

## Deformed Constitutionalism: Thai-style Judicialization and the Problem of Parliamentary Supremacy<sup>1</sup>

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### Abstract

This article traces practices of Thai Constitutional Court in order to understand how such practices effect the principles of parliamentary supremacy in Thai politics through the constitutional Court rulings from 2006 to 2021. This research suggests that the Thai-style judicialization can be divided into four waves. The first wave starts from court ruling over the April 2006 general election, the removal of the Election Commission from office, and the dissolution of the Thai Rak Thai party. The second wave comes in September 2008, in which the court disqualified Samak Sundaravej and follow with the dissolution of ruling parties in December 2008. The third wave comprises of the ruling over the constitution amendment case in April 2013 and the removal of Yingluck Shinawatra from office in May 2014. The last wave starts right after the 2019 general election. The four waves significantly contribute to the deformation of Thai politics as well as the intervention through the principle of parliamentary supremacy.

**Keywords** Constitutionalism, Parliament Supremacy, Thai-style judicialization, Deformed Constitutionalism

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## รัฐธรรมนูญนิยมที่บิดผัน: ตุลาการวิวัฒน์แบบไทยกับปัญหา ของสภาผู้แทนราษฎรในฐานะผู้มีอำนาจสูงสุด

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### บทคัดย่อ

บทความนี้พินิจปฏิบัติการของศาลรัฐธรรมนูญไทยเพื่อทำความเข้าใจปฏิบัติการและคำตัดสินของศาลรัฐธรรมนูญส่งผลต่อหลักการอำนาจสูงสุดของสภาผู้แทนราษฎรอย่างไร ผ่านคำตัดสินของศาลรัฐธรรมนูญระหว่าง พ.ศ. 2549 ถึง 2564 งานวิจัยนี้ชี้ให้เห็นว่าเราสามารถแบ่งบทบาทของตุลาการวิวัฒน์แบบไทยได้เป็นคลื่นสี่ลูก คลื่นลูกที่หนึ่งเริ่มจากการตัดสินให้การเลือกตั้งเมษายน 2549 เป็นโมฆะ การปลดคณะกรรมการการเลือกตั้งและการยุบพรรคไทยรักไทย คลื่นลูกที่สองมาถึงในเดือนกันยายน 2551 ที่ศาลรัฐธรรมนูญมีคำสั่งตัดสินว่านายสมัคร สุนทรเวช ขาดคุณสมบัติเป็นนายกรัฐมนตรีและการยุบพรรคร่วมรัฐบาลในเดือนธันวาคมปีเดียวกัน ตามมาด้วยคลื่นลูกที่สามที่ประกอบด้วยคำตัดสินที่ให้การแก้ไขเพิ่มเติมรัฐธรรมนูญจากฝ่ายนิติบัญญัติไม่ชอบด้วยรัฐธรรมนูญและการถอดถอนนางสาวยิ่งลักษณ์ ชินวัตรจากตำแหน่งนายกรัฐมนตรีย้อนหลัง และคลื่นลูกสุดท้าย เริ่มหลังจากการเลือกตั้งทั่วไปเดือนมีนาคม 2562 คลื่นของตุลาการวิวัฒน์ทั้งสี่คลื่นส่งผลสะท้อนต่อการบิดผันผิวดรูปของการเมืองไทยและเป็นการแทรกแซงหลักการอำนาจสูงสุดของสภาผู้แทนราษฎรอย่างมีนัยสำคัญ

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## I. A Deforming Decade of Thai Politics: Overthrowing Thaksin at all costs

It is more than a decade since Thai politics drastically changed after Thaksin Shinawatra was ousted by the 2006 coup d'état. Many experts pointed out that the country's politics would only retreat to military rule for a short time (Ockey, 2007, pp. 133-140). Some even remarked that the 2006 coup would be short, and a new general election would soon restore the prospects of electoral democracy (Pasuk & Baker, 2013, p. 607). However, the act of coup in 2006 was 'almost unimaginable' because 'the unpopular government could be defeated democratically at a general election and it was evident that developed countries would not recognize a military government. Nevertheless, the military staged a successful coup on September 19, 2006'. And in many ways, according to Tamada's remark, the coup was 'a crucial step in a series of attempts to topple the Thaksin administration' (Tamada, 2008, pp. 260-261)

After dissolving the parliament and calling for a general election in 2006, the judicial processes of toppling Thaksin began, charging him for criminal acts and for violation of ethical code of conduct. The TRT Party was also targeted, for it was charged with hiring a smaller party to have its members compete with TRT in some constituencies in order to avoid a 20% vote rule. The case proceeded in the Constitutional Court. The court ruled that TRT administrative committees were guilty, as a result its 111 executive members were banned from participating in politics for 5 years.

