



DEMOCRATIC ASIA AND THE WEST PAPER SERIES 2011

UNDERSTANDING THAILAND'S ONGOING POLITICAL CRISIS

Wider Implications for Southeast Asia and the West

EDMUND MALESKY
KRISLERT SAMPHANTHARAK

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The German Marshall Fund of the United States
1744 R Street, NW
Washington, DC 20009
T 1 202 683 2650
F 1 202 265 1662
E info@gmfus.org

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Cover photo: Supporters of deposed Thai Prime Minister Thaksin Shinawatra parade during a mass protest on March 20, 2010 in Bangkok, Thailand. Photo by Athit Perawongmetha.

UNDERSTANDING THAILAND'S
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WIDER IMPLICATIONS FOR SOUTHEAST ASIA
AND THE WEST

DEMOCRATIC ASIA AND THE WEST PAPER SERIES

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Edmund Malesky and Krislert Samphantharak¹

¹ Edmund Malesky and Krislert Samphantharak are with the Graduate School of International Relations & Pacific Studies, University of California, San Diego.

As Thailand prepares for elections on July 3, 2011, three puzzles confound observers and have immediate implications for democratic development in that country: 1) How did constitutional reform over a decade ago, in the name of enhancing Thai democracy, actually create the conditions for the military coup that took democracy away? 2) How can both sides in Thailand's bitter political confrontation claim the mantle of democracy while holding such widely divergent views on what democracy really means? 3) Why do the middle and entrepreneurial classes — whose property rights and economic growth are aided by democratization — generally support Thailand's "Yellow Shirts," who have worked most vehemently to undermine the most elemental of democratic concepts — one person, one vote?

In this paper, we seek to explore these paradoxes in more depth, shedding light on the underpinnings of the current "stability" in Thailand and the prospects for democracy in the country's future. Understanding how Thailand got here, and where it is going, has critical implications for Thailand, its Southeast Asian neighbors, and the West.

A Brief History of Thailand's Political Crisis

It is helpful to put the current crisis in historical context. Figure 1 shows the changes in Thai democracy over the past three decades, with the 2006 coup years shaded in gray. Democracy is tricky to measure, but this index provides a composite ranking of the country based on the opportunities for citizens to participate and express themselves politically, as well as the legal protections of their civil rights. Indeed, the Thai political system has largely been unstable since the country transitioned from absolute monarchy to parliamentary democracy in 1932. Since that date, Thailand has experienced 18 coups, 18 different constitutions, and 34 different prime ministers.

The most recent manifestation of Thai political instability began in early 2006, when then-Prime Minister Thaksin Shinawatra and his Thai Rak Thai Party (TRT) were bombarded with increasing criticism about conflict of interest, corruption, and cronyism within the ruling party. As TRT continued to win elections by increasingly larger margins and its vote share in the Thai House¹ grew from 40.6 percent in 2001 to 56.4 percent in 2005 to 60 percent in 2006,² reasonable minds began to wonder whether Thailand was beginning the onset of single-party dominance and strongman rule experienced by neighboring Indonesia and Malaysia. Concerned opposition groups united to form the People's Alliance for Democracy (PAD) and rallied against Thaksin's regime.

Negative public opinion crescendoed in January 2006, when the Shinawatra family sold their shares of Shin Corp, the country's largest telecommunications conglomerate, to Singapore's Temasek Group. The deal, for which the Shinawatra family paid no taxes, would not have been possible were it not for the Thai Telecommunications Act — passed on the very same day as the sale — which raised the limits on foreign holding in Thai telecom companies to 49 percent. The transaction netted the Shinawatra family a tax-free US\$1.8 billion. This political feat should not have been possible. The 1997 constitution had endowed Thailand with several "superintendent institutions," such as the Election Commission, the National Human Rights Commission, National Counter Corruption Commission, and a Constitutional Court, which

¹ In a great deal of the discussion of Thailand, National Assembly, Parliament, and House are all used interchangeably to describe the lower-house in the bicameral Thai legislature. For close observers of Thai politics this can be quite confusing, as the term National Assembly is often associated with the nondemocratic bodies that have followed military coups, while House refers to the democratically elected bodies. We retain this distinction throughout this article.

² Carr, Adam. Election Archive. <http://psephos.adam-carr.net/countries/t/thailand/thailand2006.txt>

The Thai political system has largely been unstable since the country transitioned from absolute monarchy to parliamentary democracy in 1932.



