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DE-POLITICIZING A POLARIZED NATION? BEHIND THAILAND'S 2015 CONSTITUTION

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P R O C E E D I N G S

MR. LIOW: Good morning, everyone. Thank you for making your way down this morning. It is really a great pleasure for me and for Brookings to be able to host Professor Duncan McCargo. Duncan, as some, if not all of you, will know and undoubtedly will agree, is one of the leading experts on Thailand, although he does not confine himself to Thailand, certainly, he's been writing about Cambodia, he's written about Vietnam, written about Japan, so very wide range of interests and expertise.

But today, he's going to share with us some of his thoughts on Thailand, specifically the developments -- political developments in Thailand over the last year or so. And it is certainly a topic, I think, of great interest to many of us given the uncertainties around what is actually happening there. So, I think, without further ado, let me invite Duncan to the podium to share his thoughts.

Duncan, please.

MR. McCARGO: Thanks very much, indeed, Joseph, for that warm welcome. It's something I've long dreamt of doing, having the chance to come to speak at Brookings, and now that we have Joseph here in the L. K. Y. Chair, Southeast Asia activity is flourishing in this great institution, which is a fantastic thing. And I see here today many old friends and new ones.

So, lots of things to talk about, and rather more than I'd really like to talk about. This is bound together the draft constitution of 2015 for Thailand, the Thai and the English versions. I got the Thai one on Saturday, so that was my Saturday reading, and then I managed to get the English one on Monday.

Going through these 315 clauses, 130 pages, is quite challenging, so I'm not going to attempt to summarize everything in there, but let me try to highlight a few of

the key themes that seem to come out of this document. If you have specific questions, I can try to rummage through, but I don't want to get too legalistic about citing all the different articles and points.

I guess what's most interesting is what is -- and hence the title here -- what's behind the constitution, what are the ideas that seem to be driving this constitution coming as it does out of the background of the military coup of the 22nd of May last year. We're almost one year past the coup.

I can do a little bit of a commercial break here, maybe, and advertise that at Columbia next week on the 1st of May, Friday, we are going to have a one-day Thailand update event and Joseph will also be speaking there. We have ten people speaking about what's going on in Thailand, so anybody who would like to come to New York next week, it's a great opportunity to combine it with a weekend doing something else. It will be ending on Friday afternoon. You can hear even more about this.

But here's a little bit of a foretaste of some of the issues. Okay, let's just flash back to 2011, briefly, because we need to have in mind a certain kind of context for what was going on prior to the coup, and it's easy at this point to forget about some of the things that have been happening in Thailand during the present millennium. There have been a series of elections that have taken place in Thailand. We're now anticipating another election perhaps as soon as next year - let's hope it's as soon as next year.

But if we go back to all the elections that have taken place in Thailand in the 21st century, what you find is a pattern not terribly dissimilar to this, which was the result -- summary of the result of the 2011 elections. I, unfortunately, missed the July 2011 election because, unfortunately, Prime Minister Abhisit happened to call it on my wedding day, so I was banned from attending a Thai election for the first time in my

recent adult life.

But what happened there you can very clearly see an incredibly strong color-coded divide with the part in red being the provinces where Pheu Thai, the pro-Thaksin party, won the majority of seats; the areas in blue, where the Democrat party won most of the seats.

So, it's an extremely striking polarization and I could talk at much greater length, and I have done before and probably will again, about how this polarization also maps onto socioeconomic divides and also maps onto what we might call sub-ethnic divides in terms of peoples' identity in the north and northeast as Isan people, Lao people, and so forth.

So, there's a massive split, which you see in that election map, which is closely related to geography, it's closely related to a whole series of other parallel identities. Not only have we had a whole series of elections where this kind of result took place and pro-Thaksin parties won all those elections, including the ones that were boycotted by the democrats, and eventually annulled by the courts, the 2006 and 2014 election.

So, that divide is there and so far we have no real evidence to believe that that divide has gone away. On top of that divide, we also have very visible manifestations of polarization, street protests that occurred, dramatically, in the center of Bangkok in 2006, in 2008, in 2009, in 2010, in 2013, and in 2014, from one side or another or both, the pro-Thaksin and anti-Thaksin sides.

So, it's hard to see how it would be easy to reconcile or bring together a country with this level of political polarization. Nevertheless, that's precisely the task with, not just the ruling junta, the NCPO, but also the constitution drafting committee and their

associated groups and agencies and experts, have been working on.

So, this document, this massive, 315 article constitution, is the latest attempt to try to find a mechanism to reconcile what would, outwardly, at least, seem to be the irreconcilable -- the whole series of divides that cut across Thai society that have alienated people from one another that make it very difficult for many Thai families to have a conversation about politics, that have stopped lots of people talking to their old high school friends, that means that the moment you look at someone's Facebook page you can get an instant view of their political orientation.

So, all that stuff is there. If we go back to previous coups, and I think the coups that should loom most largely in our minds for the time being are those of 1991 and 2006, the ones with which I'm most familiar. I started doing my PhD research in Thailand in 1991, so I've been living with coups for a long time, keep hoping that this one is going to be the last one and that aspiration, alas, has yet to be realized.

The script in '91 and 2006 was fairly similar, but what you see there is a cycle -- unfortunately I have to tell you that this vicious cycle is based on a book originally published by Chianan in 1981. This is the vicious cycle of Thai politics. Unfortunately, it nicely describes what has been happening in the recent period as well. So, what happened in the '80s turned out to happen also in the '90s and then to happen in the '00s and as recently as last year and the present year.

So, this is a cycle of coup military rule -- constitution, election, parliamentary process, conflict, crisis, and another coup. I wish I could tell you this was all obsolete, but it doesn't really look like it.

What we saw in '91 and 2006 was a pretty rapid process of moving to an interim prime minister and cabinet and date for fresh elections, rewriting of the

constitution. What we've had this time is a different version of the script, a lot more draconian suppression of dissent, a lot more hesitancy about actually getting on and setting up a government and a prime minister and so forth, took really a lot longer for all this stuff to happen. And the other thing that may be taking a lot longer is actually restarting the representative political process and the holding of elections.

We had in both '91 and 2006 talk of "it will only take a year"; in both cases it took just over a year. We're coming up for a year already and no election is in sight at the moment, so we may here be looking at a two-year process, and that tells us something about the extent to which this junta has been adamant about really trying to reorganize Thai public life, change the nature of Thai society, and so forth.

So, this is what I talk about as tearing up the script, there's an op-ed piece that I wrote in the New York Times right after the coup saying that they were in the process of tearing up the script, and alas I have to tell you that the sort of interpretation that I came up with at that point turned out to be true. I was really hoping to be -- I keep hoping to be wrong about all these pessimistic things I say about Thai politics. I would desperately love to be wrong. I don't want to cast myself in the role of Mr. Naysayer, but, you know, sadly, many of these arguments that I've made in the past, along with a number of other colleagues working in this area, have ended up being all too unfortunately true.