Despite military intervention to 're-order' Thai politics, People's Power Party or PPP-Thaksin's reincarnated Party, won the December 23, 2007 general election and Samak Sundaravej became the Prime Minister. However, Samak was disqualified by the Constitutional Court for receiving a small amount of honorarium from a television cooking show.

Somchai Wongsawat, Thaksin Shinawatra's brother-in-law, succeeded Samak despite a strong campaign against him. The People's Alliance for Democracy (PAD, aka Yellow Shirt movement) demonstrators condemned Somchai as Thaksin's nominee, surrounded the Parliament building blocking his new cabinet

members from entering a joint sitting of the National Assembly. As the encounter was at its height, the police force cracked down on demonstrators leaving two dead and more than 200 injured.

The Constitutional Court ruled that Somchai and PPP executive members were guilty of hiring a small political party to avoid the minimum 20 percent voter's rule. The PPP was dissolved and its executive members were banned from politics for 5 years. Somchai had to step down. Besides this, the Constitutional Court dissolved the Matchimathippatai Party and Chart Thai Party. The board members of the two parties were banned from politics for 5 years. Then, Abhisit Vejjajiva was chosen from the rest of the parliament members to become the 27<sup>th</sup> Prime Minister of Thailand.

However, the political situation become more critical after Thaksin's supporters and their alliances organized the United Front Against Dictatorship, challenging Abhisit's legitimacy. It later changed its name to United Front for Democracy against Dictatorship (UDD, aka Red Shirt movement) and rallied against Abhisit's government for months on Rajdamnern Avenue and at Rajadamri junction. At the height of the conflict, Abhisit's government deployed the army to 'reclaim the area' from the UDD protestors leading to crackdowns on April 10th and May 19th, 2010, in which more than 100 people died and some 2000 others were injured.

In late 2010 Abhisit dissolved parliament and set a date for a general election on July 3, 2011. The former PPP reincarnate under the new title 'Pheu Thai Party' (PTP) won the election. Yingluck Shinawatra, a younger sister of ousted former Prime Minister Thaksin Shinawatra, gained the majority vote and became the 28th Prime Minister of Thailand.

Even though Yingluck was under heavy pressure from various camps, her government had survived until the submission of a draft of an Amnesty Bill in November 2013. The draft created tensions and lead to mass protests from scholars, PAD supporters, Thaksin haters and even some Red Shirt supporters. The PAD and its alliance from the Democrat Party finally launched a new organization calling themselves the People's Democratic Reformation Commission (PDRC) and promised to overthrow Thaksin and Yingluck. The PDRC started camping at

governmental facilities and attempted to shut down ministries in opposition to Yingluck's government. Yingluck finally stepped down on December 9, 2013 and called for a general election on February 2, 2014.

However, the PDRC's agenda had gone further than calling for a general election. They created a new motto 'Reform before Election', which signified that they demanded a royally appointed government and a halt to elections until they could 'completely reform' the whole country. During such time, there were clashes between demonstrators and passers-by, including with red shirt supporters.

The PDRC tried many ways to block the February 2, 2014 general election, by for example, camping in front of the ballot stations, forcing the ballot station committee to shut down and by seizing ballot boxes. Similar PDRC acts spread to some other provinces, especially in those southern provinces that were known Democrat strongholds. Protesters were only able to shut down less than half of the ballot stations, however.

At that time, there were constitutional cases that had been brought to the Constitutional Court. The series of judicial interventions ended shortly before the May 22, 2014 coup staged by the National Council for Peace and Order (NCPO). The Constitutional Court removed Yingluck Shinawatra from her position as 'interim PM' over alleged irregularities in the appointment of a security adviser.