Figure 1: Democracy in Thailand over the last three decades. Blue line depicts the Freedom House/Polity IV combined Democracy Score for Thailand. Dashed red lines depict the lowest scores and high scores recorded for the variable. Zero represents a fully authoritarian regime with no civil liberties or political rights for citizens (i.e. Bhutan 1993-1997). Ten represents a highly democratic regime with the full panoply of civil and political rights. The shaded period covers Thailand since the 2006 coup.

were meant to act independently and check the power of the prime minister.³ In the years since the 2001 election, however, Thaksin had taken a page from the playbook of Malaysia's Mohammed Mahatir⁴ by packing these superintendent institutions with his own loyalists and weakening their oversight power through rule changes.

Frustrated over the inability to censor and remove Thaksin through legal and parliamentary channels, thousands of citizens publicly demonstrated in Bangkok against the regime in February 2006. In response, Thaksin, confident of his popular support in the rural northeast, dissolved the government

³ Hicken, Allen. 2006. "Party Fabrication: Constitutional Reform and the Rise of Thai Rak Thai." *Journal of East Asian Studies* 6(3): 381-407.

⁴ For a discussion of packing, rigging, and circumventing, see Slater, Dan. 2003. "Iron Cage in an Iron Fist: Authoritarian Institutions and Personalization of Power in Malaysia." *Comparative Politics* 36:1 (October): 81-101.

and called for a snap election on April 2. The opposition parties, viewing the parliamentary dissolution and the election as unfair, boycotted the election.

When the Democratic Party and its coalition allies withdrew, they triggered a constitutional crisis. Since 1997, an electoral district without opposition was deemed unconstitutional. Because of the boycott, a number of districts fit this definition, so results could not be confirmed, delegates could not take their seats, parliament could not be convened, and ultimately a ruling cabinet could not legally be formed. At the King's urging, the Constitutional Court intervened and scheduled a new election to be held in October.

The new elections were never held. While Thaksin was attending a meeting of the United Nations on September 19, tanks rolled into Bangkok and the military seized control of the government, appointing a new cabinet and National Assembly. TRT was dissolved by the Constitutional Tribunal appointed by the coup, and its leaders, including Thaksin, were banned from politics for five years. Fearing corruption charges from the sale of Shin Corporation and property dealings in various government concessions, Thaksin remained in exile while his political machine was dismantled.

Former members of TRT formed a new party, the People's Power Party (PPP). Concurrently, a new constitution was drafted by a group of notables elected among the members of the National Assembly. The new constitution was ratified and enacted in 2007 and a general election held that December. Despite the junta's role in convening the election, the PPP outpolled the other parties, winning 233 seats to the Democratic Party's 165. With two smaller parties, the PPP was able to form a governing coalition and its leader, Samak Sudharavedj, assumed the role of prime minister.

Samak's premiership was immediately protested by anti-Thaksin groups, who claimed that Samak was effectively serving as the exiled Thaksin's puppet. The People's Alliance for Democracy (PAD) was reconstituted and adopted the Yellow Shirts (the color representing the King) as their symbol. PAD first attempted to unseat Samak by seizing the Government Office and calling for the prime minister's resignation. When this strategy proved unsuccessful, they found a less demanding tactic. On September 9, 2008, the Constitutional Court, newly packed with judges selected during the junta period, ruled that Samak, who moonlighted as the host of a popular television cooking show called "Tasting and Complaining," was serving as an employee of a private company, which violated the constitution. Samak argued that he was never paid by the show and only participated for fun, but lost the case and his seat, to the amusement of Thai headline writers.⁵

In Samak's stead, Thaksin's brother-in-law, Somchai Wongsawat, became the new prime minister, giving the PAD even greater circumstantial evidence for their claims of puppetry. With the Government Office still occupied by the Yellow Shirts, the cabinet moved to work in the old Bangkok Airport. Somchai's stint as prime minister was even shorter than Samak's, and was again ended by the order of the Constitutional Court. While the Yellow Shirts expanded their demonstration and seized the new Bangkok International Airport in November 2008, the Constitutional Court ruled on December 2 that the PPP was involved in vote-buying during the previous election. The court dissolved not only the PPP but also its two major coalition partners, and banned their leaders from politics for five years.