So, what we've seen is this -- the non-coup coup, we're not a coup, we've taking the country into military administration, so that means it's not a coup, the making it illegal to criticize the coup, had no interim constitution (inaudible) government really for about four months in total, for the whole lot to unfold, no election for over a year, in fact, we're now looking at two years, and a lot of this language of reconciliation and

national happiness, mass arrests, many friends of mine being invited to come and spend time with the military and enjoy a week's free accommodation discussing how their attitudes might be adjusted, so the whole rhetoric of attitude adjustment, and then more draconian treatment of lower level people who were given suspended jail terms and fines for crimes such as eating McDonald's as a protest or the crime of sitting silently reading a copy of George Orwell's 1984 whilst listening to the French national anthem, for which someone was also given a six-month suspended jail sentence and a fine.

So, lots of this heavy-handed talk and then all the discourse about reform before the election, and the question of what that really means.

So, here we have the constitution, and let me just highlight a few key themes that come out of the constitution that are particularly striking. And I don't want to talk for too long because then we can throw this open for questions and there are many very knowledgeable people here in the room whose views it would be interesting to hear.

So, part two of the whole constitution is called -- you know, and the translations vary, this is my translation -- Good Leaders and a System of Good Representatives. I've talked in the past about virtuous rule as a way of understanding what's going on in Thailand. In other words, a quest for a system in which benevolent and morally upstanding elites are able to exercise very substantive control and jurisdiction over what's going on in the society; and when I started to talk about virtuous rule again, people seemed to be a bit skeptical about this idea, but if you had any doubt that virtuous rule as an objective in Thailand, looking at part two of this draft constitution, should serve to quell those doubts because Thailand will, if this is adopted, be the first country in the world to have a national assembly of morality, which is specifically designed to promote virtue.

Sometimes I wish I was making this stuff up, but I really am not. It's quite an extraordinary idea. But in many ways if you go back to earlier coups, and earlier constitutions, you'll see these themes recurring. So, when I was working on the 1997 constitution, which was an extremely interesting document in many ways, with lots of progressive elements, the first attempt to use legalistic mechanisms and what I would call the ideology of legalism, which is perhaps something I should also talk about, to reshape Thailand's politics, you see in the rhetoric of the coup drafters of people like Dr. Prawase Wasi, the distinguished former royal physician who was a prime mover behind the political reform process. When you read their writings, they talk about the need to distinguish between good and bad people and the need to create a political system in which good people will be able to have access to power and power will not be monopolized by bad people.

In '97, that language was not in the constitution itself, it was in the discourse surrounding the constitution in interviews and books and articles about the constitution.

What's happened gradually is that this language about dividing the country into good and bad people and allowing the good people to triumph has become more and more systematized and internalized, so in the '97 constitution you had things like a Senate which was supposed to be apolitical, which would watch over the activities of the much less credible and respectable House of Representatives lower down.

You also had the introduction of new independent agencies such as the constitutional court and the counter corruption commission, and those who are familiar with the so-called new constitutionalism will recognize many of the things that appeared in the '97 constitution as innovations that have been adopted by a lot of other countries

around the world and actively promoted by certain European countries, like Germany, who seem to be very eager to export some elements of what they see as successful bits of new constitutionalism.

Whilst in the Thai case people said, well, this is just the same thing, they're trying to do what happened in all these other countries. I always argued that that was not really the case, that what was going on in Thailand was something different, that it was an attempt to create a regime of morality and virtue, and now, unfortunately, the evidence is really here.

The idea of a national assembly of morality, which will check the moral qualities of politicians, takes the idea of independent institutions to a new level. It may seem to be coming from the same direction, but it's actually based on a kind of Buddhistic discourse of dividing people into -- back to the rhetoric of 1992 -- devils and angels, the good guys and the bad guys, as though it was always clear who the good guys were and the bad guys were, and as though people who were not elected politicians, people who were bureaucrats, people who were military offices, people who were close to monarchy, people who were judges, would in some way be inherently morally superior to anybody who had been elected.

That's been a theme and a subtext of what's been going on and it's now much more explicit.

The problem is, in this part of the draft constitution, as in many others, we don't know the details. There are very few details about what this assembly is all about and particularly how the people are selected, where they come from, and there are other agencies within the constitution that have similar kinds of functions, citizens assemblies at the provincial level and also civic scrutiny councils at the provincial level,

which will monitor budgets and try to prevent dubious characters, i.e. elected politicians, from inserting things that should have been inserted into the budget.

There is also a whole discussion about what it is to be a Thai citizen, how you have responsibilities as a citizen, including responsibilities to be virtuous, which have never been articulated in previous Thai constitutions, and I don't recall seeing any constitution in the world that has this kind of very detailed definition of what it means to be a citizen and what kind of moral obligations come along with it.

Another curious feature of the constitution, which is fairly unusual, I think, internationally -- I have to go and do some research to find out how many other constitutions have sunset chapters in them -- is a very large sunset chapter, which specifies a whole series of areas that need to be reformed; and in many ways, the discourse of this constitution echoes the themes that we heard a lot onstage and offstage from the PDRC protests, the anti-Yingluck government protests in 2013 and '14, the slogan of reform before the election, and the demand for a wide ranging set of social reforms.

So, what we'll have is a National Reform Assembly and a National Reform Strategy Committee. Now the National Reform Assembly will actually take people who are in the current national reform assembly and the current NLA, the unelected, military-appointed puppet parliament, for want of a better term: some of those people will roll over into the new national reform assembly, and we see a whole list of articles basically saying, we need to reform the following: 16 different areas, I believe, law and justice reform, finance and taxes, state administration, local administration, decentralization, education and human development, resources and environment, energy, labor, culture, science, technology, macro economy, micro economy, public

health, social and community affairs, media, and IT.

One blindingly obvious area that's omitted completely, yes, there's no security sector reform mentioned here, funnily enough, although I'd have thought that the single area of the Thai state that's in most urgent need of reform is the incredibly bloated and absurdly privileged Thai military, there's no mention whatsoever of even thinking about reforming them, so they're exempt from reform.

Where you see an asterisk, there's going to be a special committee set up to oversee reform in that area, not just sort of something that's delegated to the larger national reform assembly and reform strategy committee, so there's a very elaborate bureaucracy that's going to be created to administer this reform agenda. There's also, though I didn't specifically mention it, there's going to be a new council to look at media and IT, which has the implication of some sort of media regulatory/supervisory outfit of a kind that many of us would get a little bit nervous about.

So, all these clauses are supposed to expire after five years. There seems to be a kind of desire on the part of the constitution drafters to ensure that most of this business is done after five years, but it is possible to extend the sunset chapter for a further period of five years. It's a little bit unclear to me whether it could be extended beyond that.

