

Thailand's Obsession with Clean Politics Dismantles its Democracy

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On 21 February, the already fragile Thai democracy became even more vulnerable as [the Constitutional Court dissolved the Future Forward Party](#). Future Forward is the third largest party and the most active opposition against the government of Prayuth Chan-ocha. Prayuth was the former general who staged a coup in 2014 and later held the 2019 election that transformed the dictator into an elected autocrat. Future Forward was born out of frustration of Prayuth's authoritarian rule and posed the most imminent threat to Prayuth's plan to consolidate his power. Now, Future Forward is gone. Its case is the latest in the series of judicial overreach in Thailand. The phenomenon is being fueled by the unhealthy obsession of building clean politics which yields an opposite result.

Questionable legal interpretations backed by the Constitutional Court

The Election Commission accused Future Forward of accepting an illegal donation after the party admitted during an interview with foreign media outlets that the leader, Thanathorn Jungrungrangkit, gave the newly-founded party a loan of 191 million baht. The law was ambiguous. The 2017 Organic Act on Political Party neither allows nor forbids a party to borrow money. However, section 66 of the political party law limited donation to 10 million baht per person. Future Forward defended its loan deal arguing that Thanathorn had not made a donation as there was a proper contract, with an interest and a payment plan. The Constitutional Court dismissed this argument. Instead, the court held that this transaction appeared suspicious because the interest rate and the behavior of the party, in the court's eye, were different from normal business conduct and concluded that this loan was actually a donation. According to the law, any exceeding amount must be confiscated.

The Election Commission further accused Future Forward that the loan violated section 72 which prohibits a party from accepting donations from an illegal source or acquired in an illegal manner. This offence is punishable by party dissolution. While most legal experts agreed that section 72 refers to donations from criminal activities, e.g. drug money, the Constitutional Court agreed with the Election Commission's interpretation. It dissolved the party as well as banned the party executives from politics for ten years.

The decision drew [criticism](#) from many leading legal scholars who considered the Constitutional Court abused the campaign finance law in order to help Prayuth Chan-ocha get rid of his political enemy. The case was fraught with irregularities. The accusation was flimsy and the trial was so brief that the Constitutional Court

failed to issue a warrant to summon witnesses upon Future Forward's request. It was apparent that the Constitutional Court judges were asserting their personal preference over what a proper business loan was supposed to be like. The decision did not explain why the court considered the interest rate of 7.5 and 2 % per year too low when the normal business interest rate was 2-5%. The decision's understanding of an illegal donation was extremely broad. But the Constitutional Court defended its decision as necessary to prevent a party from being unduly dominated by an individual and to promote transparency and public trust in the political party system. The Constitutional Court's reasoning reflected the deeper ideological problem that underlies Thailand's constitutional crisis: a fanatical obsession with clean politics and a disdain for politicians.

Attempts at protecting democracy gone wrong

As evidenced by 20 coups, Thailand has never completed its democratic consolidation. Since the 1932 democratic revolution, the conservatives countered the revolution by painting elected politicians as corrupt. This accusation was not without merit because many local mafias used an electoral arena to ascend to power and fill their pockets. But this accusation also created a dichotomy between corrupt politicians and righteous elites represented by the Thai military, dubbed the guardian of the nation. This narrative undermines the democratic process and justifies recurring coups. Even the 1997 Constitution, Thailand's most progressive constitution, could not escape that mindset. It intended to build a strong electoral system but it also needed someone to guard democracy against politicians. But instead of the army, it empowered the judiciary by introducing the Constitutional Court and the power of judicial review. This design would later be abused to curb the government of Thaksin Shinawatra.

Thaksin was prime minister from 2001 to 2006 and during that time he used populism to dominate the Legislative and Executive branches and cronyism to enrich his family. His grab of power upset the conservative elites [who signaled the Constitutional Court to strike back so it did](#). Since 2006, the Constitutional Court has [dissolved many major parties](#), [disqualified a few prime ministers](#), and [invalidated elections](#), all in the name of protecting democracy. Building clean politics became the goal.

Since 2006, political parties have faced tougher measures. Driven by the anti-Thaksin and anti-corruption sentiment, the 2007 and subsequent 2017 constitutions subject political parties to a long list of requirements. Setting up a party has become increasingly difficult as the minimum number of members has increased. Meanwhile, campaign finance is more heavily regulated as the case of Future Forward illustrates. A candidate must satisfy very demanding qualifications. He or she must be legally and morally fit to take a public position. Some criminal convictions result in a permanent ban from holding a political office. A small mistake could prove fatal. The 2007 constitution, for example, foresaw that if one party executive is aware of an electoral fraud by a member, the whole party is dissolved and executives have their political rights revoked for five years. In the 2017 constitution, the ban gets extended to at least 10 years, and perhaps even longer. One judge in the Future Forward case

suggested a lifetime ban as an appropriate measure. All of these rules significantly raise the cost of founding a party.

The result is the opposite of what the drafters of the 2007 and 2017 laws have imagined. When the system is overly regulated and parties are easily axed, the destruction of the system is inevitable. Thai political parties have never had a chance to mature. Ironically, the only surviving parties are those who join Prayuth Chan-ocha to form the coalition. These parties are *ad hoc*, only set up to maximize their leaders' profit by joining the government and extorting as much wealth as possible before the coalition comes down. But they enjoy impunity from any constitutional restraints. Several coalition party members are implicated in crimes ranging from [forest encroachment](#) to [corruption](#) but the Election Commission and the Constitutional Court never act. Prayuth also violated several constitutional requirements, e.g. by [not taking a proper oath to uphold the constitution](#) and [appointing a former drug trafficker into his cabinet](#) with no consequence.

The dream of clean politics and truly democratic political parties must be reassessed. The judiciary must be more realistic. An unhealthy obsession with such rhetoric will only benefit the anti-majoritarian force's entrenchment in Thai politics.