Remnants of the defunct PPP quickly formed yet another new party, called the For Thai Party. Without strong leadership, however, individual

⁵ Walsh, Rob. 2008, September 10. < http://blogs.houstonpress.com/eating/2008/09/crabby_thai_judiciary_fires_fo.php >

delegates and smaller coalition parties saw greater opportunities on the other side of the aisle with the Democrat Party. Within a month, Democratic Party leader Abhisit Vejjajiva — young, English-born, and Oxford-educated — had enough votes within the House to form a government, becoming prime minister on December 15, 2009. Although the intelligent and well-spoken Abhisit came to power through legitimate means, his tenure has been tainted by the fact that he has never led a party to victory in a democratic election.

Over these years, Thaksin supporters and others who protested the military coup have united to form a movement of their own. These "Red Shirts," the National United Front of Democracy Against Dictatorship (UDD), have received increasing support from groups who, while no fans of Thaksin, resent the nondemocratic activities of the Yellow Shirts even more so. Since their formation, the Red Shirts claim that Abhisit came to power illegitimately and was abetted in this effort by the military and Constitutional Court. As such, they have actively called for Abhisit to dissolve the government and hold new popular elections. With its base in Thaksin's home region of Chiang Mai, the UDD includes large numbers of rural northern and northeastern supporters, who have swelled Bangkok's streets during protests.

The first organized UDD demonstration became violent in April 2009, when protesters invaded the Association of Southeast Asian Nations (ASEAN) Summit in Pattaya, internationally humiliating the government. The Red Shirts resumed their demonstrations again in February 2010, amid a Constitutional Court ruling on confiscation of Thaksin's assets. They later occupied the central commercial district of Bangkok. Their protest yet again turned violent when the government declared martial law and used security forces to disperse protesters in April and May 2010, killing 25 people (including one of the UDD's most vocal leaders)

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and ending the public demonstration of the Red Shirts. Parts of Bangkok, Chiang Mai, and Pattaya subsequently remained under emergency law.

The Institutional Seeds of the Thai Political Dilemma

Although the current political crisis in Thailand became visible only in the last five years, the seeds of the crisis were planted decades ago in Thai society. Political scientists are often chastised for their focus on the mundane details of constitutional design and electoral systems. Nevertheless, rarely have forensics more clearly implicated a culprit in a political crisis than the 1997 constitution. As Erik Martinez Kuhonta put it, “It is this constitution — the most democratic in Thailand’s history — that paradoxically provided the basis for Thaksin’s stranglehold on power and also ultimately the impetus for a military coup to take down his regime.”⁶

Thailand has been plagued by unstable politics since its transition from absolute monarchy. Even during prolonged democratic periods, however, Thai governments were fragile. Until 2000, no single political party was able to govern without multiple coalition partners; not a single administration survived a term without interruption by parliamentary dissolution. The 1992 constitution, which governed Thailand before 1997, was particularly prone to these problems. In his diagnosis of the political architecture underpinning the 1997 Asian financial crisis, Andrew MacIntyre (2003) labeled Thailand a highly fragmented regime, because its political system generated governing coalitions with multiple parties and factions within those parties. Because a defection of any one of those actors could bring down the government (and often did), responding quickly to the financial crisis proved

⁶ Kuhonta, Erik Martinez. 2008. “The Paradox of Thailand’s 1997 People’s Constitution: Be Careful What You Wish For.” *Asian Survey* 48 (3): 373-392.

impossible. Mired in gridlock, the Thai government missed multiple opportunities to head off economic disaster.

The 1997 “People’s Constitution” had first been proposed in 1995, but the impotence of the government during the financial crisis fueled its adoption. What few realized at the time was that the remedy was, in many ways, more problematic than the initial disease. The drafters of the Thai constitution, in an effort to avoid the weak parties, fragile governments, and particularistic campaigning of years past, over-compensated by designing an institutional structure that consolidated power in the hands of a single party, and by extension in a single man, as TRT was shaped in Thaksin’s image.⁷

The crucial alteration was electoral. Thai authorities removed the block voting structure, replacing it with a mixed-member system that allocated 400 seats to single-member districts and 100 seats to candidates from a party list. Essentially, voters were asked to make two selections, one for a candidate in their district and one for a party on the list. The second vote was allocated to parties based on proportional representation and maintained a 5 percent hurdle that prevented small parties from taking seats.