But there's an idea that even though there will be an election, there will be a new government in place, we're going to have a period of transition where the reform agendas continue to roll forth and to be developed by a whole series of agencies or committees.

Another very interesting theme that I think is going to attract a lot of attention in the weeks and months ahead is the question of reconciliation and in the

interest of full disclosure I should tell you that I have written articles about both of the two previous reconciliation commissions in Thailand, the National Reconciliation Commission, which was supposed to deal with the conflict in the south, chaired by distinguished former Prime Minister Anand Panyarachun in 2005/6 and then I wrote an article with a Thai colleague about this commission, the Truth for Reconciliation Commission of Thailand, which was chaired by Kanit na Nakorn and which published a report in 2012 addressing -- or supposed to be addressing -- the violence that took place on the streets of Bangkok in 2010 during the Red Shirt Protests.

I've also written Journal of Democracy, last week, an article criticizing the entire rhetoric of reconciliation and truth commissions beyond just Thailand itself, so this is something I've been paying a lot of attention to.

I'm rather intrigued, but also alarmed by these proposals because Thailand's track record with reconciliation commissions is, to put it politely, checkered. Both of the previous reconciliation commissions have completely failed to do what it was that they set out to do and I argued in the last article I did that the TRCT actually made things worse by not talking about the question of military responsibility for deaths in 2010 in a very explicit way, helped to foster a climate of impunity, which I believe encouraged the military to stage another coup.

So, how can it be done better this time? There are a number of things that come through. One is that the new committee will report to the cabinet. The members will be appointed by the King, they will study and analyze the reasons for conflict and take into account other domestic and international studies.

One of the interesting things about the TRCT was that they completely ignored other reports, notably the PIC, the Peoples' Information Center report, which was

a parallel report looking at the same events, which they refused even to acknowledge existed and refused to engage in any dialogue with the people who drafted it.

So, the two reconciliation committees were not talking to each other during 2012, which is a rather paradoxical situation, you have two committees who are attempting to get to the bottom of understanding what happened in the same violent events between whom there was no communication and no dialogue.

So, that's an interesting point and that almost seems to respond directly to the article that I wrote with my Thai colleague.

And international studies, so maybe people outside Thailand might be listened to or consulted, which does sound interesting. But the part that's, I suppose, of most interest to people with an oppositional orientation, pro-Thaksin people, is the mention of royal pardons, which could be offered for those who cooperate or show their remorse, or make themselves useful. The language is, again, rather ambiguous and I need to go over the translation and talk to some Thai friends to really unpack exactly what these weasel words mean.

But obviously, the idea of pardon is a very interesting idea. Those of us who followed -- or those of you who follow Thai politics closely will realize that the entire current political crisis was triggered by a pardon bill being rushed through parliament by the Yingluck government in late 2013. So, pardon could turn out to be both the origin of the present crisis and the solution of the present crisis. What goes around comes around in yet another circle.

So, we may have to add pardon to this -- the vicious cycle of Thai politics at some point. You have pardon, which produces crisis, which ultimately produces pardon again. So, we've got that added element.

And also this, unlike previous reconciliation commissions, is going to have its own law. Everything gets its own law. I mean, you can see the lawyers have really gone to town with this constitution. There will be a specific law that brings the National Reconciliation Promotion Committee into being.

Now, on one level, this having its own law is good, but of course there are so many laws that are supposed to come out of this constitution to implement all the different provisions in it. I don't know how quickly they're going to be able to get off the ground with this wide range of things.

So, reconciliation has, in the past, been a byword for not really addressing problems, for glossing over them, and failing to deal seriously with them. Let's hope that this time reconciliation is not going to be quite in that category, but it's unclear.

Okay, now to the stuff that the political scientists and so on really like, how are you going to select everybody? Okay, prime minister is supposed to come from parliament, but you can appoint a non-MP prime minister. And those who remember back to 1991, '92 will recall that when it became apparent that the 1991 constitution made it possible for a non-MP to become prime minister, that was really the beginning of the end. This is a very dangerous road to go down because it's code for army generals can be prime minister, military commanders, people who stage coups can be prime minister, it's not about anybody else. The interest here is: how likely does it make it for General Prayut or some other military figure to become prime minister either in the immediate aftermath of the next election or after some future election? That's the question, which is obviously exercising everybody's minds, because we know that when Thailand went down this road before, once you say you don't have to be an elected

representative to be prime minister, you're going back to the 1980s or before the 1980s. That's a regressive step.

Okay. Two hundred senators, so far so good, then it starts to get very messy, a complex system based mainly on functional groups, so we get ten people who are former permanent secretaries, ten former military commanders or permanent secretaries of the Defense Ministry, who are, in fact, normally former military commanders of some kind or some kind of senior generals of some kind, 15 professional association representatives, apparently there are 21 professional associations on their lists, so how they get from 21 to 15, we don't know, yet, 30 members of agricultural academic, I definitely think that university professors should have their own allocation in every parliament, that's a great idea, but how are you going to pick which ones given that the range of views in the academic sector is fairly diverse, as indeed it is in the community and local sectors. So, 30 people are going to be picked from these sectors, which seem to cover huge sways of the population in all cases except the academics, who don't amount to a huge sway of the population, but are much more important than other sways of the population, so they need some kind of special privilege.

And then 58 qualified, moral people from various fields, and then 77 people elected from the provinces, but you'll have a screening committee -- a moral screening committee who will pick ten candidates for each province from whom the voters are allowed to choose.

Now, there are a lot of problems with representative politics and democratic systems. They do have the advantage of being fairly simple. You know, you register as a candidate and people decide who they want. All of these processes involve some kind of pre-selection of candidates, it's slightly reminiscent of a sort of Hong Kong

assembly functional groups sort of idea, but it begs huge questions, how do you decide which member of your professional association gets to be the representative in the senate, and so on.

So, you can see incredible potential for politicization of this de-politicized and apolitical senate right away. So, that's a little bit disconcerting.

Then we get the -- choosing MPs, 250 constituency seats, and the party list seats, it's actually a slightly sliding number for reasons that are somewhat arcane, but the number could vary a little bit, but maybe somewhere between 200, 220, and lots of talk about the German system, mixed-member proportional voting. We all need to become experts on mixed-member proportional voting now and it's very confusing. My distinguished colleague, Allen Hicken, from University of Michigan, has some very useful postings on a website of his, which I think is called ThaiDataPoints, where he explains the multi member proportional system for those like me who don't fully understand what it is, and also he does a lot of graphs to show how introducing what seems to be the system that they're planning to introduce would have affected the results of the last couple of Thai elections, the 2007 and 2011 elections. It's very interesting.