In short, Thailand has retreated to military rule twice from 2000 to 2020. Since the 2015 draft constitution was abolished, the National Assembly has appointed a new constitution drafting committee, which intends to stay in power for another 20 months (from September 2015). Although interim Prime Minister Gen. Prayuth Chan-o-cha promised the Japanese Prime Minister that he would let a general election be held in 2015. The National Reform Assembly appointed Bowornsak Uwanno and other 36 constituent committees to draft a constitution. However, the draft did not pass majority vote from the NRA on September 6, 2015. Besides, the NRA's term had ended. The NCPO announced its second roadmap and expected to hold a general election in March 2017. Meechai Reuchupan was appointed by NCPO to lead a new constituent committee and they would take

another 20 months to complete. The draft was taken to referendum in August 2016. However, King Bhumibhol passed away on October 13, 2016.

The promulgation of the new constitution has been postponed without a certain timeline. Finally, King Rama X unexpectedly promulgated the 20th constitution on April 6, 2017. The date of general election was set on March 22, 2019. The analysts expected that Junta would withdraw from politics and return to a civilian rule. The role of Constitutional Court would be a guardian of the new constitution. On the one hand, there is no sign of trust in politicians and people. The drafting committee is seeking a better solution to exclude Thaksin's political party at all costs, as well as the NCPO's attempts to stop critiques from the opposition and welcome only PDRC wing critiques. It can be said that division in Thai society is still at large.

This paper highlights the judicial interventions and points out that such interventions created friction zones which are unhealthy conditions for the establishment of parliamentary supremacy. Besides, evaluating the performance of the Constitutional Court shows that it has invented new characters of Thai-style judicialization.

## **II. The Idea of Judicialization from Different Roots**

Being the world's oldest written constitution, the American constitution has challenged the ways in which people interpret and enforce the constitution upon the administration, legislation, and judiciary. While the American system is based on the separation of power, scholars suggest that it is implausible because there are many cases where the Supreme Court decisions changed the course of American politics. The judicial interpretation of the constitution or judicial review also generates dispute over cases that lead to debates over judicial independence, popular accountability and the separation of politics and law.

The notion of judicial supremacy in the American system was developed during the first century of the republic. The court ruled the constitutional interpretation that binds the administrative branch to comply with. However, the executive branch condemned the fact that the court interfered with its authority,

which is the authority of ‘the people’. The judges and their supporters argued that they were just doing their job and enforced the ‘fundamental law’. At some point, President Roosevelt tried to curb the judicial power by appointing ‘sympathetic judges’ in 1937.

After Roosevelt’s attempt, the constitutional law changed rapidly. By the 1970s and 1980s there was interpretative theory that was ‘designed to keep judges within the bounds of law and out of politics’. However, there was more acceptance that politics and law are related (Friedman, 2005, pp. 264-269). In many ways the court pushed forward some constitutional limitations to a new boundary in the matter of civil rights.

According to a study by Wenzel, there are at least three different styles of judicial reviews in terms of constitutional maintenance: the American system of judicial review, the Commonwealth or Westminster model of parliamentary sovereignty; and the Kelsen compromise between the two (Wenzel, 2013, pp. 591-598). The American style of judicial review relies largely on the courts. The constitution is the highest law of the land that the government has to behold to. However, all citizens can make their way up to the Supreme Court to contest a constitutional violation (Wenzel, 2013, pp. 594). The Westminster system usually limits the role of the judiciary to an advisory role, while the final interpretation of the constitution and law is held by Parliament. To reconcile both systems, the Kelsen compromise suggests that constitutional councils should be able to review and nullify acts of Parliament or the Executive. Thus, the review bodies have limited power and are institutionally connected to other branches of government. The countries that represent the Kelsen model are France, post-Soviet Russia and most of Central and Eastern Europe (Wenzel, 2013, p. 592).

Thailand has always boasted a constitutional monarchy since the revolution of 1932; the new regime follows the Westminster model. Throughout the history of modern Thai politics, it has been switching back and forth between military governments and civil governments. The military interventions in the last forty years have all ended with violence. One of the latest coups was on February 23, 1991 and ended with an uprising against the military regime, and was

consequently followed by the 1997 political reformation, whereby an elected body drafted the 1997 constitution. The 1997 constitution proclaims a Westminster model but is equipped with new independent agencies including the Constitutional Court.

