

# Introduction

When the Thai Constitutional Court was asked in 2014 if it considered itself as a “social mediator,” it answered in the negative, adding, “nor has such a role been attributed to it.”<sup>1</sup> However, more than eight years later, it is arguably even more difficult to deny that the Court has played an influential role at the heart of Thailand’s many political and social controversies, despite its formally limited mandate to rule on questions of constitutional law. Since its inception under the Constitution of 1997, the Court has been the paramount actor in the judicialization of Thai politics. In addition, it has left its mark on a widening range of hot-button issues for Thai society, including same-sex marriage and abortion. The Court’s continuous impact on matters of social concern can therefore not be underestimated.

A series of controversial decisions over the past four years (2019–22) is therefore ample reason to dedicate *Thai Legal Studies*’ first Special Issue to the Thai Constitutional Court. We called for papers in early 2022 and hosted an academic conference on “The Thai Constitutional Court: Recent Jurisprudence and Controversies” at the Faculty of Law of Thammasat University in June. The papers submitted to us addressed a variety of issues but were all related to the Court’s role in managing social change and its position within the political system.

A hybrid conference allowed Thai and international academics in Thailand, Europe and North America to share and discuss their current research. It provided a venue for critical and thought-provoking perspectives on key constitutional cases, on the Court’s approaches to the interpretation of Thai constitutional concepts, the relevance of rights in its jurisprudence, and on important institutional and procedural aspects.

This Special Issue contains four original articles originating from the conference. They are authored by young scholars who are either currently pursuing their doctoral studies in public law or who are otherwise preparing themselves for their next steps in academia. The Issue therefore provides not only fresh perspectives on recent developments in Thai constitutional jurisprudence, but also showcases the ambitious work of next-generation Thai scholars.

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<sup>1</sup> “Questionnaire, Reply by the Constitutional Court of Thailand,” 3rd Congress of the World Conference on Constitutional Justice: Constitutional Justice and Social Integration (Venice Commission, Council of Europe 2014) 7 <[https://www.venice.coe.int/WCCJ/Seoul/docs/Thailand\\_CC\\_reply\\_questionnaire\\_3WCCJ-E.pdf](https://www.venice.coe.int/WCCJ/Seoul/docs/Thailand_CC_reply_questionnaire_3WCCJ-E.pdf)>.

In addition, we aimed to include some background about the Court, an overview of recent jurisprudence, translations of major decisions, critical shorter texts on specific cases, and a book review. We thus hope that this Issue also reflects *Thai Legal Studies*' commitment to become the primary place for high-quality English-language legal scholarship on Thailand and a point of entry for everyone newly approaching the Thai legal system and its institutions.

The Issue opens with a concise Explainer. Adam Reekie and Voraphol Malsukhum introduce the Thai Constitutional Court with a view to its organization and structure, its key powers and duties under the Thai Constitution of 2017, as well as important procedural aspects.

Siravich Teevakul then takes the Court's decision No. 19/2564 (2021), which involved limits to freedom of speech by activists, as the starting point of his in-depth investigation into the Thai approach to 'militant democracy' and the forfeiture of fundamental rights. Set against the background of the judicialization of politics, his article finds that key concepts of Thai constitutionalism can only be understood if the relationships between political players, the workings of informal power and hidden political structures, as well as the culture and identity of the Thai judiciary, are taken into account.

Remarkable shifts in procedural and substantive matters were found by Apinop Atipiboonsin in his analysis of recent constitutional jurisprudence. He argues that the Constitutional Court's incremental expansion into the field of fundamental rights is indicative of its strategy to better fit with the ideal image of similar courts abroad and to further increase its power. The article also provides important data on the procedural pathways to the Court, evaluating them in a long-term perspective.

Pudit Ovattananakhun pursued the intriguing question of what extent and how the Court employed natural law concepts in affirming the constitutionality of a provision in the Civil and Commercial Code that restricts civil marriage to heterosexual couples. His article finds compelling evidence of the Court's attempts to include references to Western philosophy. However, he argues that these were often used inconsistently and in a contradictory manner, negatively impacting the protection of basic rights.

Reflecting recent tensions between younger and older generations in Thailand, the fourth article examines the Constitutional Court's jurisprudence from the perspective of "dystopian constitutionalism." To this end, Paweenwat Thongprasop and Papawin Pechnil juxtapose recent controversial jurisprudence with texts of Thai popular culture. They argue that the Court's decisions have sustained utopian concepts of Thainess that systematically exclude disenfranchised voices.

We would like to take this opportunity to thank the anonymous reviewers of these articles for their thoughtful suggestions and comments on the manuscripts.

In addition, we are privileged to include two Commentaries in this Issue. Duncan McCargo revisits the Constitutional Court's decision to dissolve the Future Forward Party in the light of subsequent developments, and Munin Pongsapan

comments on the recent term limit case, pointing out the controversies surrounding the interpretation of the rules on Prime Ministers' maximum of eight years in office.

We are particularly grateful to Tyrell Haberkorn who provided English translations of two major Court decisions: Ruling No. 19/2564 (2021) (discussed in the Siravich article), followed by the term-limit decision, which triggered vivid debates in legal academia and the general Thai public. We hope that these translations will facilitate jurisprudential analyses by international scholars. We would also like to warmly thank Supakorn Wilatratsami for concise summaries of twelve key Constitutional Court decisions from 2019 to 2022 that have not otherwise been treated in this Issue.

Finally, we are indebted to Kongsatja Suwanapech who contributed a thoughtful review of Eugénie Mérieau's recent book "Constitutional Bricolage: Thailand's Sacred Monarchy vs. The Rule of Law" (Hart 2021). His review raises several questions for future scholarly work and concludes that the book offers a "comprehensive understanding of Thai constitutional history through contextual legal studies."

We hope that Thai Legal Studies' first Special Issue will serve as a valuable resource for legal scholars and anyone interested in the Thai Constitutional Court, its role in the Thai legal system, and in Thai society.

Lasse Schuldt  
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