And one of the posts says, "To put it crudely, this new system will greatly favor the Democrat Party", that was his primary conclusion, if you just want one takeaway from all the different tables and things that I was trying to make sense of. It turns out that there's a lot of talk about this is going to benefit small parties, and he seems quite skeptical that it will benefit small parties. It will definitely benefit the second party and it will not benefit Pheu Thai, so it's likely to shift those colors a little bit.

It doesn't seem to shift the colors enough for the Democrats to be the largest party though in most of the data that he has.

Another very interesting document, which is Professor Borvornsak and a few of his colleagues, the people who drafted the constitution or played the lead, gave a presentation at the Foreign Correspondents' Club of Thailand a couple of weeks ago in which they explained some of the thinking behind the constitution and when they were talking about this part, they said that the purpose of these changes was to vote out symbiotic capitalists and party VIPs. There's another place where they talk about Mafioso types, so the rhetoric of anti-politician is very, very strong in the thinking of the people who drafted this. It's all about trying to stop politicians from gaining the upper hand.

So, for example, the Pheu Thai party list you would always have, previously, Thaksin or -- before it was Pheu Thai, when it was Thai Rak Thai, and latterly Yingluck would be the number one on the party list, so, assuming that you get even one party list vote, one person is elected from that region, you make sure that your leader and all your leading figures in the various regions of Thailand are automatically elected.

With the open list system, people can decide that they want to cross Yingluck or Thaksin off the list, hypothetically, and upgrade somebody from the bottom of the list who may have a better moral reputation. So, it's not necessarily the case that the person who's listed number one is going to be elected.

Now, this seems to assume on the part of the constitution drafters a very kind of active and engaged voter who is going to be -- of course, in this country you have these extraordinary voting opportunities for dog catchers and all kinds of things like that where you have to familiarize yourself with a whole range of issues, which people can't possibly know all about -- but in this -- you know, most electoral systems, the choice is pretty simple, and what this does is, in theory, it empowers citizens, but I think it's likely to

confuse a lot of people and many people will just go for whoever is number one on the list.

But these are questions.

Anyway, it does look as though it's not completely clear that MMP will have the desired effect. If the desired effect is to stop pro-Thaksin parties from being the main party, it might not happen. What Borvornsak and others have said in interviews is that their goal is for coalition politics. They would like a grand coalition, a government of national unity, to bring all the parties together so that the good people from all the parties would be able to form a cabinet and form a government, which might be a noble aspiration, but you can see that it's going to be an incredible struggle to have two parties that have been fighting one another until their dying breath for the past 15 years suddenly join together in one unified coalition and find that actually they can very happily run the country collaboratively.

It's also going back to what the 1997 constitution was specifically designed to avoid. In '97 people said, we've had these unstable coalitions, the government keeps changing, it's very unsatisfactory, it's all a mess, nobody has any clear direction, all the ministers are doing their own thing, it seems like the constitution drafters this time would like to go back to that because now, with the passage of time after the Thaksin period, they're feeling nostalgic for the old messiness of the coalition politics vis-à-vis the dominance of a one-party system.

Okay. Mike Montesano has written a very interesting paper -- actually, I think it was finally posted in -- I got a 2014 version, but there's a version online of 2015. He argues that what the NCPO has been trying to do is not just to favor the anti-Thaksin forces, but to de-politicize Thailand, to, in some way, deconstruct those divides and those

partisan politics so that Thailand will no longer be in the sway of partisanship.

One of the very interesting things that has happened recently is the old slogan, “Nation, Religion, King”, which you might be familiar with in Thailand, has been amended -- actually, it was amended quite some time ago by the military to read, “Nation, Religion, King, and the People”. And if you go back to this slide you’ll also notice they changed “nation” to “country”, which is an interesting slide, we have a different word in Thai for country, that would be *prathet* (speaking Thai) not *chat* (speaking Thai), which is nation, so that’s very odd. And then the other thing is that *satsana* (speaking Thai), which we always thought was translated as religion is now translated as religions. This is rather like Prince Charles saying that when he becomes King of England he’s not going to be defender of the faith but defender of the faiths.

But that’s not a translation of the Thai. The Thai is three singular words, and you can’t have -- I asked a lot of my Thai friends this. There’s no way that (speaking Thai) -- that the middle word can be plural and that the first and last word are singular. It doesn’t make any sense. It’s a very strange construction.

But this is part of an attempt to liberalize the image of the military and promote an idea of pluralism, but then when you poke deeper into the underlying thinking, it’s hard to find where that pluralism is.

So, trying to incorporate the people into “Nation, Religion, King” is part of depoliticizing the population and turning them into -- now we’re back to Indonesia and the new order -- the floating mass kind of idea where people are not identified with one side or another, but they’re all incorporated into this grander scheme.

I don’t know whether Mike Montesano is right about that, but you could use elements in this constitution to support that sort of argument. What’s very clear is

that notions of morality and virtue are so much more explicit, at the same time, the document is long, it's overburdened with details that arguably don't really belong in a document of this kind.

So, where's Thailand going? Okay, sorry, we have the same map again there, we've come full circle as in the vicious cycle. It's hard to see how these new arrangements can work. You know, the executive summary of all the work I've been doing on Thailand's political reform processes since the 1990s would be, you know, legalistic moralism has failed, so the solution, it's more legalism and more moralism. I don't really believe that you can change peoples' behavior with a constitution. It didn't really work in 1997, it didn't work in 2007. Is it going to work in 2015 or 2016? That is the debate.

I am doubtful because I think that that goal of trying to depoliticize people is a very, very difficult goal to achieve.

So, for the pro-Thaksin side, the hope is this: ultimately there's going to be an amnesty and people are not going to be in jail and people are not going to be persecuted and imprisoned for their different beliefs. We don't have here -- you know, it would be so refreshing if we had here some acknowledgement that there are problems about the current computer crime law, about the lèse-majesté law, about the security sector. Those things would be signals that reconciliation is a serious agenda rather than a rhetoric that's being espoused by one side as an attempt to bash the other side and to push their particular views onto them.

I would like to be optimistic, I'd like to think that Thailand can move forward. There was an interesting interview with Borvornsak where he was asked, how long do you think this constitution will last. This was in '97, people were saying, we won't

have to do this anymore. We've drawn a line under this constitution drafting. This is the peoples' charter and it's going to be on and on forever. And Borvornsak, who served a number of regimes -- he was also actually secretary general to Thaksin for several years, which is an episode of his life he doesn't talk about that much these days -- Borvornsak interestingly said in the interview, well, based on past history, I would assume that this constitution might last 10 to 15 years. So, that raises the question, what is going to happen in 10 or 15 years and what could replace a constitution of this kind?