In general, the theories of judicialization are varied and based on its regime and historical background. For example, in the British system it should respect parliamentary sovereignty and limit its constituency by not making a new law or introducing a new practice (Van Der Schyff, 2010). However, in the Kelsen model it could be used to nullify or correct unconstitutional practice. In this regard, some judicial review could be considered a progressive act, i.e. empowering the rights of the people, reinforcing the mechanism of government, and reducing conflict from constitutional interpretation. On the contrary, the judicial review could be also considered a conservative act in the ways in which it does not protect civil rights or supports illegitimate acts.

Besides, the review bodies in the Westminster model should represent the will of the people and be legitimized by popular participation.

### III. History of the Constitutional Court in Thailand

Prior to 1997 Thailand lacked the need for constitutional interpretation. Historically the first conflict of constitutional interpretation could be traced back to after World War II after the parliament passed the War Crimes Act of 1945. When the war crimes cases went to the Supreme Court, which at the time was acting as a War Crimes Court, it was ruled that those who were charged with war crime acts were not guilty because of the principle of ‘Nullum crimen, nulla poena sine praevia lege poenali’.<sup>4</sup> There are three reasons that the Supreme Court insisted that they had jurisdiction over the case and it could overrule the unconstitutional act. First, the court had jurisdiction over interpretation of the law and its implementation; as a result, it held the power to consider the legality of law.

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<sup>4</sup> “No crime (can be committed,) no punishment (can be imposed) without (having been prescribed by) a previous penal code.”



Second, according to the separation of power and the principle of checks and balance of power, the court had to identify any unconstitutional bill drafted by parliament.

Third, according to the legal supremacy of the constitution, parliament should not decide whether the bill is constitutional or not; it is rather the Supreme Court's role.

The parliament, then, appointed an Ad hoc Committee to find a resolution.<sup>5</sup> However, it was during the drafting process of the 1946 constitution, that inspired by that conflict, the drafting committee included a section on Constitutional Tribunal for the first time in Thai history (Saengkanokkul, 2009, pp. 14-16).

The Constitutional Tribunal in the 1946 Constitution consisted of 15 members appointed by the National Assembly. The qualification of constitutional tribunal judges was not stated. The 1946 Constitution was later torn up following the 1947 coup; the Constitutional Tribunal was established during the existence of a permanent constitution, however, there was no case taken to the Constitutional Tribunal.

The need for a Constitutional Court seemed to be less significant until the political reformation in the 1990s. After a series of coups and drafting of new constitutions, activists and political elites have come to agree that the reformation is needed. The 1997 constitution was drafted and put high hopes on its new political architecture, including sets of independent agencies to monitor and to regulate politicians and high-ranking officials. The Constitutional Court was expected as a part of this new mechanism to provide oversight of politicians.<sup>6</sup> They hoped that the Constitutional Court would adjudicate on problematic issues of constitutionality of law (aka 'constitutional cases'). The objectives were to protect

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<sup>5</sup> The ad hoc committee comprises of 7 members from a former Minister of Justice, a former Supreme Court judge, and 5 legal experts. They concluded that the final judgment on constitutional interpretation should be the parliament's constituency.

<sup>6</sup> The Constitutional Court has been established together with other independent agencies such as Election Commission, National Commission of Human Rights, National Anti-corruption Commission and so on to fight against corrupted politicians and high-rank officials.

the principle of the constitution as the supreme law and to recognize and protect rights and liberties of the people by exercising its power.

The Constitutional Court was established in the 1997 constitution and had 15 members consisting of five judges selected by a plenum of Supreme Court judges through secret ballot, two judges from a plenum of Supreme Administrative Court through secret ballot, five experts in law approved by the Senate after having been selected by a special panel<sup>7</sup>, and three experts in political science approved by the Senate after having been selected by the same panel.

During the 2006 coup, constitutional cases were transferred to a junta-appointed Constitutional Tribunal. The Tribunal consisted of 9 members as follows: the President of Supreme Court as its President, the Chief of Administrative Court as the Vice President, five judges selected by a plenum of Supreme Court judge through a secret ballot, and two judges from a plenum of Administrative Court through a secret ballot.

