be the crucial consideration, and PR is undoubtedly the optimal way of doing so.” And yet, as has been shown, proportional representation may not be the magic bullet Thailand's charter drafters have been hoping for. It is unlikely that it will help Thailand out of its political mess.

Yet there is another constitutional provision – suggested by Lijphart and in use in Germany – that could heal Thailand's wounds: federalism and decentralization. Although federalism was not considered by the CDC, it is important to realize that the political divide in Thailand is in part also a geographical divide. Wide gaps exist in identities and political preferences among the country's regions and provinces, particularly between Bangkok and the South, on the one hand, and the rural North and Northeast regions, on the other. Attention should therefore be paid to Lijphart's assertion that “for divided societies with geographically concentrated communal groups, a federal system is undoubtedly an excellent way to provide autonomy for these groups.”

Instead of creating a Senate of mostly appointed members and, with it, another democratic deficit, it would have been worth considering the establishment of a second federal legislative chamber. For divided societies like Thailand, Lijphart specifically recommended the German and the Indian models. However, given the deep-seated bias against the provinces among Thailand's urban-based elites and middle classes, as well as the kingdom's historical Bangkok-centrism, the idea of federalism seems far-fetched for now. And yet, the disappearance of King Bhumibol from the scene and the disorder that will follow may eventually force the country to find a way to effectively organize the Thai polity. Thailand may yet find confluence in the German essence, which is federalism and fair competition among the states whose unification Geibel had called for.



Further reading:

Haberkorn, Tyrell. Thailand Dictatorship Far from Benign, *Asian Currents*, April 2. 2015; <http://asaablog.tumblr.com/post/115351908961/thailand-dictatorship-far-from-benign>.

Lijphart, Arend. Constitutional Design for Divided Societies, *Journal of Democracy* 15(2), pp. 96-109.

Ünaldi, Serhat. Working Towards the Monarchy: The Politics of Space in Downtown Bangkok, Forthcoming; Honolulu: University of Hawaii Press.

World Bank. Enhancing Competitiveness in a Globalized World. East Asia and Pacific Economic Update, October, 2014; Washington: World Bank. <http://www.worldbank.org/content/dam/Worldbank/document/EAP/region/eap-economic-update-october-2014.pdf>.

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