Where is Thailand going? I wish I could be more optimistic, but I have to say that my first -- I have to say, I've only been able to read these documents very superficially and there are a lot of things that are not really spelled out and will only become clear later once we see the further debates and also the -- the secondary legislation, which is going to come out of this.

Okay, thank you very much.

(Applause)

MR. LIOW: Thank you, Duncan. Seems like the more things change, the more they stay the same.

We now have quite a bit of time, but nevertheless, I think there are a lot of questions. Duncan has given us a lot of food for thought. So, we're just going to go straight into questions and answers and I see Amitav's hand already, so we'll start with him, and then you, sir.

SPEAKER: Duncan, where does the monarchy fit into this constitutional calculus? And I would like to hear your views about how the fate of the monarchy, the possible transition, can affect the outcome, whether this constitution might work or not.

And the other thing that came to my mind is that, if this works, this will be

the most democratic constitution in Southeast Asia. This is really a peoples' country, and it has echoes of Asian values, it has echoes of Plato, and they must have done a lot of work on this, and maybe I should also recommend that Brookings do a study of advising, since they're open to international scholars and reports, you might get involved in this.

MR. McCARGO: Yes. Well, thank you very much. I was hoping for a friendly opening question there but now you've asked me about monarchy and that puts me on the spot right away.

I mean, I think as many people know, I've talked in the past about something I call "network monarchy" and I've said that we have to stop thinking about monarchy just in terms of their royal institution or "the King" and to see monarchy as a network and I think increasingly it's the case that the core institution, the king, is not really doing day-to-day, that day-to-day is actually now being done partly by the privy council and other elements of the network monarchy from before, but increasingly by the NCPO and by the current military rulers. In a sense, the military has taken up the mantel of doing what they believe the monarchy would want them to do.

So, in a sense, the network monarchy has, for better or worse, actively or passively, subcontracted most of its activity to the military and the military has then subcontracted back to people that I've talked about in the past as part of the network, the liberal royalists, like Borvornsak who would like to find some kind of legalistic solution to Thailand's political problems.

So, the network is very much functioning even though we're not seeing a great deal of direct input from the monarchy itself. And I also believe that just as the -- I heard Dr. Prawase, and I've written about this in a number of articles, say, in public in Thailand in 1995 that the reason why a new constitution was needed, was "to avert

potential violence and conflict. . .” meaning, you know, in the wake of the succession. So, clearly, the ’97 one didn’t work, the 2007 one didn’t work, but the project of trying to draft a succession-proof set of political structures and institutions and rules is very much on, and this is the latest iteration, this is, if you like, iteration three of project shore up Thailand’s politics so that it can survive any possible crisis that might hit Thailand in the future, and that 10 to 15 years might be, you know, that kind of future that we’re talking about.

I don’t know whether it would be the most democratic constitution in Southeast Asia. Certainly, it resonates with all kinds of things, and you see that the people who’ve written it have been thinking a lot and reading a lot for many years, and they should be getting good at this because this is the third time around that people --

SPEAKER: Who are the people who actually --

MR. McCARGO: Yeah, I mean, we know the names of Borvornsak and the people who are key members of the CDC, and if you look at -- if you search their names, you’ll find that many of these people were involved in 2007 and also in 1997. There are some younger people who’ve come in on the project, but the younger people are very much trying to learn the lessons of ’97 and 2007.

So, in ’97 the constitutional process is legitimated by this extensive consultation process and an argument that it’s embracing more rights, and this discourse about rights is there again. We’re broadening peoples’ rights and a lot of rights have been specifically written into this constitution that weren’t there before.

Interestingly, the National Human Rights Commission is being abolished, but it’s being merged with the Office of the Ombudsman, so another innovation, Thailand may be the first country in the world to have the Office of the National Human Rights

Ombudsman, which is brought into being by this constitution.

So, the whole rights expansion and citizenship theme is there, but you'll also see, part and parcel of that or closely allied with that is the anti-politician theme and I do believe, and this is where I take a lot of inspiration from the distinguished Harvard political philosopher, Judith Shklar, who wrote a whole book about legalism. Legalism is a political ideology, which most people don't want to recognize and lawyers don't want to talk about, so, the legal elite in Thailand is extremely influenced by the belief that they can use legal mechanisms for moral purposes, and that is an explicit political project but one that is often glossed over.

So, in many ways, this is the latest iteration of that project, although it does have resonance with Asian values and with some other things, but of course if you talked to Thais they'll tell you that this is unique, you know, this is distinctively Thai. In some ways it is distinctively Thai, because some of these things, the National Morality Council and so on, I don't think anybody else has got yet. So, they're ahead of the curve. Maybe national morality councils will be a function of the next wave of the new constitutionalism worldwide, but I don't know.

SPEAKER: Hi. My name is Nick Borroz. I work with TDI. I was a Peace Corps volunteer in Thailand about five years ago, now I work in DC. I went back a few months ago and I really was struck by the frustration of people that I know in central Thailand rural areas.

I was wondering if you -- what your thoughts are, do you think this constitution could spur a level of violence? Do you think that the frustration could rise to something in terms of violence greater than we've seen in recent years, especially when you consider, you know, some of the other factors in Thailand like massive gun violence,

ongoing insurgencies? Is there any way that all these factors may converge into something that could really destabilize the country?

MR. McCARGO: Can I just ask you, when you say that you found frustration, what kind of frustration specifically are you talking about?

SPEAKER: Driving by a temple and seeing a bunch of soldiers on the grounds and having people that I know quietly tell me that this is horrible and that they really don't like it.

MR. McCARGO: Right. Resentment about the level of suppression of dissent and so on that's been taking place. Yeah.

Yeah, well, you know, I don't want to be a complete doom monger and naysayer, but the fact is that the '97 -- well, the '91 constitution leads more or less directly into the violence of '92. The 2007 constitution led, with a certain delay, to the violence of 2010. The '97 constitution didn't directly lead to violence, but in many ways it sets up the conditions to get us back onto the vicious cycle with the Thaksin period and then other conflicts start to emerge, like the conflict in the south.

So, there's a sense in which, if you believe in this vicious cycle, it's kind of a Buddhist wheel of dharma, of course, or a Buddhist wheel of karma, you know, you would imagine that there's a high possibility that if people feel suppressed and they're very dissatisfied with things that happen, whether it's Yingluck possibly being sentenced to a jail term like her brother or an election result coming out that didn't feel, to a lot of people in the country, as though it reflected their desires, or the choice of a -- I think most obviously, the choice of a prime minster who did not come from an election would go down very, very badly with a lot of people, not just in north and northeast Thailand, but actually with a lot of people.

I mean, the Democrats are not terribly happy with this draft constitution either. It's not like it's only the pro-Thaksin people who have their doubts about this, because the Democrat side too can see that this is an anti-politician constitution, this is really against representative politics, it's against what they stand for as well, it's not purely directed at one side.