After the promulgation of the 2007 Constitution, the new structure of the Constitutional Court was designed after the 1997 Constitutional Court, but its members were reduced to 9 as follows: three judges selected by a plenum of Supreme Court judge through a secret ballot, two judges from a plenum of Supreme Administrative Court through a secret ballot, two experts in law approved by the Senate after having been selected by a special panel,<sup>8</sup> and two experts in political science approved by the Senate after having been selected by the same panel.

The Constitutional Court had jurisdiction to determine whether the provisions of any law, rule or regulation are contrary to or inconsistent with the

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<sup>7</sup> The panel members are Supreme Court Judge as the president, four deans of law, four deans of political science, and four representatives of the political parties whose members are representatives.

<sup>8</sup> The panel members are Supreme Court Judge president, the SAC president, the president of the House of Representatives, the opposition leader, and one of the chiefs of the constitutional independent agencies (Chief Ombudsman, President of the Election Commission, President of the National Anti-corruption Commission or the President of the State Audit Commission). This panel has no representative from political party.

Constitution. Decisions of the Constitutional Court were not subject to appeal by any other court. According to the 2007 Constitution, the jurisdiction of the Constitutional Court covered twenty areas.

It also states in Section 126 that ‘The decision of the Constitutional Court shall be deemed final and binding on the National Assembly, Council of Ministers, Courts and other State organizations’, which is not included in section 268 of the 1997 Constitution.

The Constitutional Court was redesigned in the 2017 Constitution that its members comprise of three judges selected by a plenum of Supreme Court judge through a secret ballot, two judges from a plenum of Supreme Administrative Court through a secret ballot, one expert in law approved by the Senate after having been selected by a special panel, and one expert in political science approved by the Senate after having been selected by the same panel. The 2017 Constitution introduces two new members from experienced civil servant. To compare with the 2007 Constitution, the two seats from experts in political science and law were taken into the hand of bureaucrats. The selection of Constitutional Court members after 2017 Constitution relies heavily on the Senate. Without the Senate’s approval, the candidates will be immediately ruled out (iLaw, 2020).

In this regard, the Constitutional Court has accumulated power and rules binding other institutions and agencies including courts after the 2006 coup d’état. Many scholars have suggested that the Constitutional Court has become the ‘Fourth Power of Sovereignty’ (Trisuwan, 2020).

#### **IV. Four waves of Thai style Judicialization**

The beginning of Thailand’s political crisis started even before Thaksin Shinawatra dissolved the parliament on February 24, 2006 following the call for a general election scheduled on April 2nd. The Thaksin government was under heavy pressure from various groups, and thus, the Democrat Party boycotted the general election. Abhisit Vejjajiva, the leader of the Democrat Party joined the PAD’s call for the monarch’s appointed PM citing Section 7 of the 1997 Constitution. In response to the PAD and the Democrat leader’s call, His Majesty the King delivered

a famous speech on April 25, 2006, stating that he could not violate the constitution. It is possible that the courts should find the solution.

The royal speech generated discussions among judges, scholars, and political analysts both in support and opposition to the king's opinion. Scholars point out that the Constitutional Court's judicial intervention is 'surely inspired at least in part by the king's 2006 speech' and 'the junta's appointment of sympathetic justices' (Nardi Jr., 2010).

Thirayuth Boonmee, a renowned anti-Thaksin scholar, wrote an article endorsing the judicial intervention by citing the king's speech. Theerayuth blames the Thai parliamentary system as the cause of the crisis. He cited the 1997 economic crisis as a product of a corrupted political system. Due to the lack of checks and balance mechanism, Thailand's corrupted political system always leads to crisis.

Thirayuth also condemned the fact that a capitalist system takes an absolute control of the Thai state creating conflicts of interest, for instance, with the privatization of state-owned enterprises, double standards, lack of internal and external auditing in policy making, and so on.

According to Thirayuth, when Thaksin is out of politics, Thai society gets back to normalcy. It has become an agenda to uproot Thaksin at all costs for those who believe that when Thaksin is out from politics, Thailand will return to be a peaceful society.