Comparative political science provides clear rules for the implications of all of these changes, which were striking and unidirectional. Single-member districts with a first-past-the-post electoral system reduced the number of parties able to compete in an election by eliminating the possibility of grabbing seats from fringe voters on a left-right spectrum. The 100 proportionally elected seats should have allowed for some minority party representation, but this was limited by the small number of seats and the hurdle eliminating tiny parties. Single-member districts and party lists

⁷ Kuhonta. 2008: 373.

strengthened party control over delegates. The bottom line is that the electoral rules virtually guaranteed the consolidation of small, weak parties into larger, cohesive groupings.

Party size and cohesiveness were reinforced by two additional features of the constitution. One rule required a member of parliament (MP) to be a member of a party for at least 90 days before taking office. Furthermore, the Election Commission was constitutionally mandated to hold an election 45 days after the dissolution of the government. The two deadlines combined to restrict the political movement of MPs. In the past, an MP could abandon a coalition for a different party and stand immediately for re-election wearing the new party's colors. Now, any MP who changed stripes was ineligible to run for re-election, which would take place before the waiting period passed. The new rule empowered the prime minister, strengthening MP dependence on the party and forcing all members of government to seriously consider whether they wanted to forsake the perks of office.

As expected, party size and cohesiveness altered with the first election in 2001 and continued throughout the decade. By 2001, the national ENP declined to 2.7 and was a mere 2.0 by 2005.⁸

Thaksin was ideally positioned to take advantage of these changes. As the richest man in Thailand, Thaksin's deep pockets helped motivate a number of smaller Thai parties to join the TRT. Thaksin also seemed better able to take advantage of rules that strengthened the hands of party leaders, such as placement on party lists and ministerial appointments.

The People's Constitution had seemingly anticipated the ability of a charismatic figure to consolidate power. It therefore created a democratically elected and nonpartisan Senate and

superintendent institutions as constraints on prime ministerial influence. Prior to the 1997 constitution, the Senate was appointed, deriving informal power from the military and civil servants working within it rather than from its formal powers, which were highly constrained. The People's Constitution did not increase the powers of the Senate, which retained its original powers of delaying the passage of legislation in the House and appointing the members of the superintendent institutions. The chief goal of the nonpartisan, elected Senate was to serve as an impartial check on the newly empowered prime minister, and break the legacy of the military involvement in Thai politics.

The role of the Senate as a check on power was weakened from the start, ironically, by the very fact that it was deemed to be nonpartisan. Senate candidates needed to look for ways to distinguish themselves from the competitors, but were now prohibited from doing so based on programmatic campaign promises. Since the Senate was relatively powerless over policy choices, voters' knowledge about candidates was limited to family and relationship ties, as well as vote buying. It should have been a signal that in the first Senate election in 2000, two patterns had emerged: 1) 78 candidates were suspended for cheating by tacitly aligning themselves with a political party or buying votes outright; 2) the most successful candidates tended to be family members of current politicians, to the point that Thais joked of their bicameral legislature as the husband-wife institution.⁹

In subsequent Senate elections, it soon became apparent that Senate candidates who could connect themselves (through family or other relationships) to the patronage and incumbency resources of Thaksin and TRT tended to prevail. Thus, in short order, the impartial check on the lower-house was converted into its lapdog. Since appointments to

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⁸ Hicken. 2006: 389.

⁹ Kuhonta. 2008: 385.

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the impartial superintendent institutions like the Election Commission and Constitutional Court ran through the Senate, Thaksin would have no trouble packing these organizations with TRT supporters as well. Freed from institutional checks and balances, Thaksin quickly filled various positions in the armed forces and civil services with his relatives or cronies. The only remaining check was electoral accountability, but Thaksin had a plan for that as well. He could also use his legislative majorities to institute populist policies, such as the universal healthcare coverage and village development funds that continue to endear him to the poor in rural villages. TRT won a landslide victory in the 2005 general election, and seemed set to maintain such successes well into the future.

The Thai constitutional experience over the past few years tells us a great deal. First, the mundane choices of political institutions can have striking long-term consequences. Though some claim that the 1997 constitution was the victim of the law of unintended consequences, this couldn't be more incorrect. The institutional choices made by constitutional drafters had clear and predictable implications that were well-documented in the political science literature. The 1997 constitution delivered exactly the result that was intended: strong government and the eradication of party fragmentation.