So, the potential is there. I would hope that it doesn't have to get horrendously bad, and I don't want to go around predicting, you know, McCargo says Thailand's going to go into meltdown any time soon -- I don't want to go around saying those kind of things, but there are reasonable grounds for believing that there will be a backlash against this process at some point in the next two to three years after an election.

SPEAKER: Hi. Prashant from the Diplomat Magazine. So, two questions, quick ones. So, firstly, since this is technically the first draft, do you see in response to certain reactions in Thailand or abroad any reactions in terms of diluting certain provisions or potential amendments? And then, secondly, in line with this idea of bringing the people inside, do you see them being able to make the argument for getting the constitution through without a referendum, which I guess they may consider or may not consider?

MR. McCARGO: Yeah. I think we have to assume that something's going to change in this draft, that this draft won't correspond to the final document, but where the changes are going to be, I don't quite know. I mean, already, you know, if you go back to Allen Hicken's columns you'll see that most of the discussion was about having six regions -- sorry, eight regions for the party list and now it's gone down to six regions, so you can see that that's something that they've tweaked.

So, there's been an ongoing process whereby leaks have been coming out, the waters have been tested, there was discussion about various things, elected prime minister, that clearly bombed, and they decided, you know, we're not going to do the elected prime minister.

So, something will change. Where the changes are most likely it's a little bit hard to know, you know, who has the most powerful capacity to lobby. I'm rather afraid that people will be spending a lot of their time on these reform agendas. I put up the list of 16 reform areas and noted that there were only six actual committees to implement reforms. I can see those areas that don't have their own committee being very disappointed, you know, why are you doing one for education, not for us? So, a lot of energy could be dissipated in haggling about stuff that isn't terribly substantive, but I'm also assuming that all the political parties, which don't have a great deal of clout at the moment, will be saying, we don't like this general layout.

Presumably the Democrat Party may be more enthusiastic about MMP than Pheu Thai, but nobody could really -- the politicians can't really be very happy about the National Morality Council and the way that the Senate is being elevated and the number of checks and balances has been increased to the point where it's going to be very difficult for them to operate and to run any kind of normal political system.

The referendum, I don't know. It seems like the constitution drafters themselves are expressing enthusiasm for referendum and that was one of the things they talked about at the FCCT talk, that there should be more referenda, that people should have the opportunity to have referendums on things that they were -- that they felt were pressing national issues and important pieces of legislation, and that's about making more active citizens.

At the same time, I suspect there's a bit of cognitive dissonance between what the constitution drafters would ideally like and what the NCPO is going to let them get away with. And this could be one area where, in the end, the NCPO will say, we don't want to risk the referendum.

If you say referendum to a Thai military officer, they usually don't look very happy with you. I've -- you can just try it with random sentences. I mean, I remember saying, "We had a referendum in Britain about the Northern Ireland peace deal" and they just start to look very, very agitated. And I say, well, you know, but the referendum was just to see whether people liked the deal, but we had already agreed the deal anyway and blah, blah, blah.

Don't mention East Timor, of course, to any Thai military officer. The south, you know, would we have a referendum whether the people in the south wanted to be part of Thailand or not? That's the kind of thing that would scare the hell out of them.

So, the only really serious example we have of the referendum was that 2007 constitution referendum where they did manage to win, but they didn't win in the northeast, which is the most populace part of the country. For all the pressure that they put on people to vote yes in the referendum, they could not win in the single most populace part of the country, and that undermined the legitimacy of the whole process.

So, when you really go down the road of referendum, you undermine claims that are being made by elites, by military leaders, and so on. So, it's a dangerous thing for them to embrace.

At the same time, the previous coup did bring in the referendum for 2007, so why could we have it in 2007 and why not this time? Is it because you're afraid you're going to lose? Well, if you're afraid you're going to lose, that's not a very good

argument for not having one.

I think it's very difficult for them to go down the referendum road because they'll be afraid that they can't really control it and they wouldn't be satisfied with -- they want a national happiness result, which means Soviet style result, they want 99.2 percent of the population to turn out and vote yes in the referendum and there's no way that's going to happen.

And if they're aiming at de-politicization, they would see a referendum as a divisive, politicizing project rather than -- because active citizenship is in the imaginations of the constitution drafters, that bit is not in the imaginations of the military.

MR. HAYES: Thank you, Professor. My name is Matt Hayes from IRI. I was wondering if you could touch on the elections a little more? I think I agree with you when you say that this new proportional representation system will benefit the Democrats, but what about the Pheu Thai party and I had to remember, I think there are still 200, 250 ministers from Yingluck's party still facing impeachment.

MR. McCARGO: Yes.

MR. HAYES: Are they able to reorganize successfully? You know, who's the future face of that party? And are they able to compete or do they reorganize under a new banner?

MR. McCARGO: Yeah. These are questions that I, you know, I would love to know the answers to as well. If you have any insights into them, please do share them.

I mean, a lot of people told me that, you know, it's not going to be Yingluck again, that she's done her time. They're going to have to find somebody else. Of course, the problem with finding somebody else has always been that Thaksin doesn't

trust anybody who's not a member of his immediate family and he's running low on plausible members of his immediately family. I think he's pretty much exhausted them with Somchai Wongsawat, and Yingluck. So, Thaksin is going to have to deal with his own particular problem on that front. And, yeah, there are also people facing all sorts of charges, which of course, you know, they've been there before. This is what happened with Thai Rak Thai when you had -- because of course, those of you -- some people may or may not remember this, but if you're not aware of this, you know, 111 executive members of Thai Rak Thai party were banned from office for five years after the coup in 2006. That's because everybody wanted to be an executive member of Thai Rek Thai, so everybody who'd ever been a minister, essentially, was on this list.

So, what's interesting was that that level of -- and this was clearly an attempt to decapitate Thai Rek Thai after the last coup, and yet they managed, in a reinvigorated, reincarnated form, as Phalang Prachachon to win decisively in December 2007 right after all these people have been banned from office.

So, it didn't make any difference last time. They got away with it. Whether they can continue to pull off the same trick, I don't know, but you have to assume there's a reasonable chance that people in those pro-Thaksin heartlands will vote for any party which is given the imprimatur of being the one that Thaksin and Chon are supporting.

But, yeah, and one of the things I didn't talk about here, but I was hearing about when I was in Thailand last year, and it's -- the rumors keep coming and going -- are people closely associated with the NCPO trying to set up a new party, which would bring the good guys from the various parties together and that could form one key element, perhaps a brokering element in any coalition government in the future along the

lines of Bhumjaithai, which was, of course, created by Prawit the main guy who's actually behind Prayut and was telling him what to say back in 2008.