Thirayuth interpreted the king's speech in the ways in which a righteous one would do anything for his country, urging the judges to exercise their power in more advanced ways. He insists that the judicial branch has an indirect and soft power. He claimed that there was a gap in the checking and balance mechanism, which caused 'conflicts of interest' and 'corruption' of politicians. In other words, he suggested that the judicial branch should fill the gap by using its judicial power in a broader sense and practice. He also urged other quasi-judicial organizations, for instance, the Election Commission, National Anti-Corruption Commission, and so on to engage in check and balance mechanisms. He defines judicial intervention as 'tulakarnpiwat' or 'Judicialization of Politics' (Boonmee, 2006, pp. 12-19).

Despite a rough interpretation of the speech, Thirayuth gained recognition as having a way to break through a political deadlock. Instead of breaking state power into three branches, he suggests that the current Thai state has been divided into two sectors as follows: The first sector is state power comprising government, bureaucrats, and politicians. The second half is civil society including mass media and members of the general public. He urges that the judicial branch should support civil society. In this sense, Thirayuth puts a high expectation on the shoulders of the judicial branch. Rather than limiting its role towards the law, the courts can make law by more advanced rules and verdicts. Even a modern state relies on the principles of separation of power; he also claims that there is no clear distinction between the branches of power. Hence, it is possible that the court could cross the boundary to make laws (Boonmee, 2006, pp. 20-28).

McCargo highlights 6 cases of judicialization in action as follows: the nullification of the April 2006 general election, the banning of TRT, the removal of Samak Sundaravej from office, the Ratchadapisek land verdict in October 2006, the confiscation of Thaksin Shinawatra's assets in February 2010, and the removal of Yingluck Shinawatra from office in May 2014 (McCargo, 2014, pp. 417-441).

This research suggests that in order to understand Thai-style judicialization we have to consider its practices as four waves. I use the term 'wave' as a metaphor signifying that the constitutional court verdicts washed Thai politics away from principles of constitutional monarchy. The first wave comprises the nullification of the April 2006 general election, the removal of the Election Commission from office, and the dissolution of the TRT party in May 2007. The second wave consists of the disqualification of Samak Sundaravej in September 2008, the dissolution of PPP, Matchimathippatai Party and Chart Thai Party in December 2008. The third wave comprises of the blocking of a constitution amendment in April 2013 and the removal of Yingluck Shinawatra from office in May 2014. The last wave starts right after the 2019 general election.

Each wave represents the significant moves of the Constitutional Court and independent agencies. The first wave represents the attempt of courts and independent agencies to further push Thai politics by their interpretation of the king's

speech. The judicial activism is the first action and is welcomed and enabled the political deadlock to be broken. It should be noted that Thaksin's asset confiscation was made under the Constitutional Tribunal appointed by the junta. The case had proceeded until the Supreme Court ruled that Thaksin's wealth was unusual, as a result the court confiscated 46 billion Thai Baht (approx. 1.32 billion USD).

The second wave represents a more obscured use of judicial interpretation; the ways in which the Constitutional Court ruled that Samak Sundaravej's status as a TV moderator was unconstitutional. The dissolution of PPP and its supporters for the election fraud enabled the unpopular Abhisit Vejjajiva to become the 27th Prime Minister of Thailand.

The third wave represents an almost deformed style of politics since the attempt of Yingluck's government to amend the section on the Senate from being a half-elected body to a fully elected body. The Constitutional Court ruled that the amendment would lead to a change of structure of the state. As a result, the court invalidated the amendment.

The last wave washes the opposition party right after the 2019 general election. The Constitutional Court suspends Thanathorn Juangroongruangkit, the leader of Future Forward Party and a PM candidate, to stop performing his duty as a representative in the first parliament session (Online Reporters, 2019). He was later disqualified from MP in May 2019 (Post Reporters, 2019). Later on, the Future Forward Party and its executive members are disqualified and banned from politics (Online Reporters, 2020). The constitutional Court also rules over the 2017 constitution amendment during the third reading of parliament and suggests that the constitution amendment must be taken to referendum both before and after the draft finish (Sattaburuth, 2021a). The Court ruling comes out during the parliament's third reading surges an opportunity that the ruling party would vote for constitutional amendment. Besides, members of both oppositions and ruling parties hesitate to vote for they are afraid of violation of court ruling (Sattaburuth, 2021b).

