

The Constitutional Court of Thailand: Preserving the Deep State and Judicial Ideology

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Received: 2025-5-27; Revised: 2025-10-31; Accepted: 2025-10-31

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 two landmark rulings issued by the Court in August 2024, arguing that these decisions reflect the institution's transformation into a moral adjudicator and de facto safeguard against the authority of elected officials.

Keywords: Thailand; Thai Politics; Thai Courts; Thai Constitution; Thailand Constitutional Court

Introduction

The Constitutional Court of Thailand was established under the 1997 Constitution, often referred to as the "People's Constitution" or the "Reform Constitution" (Kingdom of Thailand, 1997). This foundational legal document emerged from a period of political upheaval and reform between 1993 and 1997, catalyzed by the military coup of 1991 that deposed Prime Minister Chatchai Choochavan and the subsequent pro-democracy demonstrations of May 1992, during which state security forces killed dozens of civilian protestors (Bhuchongkul, 1992; Bunbongkarn, 1992; Maisrikrod, 1993). The public outrage that followed these events precipitated demands for structural political change, culminating in the promulgation of a new constitution intended to institutionalize democratic norms and prevent authoritarian overreach. The 1997 Constitution introduced a series of independent oversight bodies previously absent from Thailand's political framework. These included the Election Commission of Thailand, the Office of the Ombudsman, the National Counter-Corruption Commission, the Human Rights Commission, and notably, the Constitutional Court (Dressel, 2009). According to Uwanoo and Burns, these institutions were conceived as corrective mechanisms designed to address entrenched issues in Thai governance, such as pervasive

electoral corruption, vote buying, the fragility of coalition governments, legislative inefficiency, and the frequent abuse of executive authority (Uwanno & Burns, 1998).

This paper focuses specifically on the Constitutional Court and the trajectory of its institutional role since its inception. Over the past fifteen years, the Court has played an increasingly assertive role in Thai politics, having removed two sitting prime ministers and dissolved at least five political parties. Rather than operating as a neutral arbiter within a balanced constitutional framework, the Court has come to be perceived by many observers as judicially activist, ideologically aligned with conservative and royalist factions, and strategically selective in its legal reasoning and interventions.

Through an analysis of key rulings—particularly those concerning the Future Forward and Move Forward parties, as well as the 2024 removal of Prime Minister Srettha Thavisin—this paper argues that the Constitutional Court has exceeded its intended constitutional mandate. It contends that the Court employs expansive and inconsistent legal interpretations that reflect broader ideological objectives. In doing so, the Court not only undermines the principles of democratic accountability but also encroaches upon the constitutional prerogatives of the legislative and executive branches.

Review of the Literature

Over the past fifteen years, the Constitutional Court of Thailand has increasingly come under scrutiny for its perceived politicization. Scholars have argued that the Court has evolved from a constitutional adjudicator into a political instrument serving entrenched elite interests. Mérieau (2016), for instance, contends that the Court functions as a component of Thailand's so-called "deep state"—a domain of elite power beyond the reach of democratic oversight and outside the formal control of the civilian bureaucracy. According to her analysis, the Court has been repurposed as a mechanism for the military-monarchy alliance to reinforce its dominance, particularly in opposition to reformist movements and progressive political actors.

Complementing this view, Dressel and Mietzner (2012) present a periodized analysis of the Court's development, identifying two distinct phases: the first spanning from its founding under the 1997 Constitution to the 2006 military coup, and the second beginning with the 2007 Constitution drafted by the coup-installed junta. During the initial phase (1997–2006), the Court is portrayed as largely fulfilling its intended constitutional function—operating as a political court with the capacity to judiciously balance legal norms with political exigencies, while safeguarding the equilibrium between state institutions and civil society. However, the post-2006 era marks a significant shift. Dressel and Mietzner argue that following the military ouster of Prime Minister Thaksin Shinawatra and the promulgation of the 2007 Constitution, the Court adopted a more overtly activist posture. This transformation is evidenced in a series of judicial decisions consistently targeting political figures and parties aligned with anti-establishment or populist agendas. Notable among these are the disqualifications of Prime Ministers Samak Sundaravej and Somchai Wongsawat—both close associates of Thaksin—and the judicial climate leading up to the military overthrow of Prime Minister Yingluck Shinawatra.