So, the military has done this before. They reorganize parties, they did it in '91 and they did it, most importantly, in 2007 when they created Bhumjaithai. So, that's another thing that we have to see. And when I talk to politicians who told me they'd been approached by people who would like them to join a new party, which would realign Thai politics and we could get the young generation, the progressively minded people, you know, we would be able all to come together in this new part, which of course would be masterminded by the NCPO themselves.

So, that's one of the other questions. There will be attempts one way or another to lure electable figures away from pro-Thaksin parties into other parties as part of this overall strategy.

MR. LIOW: In front here.

MR. WINTERS: Steve Winters, Washington-based researcher. I've heard it stated at the notable think tank around the corner that there's actually quite a bit of Chinese networking and influence going on in Thailand and obviously everybody knows that the geopolitical situation of the different states in Southeast Asia is of great interest to certain great powers.

I wondered if you noticed any Chinese activity there, and actually the statement was they're active on both sides of the divide, of the sort of split. So that, you know, no matter what happens, they've sort of got a good hand in it.

MR. McCARGO: Yeah. I don't really do great powers, I'm not very big on all that stuff. I struggled enough just to figure out what was going on inside the countries that I do attempt to study. But, yeah, there have clearly been some very

interesting things happening. It was significant that, you know, the first outside political leader to address the Thai House of Representatives was from China and the same thing in Indonesia, and this was taking place in the -- I believe around about October 2013, there was the simultaneous move on the part of the Chinese, but then Thaksin himself is continuing to maintain good relations with China, so, yeah, obviously people are playing it both ways.

But I don't profess to understand the dynamics of that stuff; that's not what I really study. But clearly, at the time when relations with the U.S. are not as good as they could be or have been, there's an opportunity there for rival powers to come in and express themselves. I don't see the whole thing as -- some people are painting this in a very, very dark, sinister light, and I'm not sure that it's really like that because the Thais have always had a very well developed capacity to establish good relations with a wide range of people, such as being on both sides in the Second World War, so it's part of the territory that Thailand would naturally be doing that.

MR.ZEITLIN: My name is Arnold Zeitlin and I'm a long time admirer of Professor McCargo. You briefly mentioned Southern Thailand, is there any Muslim input in this process? And what is the Muslim representation, if any, in Bangkok anyway?

MR. McCARGO: Maybe we can take John's question as well. He's been very patient.

MR. LIOW: Okay.

MR. BRANDON: Mine's a bit different. I'm John Brandon, I'm with the Asia Foundation. Thank you, Duncan. Your remarks reminded me of conversations I had when I was in Bangkok last month and one individual -- I thought the best quote that I received was -- talking about the situation -- was that our situation is very complex and

we lack all sophistication. That came from an individual who's actually a member of the National Legislative Assembly who will remain unnamed. But another thing that we talked about was what I believe is the Achilles' heel of the military and Thailand in general, and that is of nepotism and patron-client relationships.

So, when you're talking about a moral assembly or citizens of virtue, you know, that kind of dumps the political culture of Thailand, for centuries, even well before it, you know, became a constitutional monarchy, on its head. And so, can -- is -- how long is that going to take? It's going to require a maturation of institutions and not once in your remarks -- and I'm not faulting you for it because it wasn't said by anyone in Thailand -- was that no discussion of good governance, which would be critical if they really want to develop a political system that would serve the people, you know, which is now added to its motto.

But my question is -- is that, you know, I also got an understanding that the democrats are probably going to split and that (inaudible) and the money guys or the democrats will sort of go their own way, which I would imagine would leave the democratic party, as we know it, even more ineffective.

And so, how might you see that, you know, playing out and how it benefits the current powers that be in the country?

MR. McCARGO: Great. Lots of questions there. Yeah, the Muslim representation doesn't really figure very prominently in this whole thing and what's -- you know, in terms of the conflict in the south, which I probably should talk more about, because it is -- it was the main obsession of my life for many, many years and I'm still trying to follow it and talk about it whenever I can, so let me take this as a cue just to talk a little bit about the situation in the south.

The conflict is just as bad as ever. More than 6,000 people have now been killed. Everybody has totally forgotten about it, a long, long time ago, and Joseph may well have something to say about this too because he's also worked a lot on this issue -- a long, long time ago, really, from 2006 when the anti-Thaksin movement got underway, the mobile TV studios rolled back from the C.S. Pattani Hotel to the center of Bangkok and have never gone back to C.S. Pattani Hotel again.

So, the most serious insurgency in Southeast Asia, which was, in fact, the third most intensive insurgency in the world for several years, has been almost totally neglected by Thai domestic media, international media, diplomats -- and I've had conversations with a number of ambassadors and former ambassadors whose names I won't mention who told me they were going to go down to Pattani during their term in office but were not allowed to go by their governments or by the Thai government.

So, it's very, very difficult to focus attention on what's going on in the south.

What was interesting, and I'm not trying to give Yingluck enormous credit because I don't believe this was ever one of her main focuses of policy concern, but Yingluck did sign with some people who purported to be representatives of the militant movement in KL an agreement to have talks and even though -- well, I wrote a paper last year, which is on the Lowy Institute website in Australia -- criticizing those talks, but nevertheless, that was a step forward off some kind and it received an awful lot of popular support on the ground in Pattani, people were very excited that some sort of talks process was going on because it seemed an acknowledgement this was actually a political problem which could be solved by political means.

Now, the Yingluck government didn't put the effort and resources into

that process that they should have done and there were a lot of problems with the so-called militant side and the Malaysians were not always doing everything they could have or should have done either, but nevertheless, it was a positive development.

Of course, the moment that the coup took place, the people who had been driving that process were removed from office, in fact, they were sort of centrally involved in the events that led up to the coup in many ways, and the net result was that it was clear the military wanted to close down that talks process. They've actually not been able to close it down because the groundswell of support on the ground is such that they have to continue going on with it, so they're continuing to talk about having a dialogue process.

Nevertheless, the dialogue has been stripped of its substantive content. We're going to have meetings to talk about meetings, we're going to talk about where we could put the coffee, and so on, on the table, and we'll talk about all kinds of things. We'd also really like you to bring along all your leaders so we can find out who they are, which has always been one of the main things the Thai military has done, get your real leaders to come to the table so that we can photograph them, fingerprint them, and get their DNA.

So, that's been the shift in the talk about the talks. Interesting that that couldn't be closed down completely, but in terms of substantive input from whether it's the Malay Muslim community in the south or other Muslim communities in Thailand into what's going on, very marginal.

This rhetoric about religions covers up the fact that there's new legislation going through about Buddhism, protection of Buddhism, and also the Buddhistic language that the whole constitution is replete with clearly doesn't cut a lot of

concessions.

I mean, for a long, long time, Muslims in the deep south have wanted to have their own political party and they've always been told, you can't register a political party called the Muslim Party in Thailand. They tried calling it the Santiphap Party, the Peace Party, and things like that, but you can't actually have a Muslim political party. So, there isn't really space for a distinct Muslim voice.