Second, institutional choices and party support can be sticky. The populist policies that the 1997 constitution enabled, and facilitated, endeared poorer voters to Thaksin and his party label. These policies had real and visible effects; Thai standards improved during the TRT reign and post-transfer economic inequality declined. Poor, rural voters in the north experienced the benefits of their political power. This is why the various successor parties to TRT won the 2007 election and continue to poll well throughout the country. Even with the 2007 constitutional changes meant to reduce their

power, the underlying support for "red" parties has prohibited ENP from returning to its pre-1997 levels.¹⁰ This stickiness is even more evident if we further take into account that Thaksin's electoral base has not been swayed to his opposition even though the junta and the Abhisit government continued and expanded many of Thaksin's populist policies.

Whose Democracy is the Right Democracy?

The use of the term "unfair" by opposition groups to justify their refusal to participate in the 2006 elections is worth exploring in more detail, because it reveals a deep-seated distrust of popular democracy among some groups today. The *Nation*, a leading Bangkok newspaper, fulminated that the elections "fail to take into consideration a major fallacy of the concept [of democracy], particularly in a less-developed democracy like ours, in which the impoverished, poorly informed masses are easily manipulated by people of his [Thaksin's] ilk."¹¹

Vote buying is problematic, of course, but all parties were guilty, not just TRT. It was also certainly true that TRT had used state resources in large public spending programs to improve education, healthcare, and infrastructure in rural regions, particularly the TRT base in north and northeastern Thailand. These policies have raised living standards in the region and won Thaksin a host of loyal support in the area that continues to this day.¹² While perhaps problematic in terms of macro-economic policy, populism is not

¹⁰ For a description of this effect, see Hicken, Allen and Joel Selway. 2009. "Forcing the Genie Back in the Bottle: Sociological Considerations of Institutional Reform in Thailand." Presented at the Annual Meeting of the Asian Studies Association, Philadelphia, PA.

¹¹ The Nation. 2006. "Democracy put to the ultimate test." March 21. <http://nationmultimedia.com/2006/03/21/opinion/opinion_20003175.php>

¹² Hicken and Selway 2009.

undemocratic and TRT was certainly not the first administration to learn that public expenditures garner votes. The bottom line is that the major beef of Yellow Shirts about democratic elections in Thailand was that they stood a strong chance of losing, a feeling that continues to this day.

But does that mean the Yellow-Shirts are anti-democratic? A number of analysts have portrayed the Thai impasse as a battle between haves and have-nots, with the haves using nondemocratic means to preserve their status. The narrative goes as follows. During the boom years of Thai economic growth, an elite business class emerged, which consisted of businesses, intellectuals, and civil servants. These elites are resistant to changes that will damage their privileged position, and can appeal to the conservative forces of the military and monarchy (to whom the elites are connected through complex family, education, and business relations) to defend their interests. Josh Kurlantzik, noting that GDP per capita in some parts of rural Thailand is merely one-tenth that in Bangkok, argues that “the Red Shirts’ anger is driven... by a feeling of exclusion.”¹³ From the class conflict perspective, the 1997 constitution is seen as the document that exposed entrenched elites to democracy and they didn’t like the taste of it. The paradox of this narrative is that the middle-class is supposed to be the flag bearer for democratic rights, not its antagonist.

We should be suspicious of this narrative for two reasons. First, as Kurlantzik acknowledges, it is possible to observe heterogeneous preferences within both sides. The Yellow Shirts consist of both anti-Thaksin and pro-monarchy groups, and these two groups do not have identical goals. The Red

Shirts consist of pro-Thaksin rural supporters as well as a wide swathe of urban intellectuals opposed to military intervention in politics, and anti-monarchy forces.

Secondly, while inequality and distributional demands are certainly a factor in the debate, we should be careful about deriving democratic preferences from them. A recent survey by the Asia Foundation found that 95 percent of Thai citizens believe democracy is the best form of government; this includes self-identified members of both the Red and Yellow Shirts. If we push a little further, we find that 74 percent want directly elected rather than appointed MPs, a view held consistently in Bangkok and in the north. Where there is clear disagreement, however, is over what the concept of democracy actually means for the respondent. Forty-six percent of Thais believe democracy means that policy should be what the majority wants, even if the minority disagrees. Fifty-two percent believe democracy entails compromise between majority and minority viewpoints. Given this disagreement about what democracy entails, it should come as no surprise that 30 percent of citizens express dissatisfaction with the level of democracy in Thailand today.¹⁴