Building on this trajectory, Dressel and Tonsakulrungruang (2018) further contextualize the Court's role within Thailand's polarized political landscape, often characterized by "color-coded" divisions: the yellow faction, representing pro-monarchy and military-aligned forces, and the red faction, associated with Thaksin-aligned populist movements. They argue that the Constitutional Court has systematically aligned itself with the yellow camp, thereby undermining its credibility as an impartial institution. Instead of functioning as a neutral judicial body, the Court has increasingly acted as a political instrument, advancing the interests of conservative elites and reinforcing authoritarian legalism under the guise of constitutionalism.

Chanrochanakit (2021) provides a comprehensive analysis of the Thai Constitutional Court's rulings from 2006 to 2021, identifying four distinct waves of judicial intervention that have progressively eroded the principle of parliamentary supremacy. These interventions, including the dissolution of political parties and the removal of elected officials, have shifted the balance of power, undermined democratic processes and entrenched elite control over political institutions. This trend reflects a broader pattern of judicialization that serves to legitimize authoritarian practices under the guise of constitutionalism.

The Thai Constitutional Court's increasing politicization has been a focal point in recent legal scholarship. Teevakul (2022) critically examines the Court's interpretation of Section 49 of the 2017 Constitution, labeling it as a manifestation of "Thai-style militant democracy". This interpretation, according to Teevakul, allows the Court to suppress fundamental rights under the guise of preserving the monarchy's headship, thereby reflecting a politicized judiciary that aligns with conservative forces.

Additionally, Leelapatana and Asanasak (2022) analyze the Court's decisions from 2014 to 2020, highlighting how the Court navigates between liberal constitutionalism and the dominant identity of Thai-ness. They argue that the Court adapts liberal democratic principles to reinforce traditional Thai values, indicating a selective and ideologically driven approach to constitutional interpretation in perpetuating a political order that favors conservative elites.

Collectively, these studies converge on a critical interpretation of the Constitutional Court's institutional behavior, suggesting a profound departure from its founding democratic ethos toward a more politicized and ideologically driven jurisprudence.

Hegemonic Preservation and the Thai Constitutional Court: A Theoretical Reframing

Ran Hirschl's theory of hegemonic preservation offers a critical perspective on constitutional design and judicial empowerment, particularly in politically volatile or transitional settings. In his foundational works (2000, 2001, 2004a, 2004b), Hirschl challenges the liberal-democratic assumption that constitutionalization and the expansion of judicial review are inherently progressive or emancipatory. Instead, he proposes that dominant elites—whether political, economic, or judicial—often turn to constitutional reform as a strategic move to secure their long-term interests when their power is threatened. Rather than merely safeguarding abstract legal principles or civil rights, constitutions frequently function as instruments for insulating elite preferences from the uncertainties of majoritarian politics.

Hirschl posits that “the constitutional fortification of rights may provide an efficient institutional way for hegemonic sociopolitical forces to preserve their hegemony and to secure their policy preferences even when majoritarian decision-making processes are not operating to their advantage” (Hirschl, 2000, p. 95). This strategic resort to constitutionalism—often occurring during moments of elite anxiety about shifting political landscapes—aims to codify institutional guarantees for those in power, particularly through the judiciary. In such contexts, constitutional courts are not neutral arbiters but political actors capable of reshaping governance through ostensibly legal means. Shambayati and Kirdiş (2009) argue that judicial institutions, under these conditions, become tools for managing and neutralizing political threats, especially when more overt, extralegal methods are either unavailable or politically costly.

Hirschl further identifies three primary elite constituencies that tend to initiate constitutionalization projects: political elites facing waning influence, economic elites concerned with protecting market privileges, and judicial elites seeking to enhance their authority and institutional independence (Hirschl, 2004b, p. 90). These groups, particularly when aligned, promote constitutional reform as a means to preserve existing power asymmetries under the guise of legal neutrality. Critical to this process is the perceived legitimacy of judicial institutions: courts are most effective in hegemonic preservation when they are viewed as professional, impartial, and principled. In practice, however, these institutions often reflect the cultural and ideological preferences of elite networks, thereby masking strategic interests beneath the rhetorical veneer of “rule of law”.