The court's interpretation became an intervention in the realms of parliamentary jurisdiction. It violated the fundamental rules of the Westminster

model—the parliament supremacy. Not to mention that the court itself had no connection to principles of popular sovereignty and legitimacy.

There is also an exercise of people’s right to protect the constitution and democratic regime, according to Article 68,<sup>9</sup> whereby one has to submit an appeal to the Attorney General and then the Attorney General will file the case to the Constitutional Court. The court ruled that it can accept it has jurisdiction over the case because it is an emergency (Head, 2015).

The waves of intervention represent a higher degree of judicial intervention in parliamentary constituency even though Thailand claims itself to be fashioned on the Westminster model. One can observe that the parliament is overruled by the attempt to amend the 2007 constitution. Such activism calls attention from scholars to criticize that this action is considered a Judicial Coup (McCargo, 2014, p. 434), political conservatism (Hewison, 2015), or ‘a coup d’état in the disguise of a court ruling’ (Nardi Jr., 2010).

Such critiques are based on relevant facts that the Constitutional Court and other courts do not connect to the people. It has no direct link to the rule of

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<sup>9</sup> “Section 68. No person shall exercise the rights and liberties prescribed in the Constitution to overthrow the democratic regime of government with the King as Head of the State under this Constitution or to acquire the power to rule the country by any means which is not in accordance with the modes provided in this Constitution.

In the case where a person or a political party has committed the act under paragraph one, the person knowing of such act shall have the right to request the Prosecutor General to investigate its facts and submit a motion to the Constitutional Court for ordering cessation of such act without, however, prejudice to the institution of a criminal action against such person. In the case where the Constitutional Court makes a decision compelling the political party to cease to commit the act under paragraph two, the Constitutional Court may order the dissolution of such political party.

In the case where the Constitutional Court issues an order dissolving the political party under paragraph three, the right to vote of the dissolved political party’s leader and executive committee members at the time of the commission of the offence under paragraph one shall be suspended for the period of five years as from the date of such order of the Constitutional Court.”

people's sovereignty. The source of the Constitutional Court relies on the Senate, a half-elected body, together with representatives from courts. The acts of judicial intervention create a new convention on the appealing process of Section 68. Besides, the Constitutional Court power is increasing without a checks and balance mechanism. Its rule is unable to be challenged and is unappealable.

## **V. Results of Thai-style Judicialization: Entering the Age of Uncertainty**

The Constitutional Court has since accumulated its power and influence in the wake of the 2006 military coup and the post-coup 2007 constitution. Its climax is the 2013 ruling that Parliament could not amend the constitution. In May 2014, the Constitutional Court ruled that the Thai prime minister and nine other cabinet ministers had to resign because of malfeasance. Many questions have been raised not only over the court's increasing power in this matter, but also why the Supreme Court, which apparently has jurisdiction in such cases, did not adjudicate. There have been repeated calls for reform or outright elimination of the Court because of its politicization (Chirakiti, 2009).

However, there is a positive view on Judicial Intervention such as the dissolution of political parties. It has become a new rule that forces political party executive members to monitor party members and ensure that they do not buy votes or commit election fraud, which are a violation of the Election Act and risk the party being dissolved. A supporter of the Constitutional Court strongly believes that the dissolution of a political party for such violation advances Thai political development because 'whenever there are political problems, there is always a coup d'état, and then when the coup has occurred, a group usually drafts the laws which they believe will solve the problems' (Chirakiti, 2009).

To conclude, this research has explored changes in Thai politics and Constitutional Court's practices. It reveals that Thailand's political system has arrived at the point that it can no longer claim itself a democratic and constitutional monarchy. The Constitutional Court has extended its judicial power and has entered the domain that was formerly belongs to the people, according to principles of parliament supremacy. It also marks the time of uncertainty generating



by the deviated course of Thai politics from a constitutional monarchy to a deformed Thai-style judicialization, a regime that the Constitutional Court is becoming the fourth branch of sovereignty.

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