

Thailand: From the People's Constitution to the Judges' Constitution

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Fear and loathing of elective democracy is the dominant theme of the new draft constitution. Never again, the drafters hope, should real power be based upon the people's vote.

The reshaping of parliament is designed to produce a fractious, corrupt politics which will condemn itself. The draft brings back the system of multi-member constituencies under which election candidates are in effect competing just as much against their own party colleagues as against their party opponents. Parties will weaken. Elections will become more violent, with more deaths of canvassers caught in the increased complexity of local factionalism.

The 90-day role is in effect abandoned. Wholesale merger of parties is banned, but the prelude to elections will revert to the old pattern of musical chairs, and open auctions of political loyalty. To add to the fragmentation, the draft even explicitly absolves MPs from voting by party. The two-term limit for a prime minister will encourage fast snacking. Parliament will revert to the pattern of many small factions, loosely aggregated into weak parties, and constantly rearranged by money and opportunism into fragile coalition governments.

In the vision of the drafters, this does not matter because parliament does not really matter. One of the most striking features of the charter is the expansion in size and scope of the section on Directive Principles of Fundamental State Policies. If you think that title has a whiff of the documents emerging from the supreme council of some totalitarian state, you may have the right idea. In the old constitution, these principles were brief and vague. Nobody honestly took much notice of them. In this draft, this section has expanded from one page to eight. The coverage extends across security, administration, religion, society, education, culture, law, judicial matters, foreign affairs, economy, land, natural resources, environment, science, intellectual property, and labour. The government is obliged to ensure that its policy statement presented to parliament accords with these principles, and is obliged to make an annual report to parliament on its progress.

These principles are much more detailed than in the old charter. Take the economy as an example. In the 1997 charter, there was just one paragraph with little more than a list of topics. The new draft has twelve paragraphs. Some of these are again very broad and vague, such as promoting the sufficiency economy, upholding the free market, and ensuring fiscal and monetary discipline. But other paragraphs have specific measures which will require legislation and changes in administrative practice. The government must amend laws and regulations which put unnecessary controls on business; revise the tax system to be more equitable; create a system to provide for the old aged; and amend laws on monopoly in order to provide for free and fair competition. Then there are further clauses which are not so specific yet still envisage major changes - distributing income more fairly, increasing opportunity, promoting the exploitation of local wisdom and Thai wisdom in the creation of products and services, delivering the highest returns to agriculture, ensuring the basic needs of consumers are not obstructed by monopoly business, controlling female and child labour, and devising an equitable social security system.

That is just on the economy. The same kind of detail is applied to every aspect of government. If this

were taken seriously, the resulting workload would occupy the full legislative agenda for the next government and several following after. Political leaders and political parties no longer need to come up with policy programmes, because these have already been set.

In short, this is an attempt by a handful of charter drafters to dictate policy. A fundamental principle of parliamentary democracy is that policy-making is the duty of elected representatives who are in some way responsible to their constituency. The 1997 constitution began this practice of trying to dictate policy to future governments. This draft charter has taken the practice to another, absurd level. This chapter betrays the drafters' total contempt for the principle of parliamentary democracy.

While the last charter was dubbed the People's Constitution, this one deserves the title of the Judges' Constitution.

Under this draft, the three very important persons are not the prime minister, president of parliament, or even commander-in-chief of the army, but the heads of the Supreme, Administrative, and Constitutional Courts.

The importance of these courts will increase. People gain the right to present cases directly to the Constitutional Court over infringement of rights, and to the Administrative Court over disputes with official agencies. The Supreme Court takes over some of the most important powers in the control of elections. These courts will consequently have a bigger role in major decisions which affect politics and administration. On top, the heads of these three courts are among the handful of gods who have the power to appoint the members of the senate, and the members of some independent bodies intended to act as checks and balances on the executive and parliament.

The procedures for appointing two members of this judicial triumvirate are already in place and are internal to the judiciary. The procedure for the Constitutional Court has had to be newly devised. The details offer a glimpse into the clubby kind of politics we have in store.

The nine members of the Court will include three high court judges and two administrative court judges, again chosen by the internal processes of the judiciary. The others are two legal experts, and two experts in political science, social science, or religious studies. These four are nominated by a committee consisting of the presidents of the Supreme and Administrative Courts, the president of the Assembly, and opposition leader, and the head of the independent organizations. The Senate has to approve this committee's nominations, but has no leeway to make any choice. If it refuses, it can eventually be overridden, again by a cabal of judges.

"Elections are evil," said one drafter last week. He used to be a judge.

P.S.

* From: <http://www.geocities.com/changnoi2/draft.htm>