These dynamics resonate strongly in the Thai context, where the Constitutional Court has emerged as a pivotal institution in the ongoing political struggle between reformist and conservative forces. Since the 2006 military coup, the Court has played an increasingly activist role, issuing a series of politically consequential rulings—including the dissolution of parties aligned with former Prime Minister Thaksin Shinawatra and the disqualification of multiple elected leaders. Through expansive legal interpretations and selective enforcement of constitutional provisions, the Court has repeatedly intervened to undermine reform-oriented and populist movements. This pattern is consistent with Hirschl’s account of judicialization as a strategic move by elites to constrain democratic contestation and preserve the political status quo.

Thailand, however, presents a nuanced variant of hegemonic preservation. Rather than elites maintaining power in a static context, conservative-royalist networks—intertwined with the military, judiciary, and monarchy—have employed constitutionalism as a *restorative* mechanism to reclaim influence perceived as lost since Thaksin's electoral success in 2001. Here, hegemonic preservation operates not merely to protect established authority but to reconstitute it through legal-institutional control. In this regard, Thailand reflects a reactive form of constitutionalization, driven by efforts to reassert elite dominance over an electorate that has repeatedly favored populist alternatives. Of critical importance is the normative

content and purpose of revert to constitutionalization under hegemonic preservation which Hirschl sees as being led by:

“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”

Furthermore, the Thai case complicates Hirschl’s theoretical distinctions between political, economic, and judicial elites. These spheres are deeply entangled within Thailand’s “network monarchy,” an informal system of governance where authority flows through overlapping institutions of royal, military, judicial, and bureaucratic power. Unlike Western cases where elite interests may be more easily segmented, Thailand’s elite bloc is unified in its opposition to redistributive or democratizing reforms associated with Thaksin and his successors. In contrast, Thaksin’s own coalition fuses economic capital with political mobilization, creating a hybrid power center that threatens traditional hierarchies. Thus, the Constitutional Court—and, more broadly, constitutionalism in Thailand—becomes a key terrain of contestation where institutional appointments, legal interpretations, and judicial rulings serve to advance the objectives of entrenched elites.

Ultimately, Hirschl’s framework reveals how legal institutions can serve as mechanisms for elite re-entrenchment rather than democratic deepening. In Thailand, the instrumentalization of constitutional law by conservative networks demonstrates the ways in which judicial power, far from being independent or apolitical, is mobilized to reconfigure and preserve elite hegemony under conditions of democratic threat. The struggle over constitutional interpretation, judicial appointments, and the authority of independent agencies reflects not merely legal disagreement, but a deeper battle over the structure and future of political power in Thailand.

The Constitutional Court Rulings on Future Forward and Move Forward Political Parties

Following the 2019 general election, Thailand’s entrenched military-backed political establishment was unexpectedly challenged by the electoral surge of the Future Forward Party (FFP), led by Thanathorn Juangroongruangkit, a wealthy industrialist. Securing 80 seats in the 500-member parliament, the FFP’s reformist agenda, which sought to curtail military dominance and dismantle economic monopolies, directly confronted Thailand’s traditional power structures (Wikipedia, 2019). The rapid legal response culminating in the party’s dissolution and the imposition of ten-year political bans on its leaders (Bangkok Post, 2020; Constitutional Court, 2024) illustrates a classic example of what Ran Hirschl conceptualizes as

hegemonic preservation through constitutionalization. Hirschl (2000, 2004b) argues that threatened elites utilize constitutional law and judicial institutions strategically to maintain their dominance when majoritarian democratic mechanisms threaten their interests. In this context, the Constitutional Court's legal interpretations concerning Thanathorn's loans and shareholdings—despite their tenuous factual basis—served to neutralize a rising political threat by deploying the rule of law as a tool of elite power preservation (Constitutional Court, 2024).

The Court's approach in this case—such as deeming Thanathorn's dormant media company shareholding as a potential future violation and applying arbitrary interest rate benchmarks—reflects Hirschl's assertion that constitutional rules can be manipulated to sustain hegemonic interests under the veneer of legality. This selective judicial activism aligns with Bhengsri's (2021) analysis of Thailand's judicialization of politics, whereby courts systematically contain reformist challenges through ostensibly neutral yet strategically motivated legal rulings. The FFP's demise thus exemplifies the judiciary's role in reinforcing Thailand's conservative power nexus by circumscribing democratic contestation.