Thus, while both sides claim the mantle of democracy, they hold very different conceptions of what it means. James Klein, the Asia Foundation’s country representative in Thailand, observes that what the Red Shirts want is electoral democracy: the idea that ultimate accountability comes through the ballot box and that citizens express their preferences by either maintaining their government or throwing the bums out.¹⁵ The Yellow Shirts,

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¹³ Kurlantzik, Joshua. 2010. “It’s Not Just Red and Yellow.” Newsweek. May 10. http://www.cfr.org/publication/22037/its_not_just_red_and_yellow.html Mead, Walter Russell. 2010. “Bangkok Burning.” The American Interest Online (March/April). <<http://blogs.the-american-interest.com/wrm/2010/05/20/bangkok-burning/>>

¹⁴ Meisburger, Tim. 2009. Constitutional Reform and Democracy in Thailand: A National Survey of the Thai People. Bangkok, Thailand, The Asia Foundation: 59, 60, 67.

¹⁵ Klein, James. 2008. “In Thailand: A Reality Check.” In Asia. December 3. < <http://asiafoundation.org/in-asia/2008/12/03/in-thailand-a-reality-check/>>

In Thailand, we are seeing a fundamental debate over the very essence of democracy itself.

by contrast, believe that democracy should also restrain the tyranny of the majority, and that checks and balances in the structure of a constitution are meant to protect minority interests. The PAD beef with Thaksin is not that he was a popular, elected official who engaged in populist policies, but that he was able to “rig, pack, and circumvent” the institutions that were supposed to protect minority interests against the will of an illiberal majority.¹⁶ Certainly the rural poor benefited from his policies, but Thaksin and his family did as well, in a jaw-dropping manner, and his co-option of institutions insulated him from accountability in these matters. The Red Shirt rebuttal to this is that what the Yellow Shirts think of as minority interests are actually elite interests, who captured the Thai government and built up the institutional edifice to protect elite advantages.

What is at stake in Thailand is more than just a narrative of class conflict. In Thailand, we are seeing a fundamental debate over the very essence of democracy itself, drawing on debates that have consumed political theorists for centuries. Calls for immediate elections to restore the legitimacy of the regime, while an enticing tonic, miss this vital point. The situation in Thailand cannot be repaired until all actors are able to agree on a system of government that balances popular will with adequate safeguards for minority interests.

Conclusion

The Thai political situation is complex and unresolved. Simple solutions could be dangerous at this stage. The crisis has exposed deep fissures in Thai society that do not conform easily to naïve narratives of class conflict or ethnic politics. For western observers and policymakers, there are a few important lessons to keep in mind.

¹⁶ Borrowed from Slater 2003.

First, there is no right or wrong side in this conflict. While it is tempting to blame an unrepentant Thai elite or the corrupt legacy of an autocrat, those on the ground are debating the appropriate institutional structure to accommodate two conflicting democratic conceptions.

Second, elections can bring accountability to citizens, but they are no panacea. Electoral outcomes are highly influenced by the specific electoral rules and the ability of other institutions to protect their integrity. Insisting on elections before these conditions are met could backfire.

Third, according to the Asia Foundation, 70 percent of Thai citizens do not ascribe to either the Red Shirts or the Yellow Shirts and are merely shades of orange.¹⁷ These people would simply like a return to normalcy — to take care of business without constant disruptions to their livelihood and safety. At times over the past few years, it appeared that the entire country was locked in stalemate. This is not the case.

Nonetheless, there is a danger lurking in the survey data that we should not overlook. Nearly one in three Thais believes their country needs a strong leader, who does not need to be elected.¹⁸ Thus, while Thais support the various ideas of democracy, underlying support is growing for an authoritarian hand.

Future polling needs to keep a sharp eye on this trajectory. It may be that the silent majority, upset with the democratic impasse, chooses efficacy and public services delivery over democratic institutions. This would be an ironic and tragic conclusion for a battle over the meaning of democracy.

¹⁷ Tweedie, Pauline. 2010. “After Unrest Deep Divisions Still Exist in Asia.” In *Asia*. June 16. <<http://asiafoundation.org/in-asia/2010/06/16/after-unrest-deep-divisions-still-persist-in-thailand/>>

¹⁸ Meisbauer. 2009: 64

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