The 2023 general election intensified this dynamic when the Move Forward Party (MFP), an ideological successor to the FFP, won 151 parliamentary seats and led the popular vote (Jones, 2023; The Standard, 2023). The party's platform, particularly its call to reform the lese-majeste law (Article 112), triggered a strong backlash from the conservative establishment. Despite MFP's electoral success, it was blocked from forming a government, demonstrating the limits imposed by hegemonic actors on political renewal (Bangkok Post, 2023; Cogan, 2023; Jones & Rhein, 2023). Applying Hirschl's framework, the Court's subsequent rulings against the MFP illustrate constitutional fortification whereby elites leverage judicial power to thwart progressive policy shifts perceived as threatening to their hegemony (Shambayati & Kiridiş, 2009).

Two complaints against the MFP — one alleging constitutional violations due to party leader Pita Limjaroenrat's media shareholdings and another accusing the party of attempting to overthrow the democratic monarchy through its reformist agenda — led to a series of judicial decisions culminating in the dissolution of the party and bans on its leadership (Tanakasempipat, 2024; Strangio, 2024a). The Court's verdict, emphasizing that any attempt to revise the lese-majeste law jeopardizes national security and the monarchy's inviolability, effectively placed the royal institution beyond the scope of democratic debate or legal reform (Constitutional Court of Thailand, 2024; Kingdom of Thailand, 2017). This judicial stance, buttressed by laws insulating the Court from public criticism (Bangkok Post, 2018), aligns with Hirschl's notion of constitutional entrenchment—where courts act as protectors of elite interests by insulating themselves and the prevailing constitutional order from majoritarian pressures (Hirschl, 2004a).

The Removal of Another Prime Minister

Shortly thereafter, the Constitutional Court adjudicated that Prime Minister Srettha Thavisin had committed serious ethical violations under Article 160 (4 and 5) of the 2017

military-drafted constitution, which prohibits individuals convicted of corruption or criminal offenses from holding ministerial positions (Constitutional Court of Thailand, 2024b). The case focused on the attempted appointment of Pichit Chuenban as a minister attached to the Prime Minister's Office during the Pheu Thai government's formation late the previous year. Pichit had previously been found guilty of contempt of court for attempting to bribe judicial officials in a 2008 land dispute involving Thaksin Shinawatra's wife (Wikipedia, 2024). The Court did not merely find PM Srettha culpable of ethical violations but also ordered his immediate removal, along with the dissolution of the entire Cabinet (Al Jazeera, 2024). Strangio takes the analytical view of previous scholars who have articulated the 'network monarchy' perspective of entrenched deep state power checking democratic public power (Strangio, 2024b).

Applying Ran Hirschl's hegemonic preservation framework elucidates the broader political significance of this ruling. Hirschl conceptualizes constitutionalism as a tool employed by threatened elites to safeguard their dominance by utilizing legal institutions, particularly courts, to circumvent democratic majoritarianism and maintain entrenched power structures (Hirschl, 2000, 2004b). In this context, the Constitutional Court's expansive reading of Article 160 can be interpreted as part of a strategic legal maneuver aimed at curbing the executive authority of political figures associated with reformist or oppositional movements, in this case the Pheu Thai Party. Despite Pichit Chuenban's disbarment not constituting a formal criminal conviction, the Court's interpretation effectively disqualified PM Srettha by association, thus reinforcing elite boundaries on legitimate political participation.

Moreover, this judicial intervention represents an encroachment on executive prerogatives, where the Court asserts a gatekeeping role over ministerial appointments—a sphere traditionally reserved for the executive branch. This dynamic exemplifies Hirschl's assertion that judicial constitutionalism can be harnessed as a mechanism for "constitutional fortification" that protects hegemonic interests by insulating them from electoral or popular challenges (Hirschl, 2000). The Court's decision thereby functions not only as a legal judgment but as a political act of hegemonic preservation, reinforcing the status quo by limiting reformist or populist figures' capacity to exercise governmental power. Such rulings contribute to the broader pattern of judicial activism in Thailand, where courts increasingly serve as arbiters that uphold the interests of established elites through selective interpretations of the constitution, undermining democratic governance and deepening political contestation.

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 actor in sustaining the status quo amid a volatile and contested political landscape.

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