Okay, now, John, you raised quite a number of things and let me mention a couple of them. I did talk about the need for security sector reform and the real problems in the military and that, you know, this document is extremely disappointing in refusing to acknowledge in any way, shape, or form that there might be an issue with the military.

But of course, that leads us to, who are these people, who are the National Morality Council. Many of them are people who are deeply embedded in the military and the bureaucracy and these people have been enriching themselves and they are not in a position to make assets declarations and they can't explain how on their miniscule salaries they are living in the ways that they live.

So, when they point the finger at politicians and say, you are corrupt, there's really not been any mechanism to say, well, hang on a minute, who exactly are you. I mean, what you'd like to see is every military officer above the rank of major general should have to have a full assets declaration annually so that we can try to figure out how it is that they're becoming so rich because it can't always be true that their wives are in business, which is the standard -- it's my wife's business, is the answer that you get from people -- not just with military officers.

So, there's a real problem here. The bureaucratic side and the military

side can't set itself up as guardians of morality when it knows that its own activities can't be publicly defended. I've never seen -- we've seen lots of discussion about monarchy and about the Crown Property Bureau and so on, very little about the military and its business activities and its landholdings.

I lived on the 20th floor of a condominium in Bangkok for a year a couple of years ago and most of the land that I could see for miles around belonged to the military, right in the middle of Bangkok. You can't even tell that it's there because it's behind high fences. The military has an incredibly privileged position in terms of landholdings and really should be kicked out of Bangkok because you don't need soldiers in the capital city in most countries. Soldiers need to be at borders and the key strategic locations. If they're in the capital city it's because they're messing around with politics, they're not performing any military function.

SPEAKER: (off mic).

MR. McCARGO: Yes, exactly. Yeah. Absolutely. So, those are real questions about how you -- you know, those who set themselves up to be moral need to be able to take the heat. We saw this with the Surayud government where Surayud, of course, was set up to be moral and then he had to deal with the problem of the summerhouse that he wasn't supposed to have up in Khao Yai, which ended up being knocked down, but we haven't seen the present military leadership knock down any of their summerhouses or even talk about where they might be located and what kind of landholdings they have, and that's a real problem.

Yeah, I mean, this potential split in the Democrat Party is part of this wider potential realignment and restructuring of politics. And will it actually take place in the end? People are talking about it, maybe it will. The risk, of course, is that then you

have a more unified pro-Thaksin party and that party is still, by far, the largest party in any government, but I think the fantasies, we can split Pheu Thai as well and just have a lot of small parties, and then no one is overall control and then no one can really challenge the dominant moral bureaucratic power.

We go back to the situation we had in the '80s and early '90s of lots of small parties competing against each other and we can kind of come in and manage them, that seems to be the idea, that we'll -- let the democrats split and we'll make Pheu Thai split, we'll force them, in some way, to split, by making people offers they can't refuse to join another party or something and then you result in a series of small parties instead of a two-party dominant system.

But at the moment, this still remains a kind of collective fantasy and we're not there yet. Whether we're going to get there will be very interesting to see.

MR. LIOW: A couple more questions. Yes, please.

MS. TYLER: Hi, my name is Sally Tyler. I'm a policy analyst for a labor union here. So, I had two questions in two kind of different subjects, one, you've done a good job of really highlighting how this seems to be an attempt to really permanently enshrine the military, so that's very clear, but I wonder if you could also speak about, as I understand it, the lifting of martial law has been -- made way for Section 44, to speak a little bit about how that -- what it does to due process and how that is a further permanent attempt in some ways.

And the other question is about relations with Cambodia, what you see as any ongoing cooperation or perhaps improved cooperation. During the Thaksin/Hun Sen years there was always a lot of suspicion there and has been fostered throughout, it seems to continue, and that allowed the Democratic Party to fan nationalism, it seemed,

a lot, to use it running up to elections.

Do you see in this current -- within the junta and going forward, a little more room for cooperation with Cambodia?

MR. McCARGO: Sorry, what was the first point again?

MS. TYLER: First point is Section 44 and --

MR. McCARGO: Yes, okay.

MS. TYLER: And what it's doing with due process in terms of continuing to have some military courts rather than civil courts, lack of appeal, et cetera, et cetera, et cetera.

MR. McCARGO: Yeah, now, well, the ending of martial law turned out not to mean a very great deal because martial law can just be replaced by something else, which, by the way, we happen to have in our back pocket the whole time. So, I mean, the use of martial law was very odd because martial law is supposed to be proclaimed only in individual districts where it's needed. There was never any understanding in the past that martial law could be proclaimed in every single district across Thailand, so it was a very peculiar idea in the first place.

People were focused on, you know, objecting to the Thai military's use of martial law. I mean, I understand why people engage in these campaigns and that the objective of trying to get the military to drop martial law is a good objective because they shouldn't be using marshal law. At the same time, this is an example of a legalistic response to people who are using law in any way that they like. This is nothing to do with law, it doesn't really matter whether it's Section 44 or it's martial law or it's whatever it is, they're just doing whatever they like and they will find some justification to do whatever they like under whatever guise, but they just now have the advantage of being able to

say, we're not using marshal law anymore. Yeah, but you're using something under another name which is actually worse.

So, no real surprises there. I've never been one of those who was so agitated about martial law because you could just see that if we move beyond marshal law, we're not going to -- you know, taking martial law out is not going to return things to normality when we have an interim constitution, which has these incredible powers that Prayut continues to exercise.

Yeah, the Thai-Cambodian relations thing is very complicated and I have also spent time in Cambodia and I still haven't completely got my head around it. In some ways, the Thaksin-Hun Sen relationship was the best period of Thai-Cambodian relations and, you know, in the aftermath it's all been very difficult because for -- what should we call them -- the morality controllers of Thailand, Cambodia became a red country, a pro-Thaksin country, so Cambodia is full of people who've run away from Thailand because they can't actually stay in Thailand anymore.

So, Laos became a yellow country, whether it really is or isn't, and Cambodia became a red country. So, what the Thais have done is project their own internal politics onto the politics of the wider region in an extremely peculiar way. You know, the Thai-Cambodian conflict illustrated the impossibility -- and this is why when people ask me about Thai foreign policy I struggle to answer because Thailand doesn't seem to have foreign policy in any very conventional sense. What you saw with the Thai-Cambodian conflict was the foreign ministry and the prime minister's office, Abhisit government saying one thing and talking about ASEAN and talking about observers and so forth, and the military in the end saying, no, we're not having any of this. This is our problem, you just go to hell.

And basically, the foreign ministry and the prime minister's office has no right to say anything in public about what's going on on the Thai-Cambodian border because borders are what we do. So, you've got three rival foreign policies, and that's something that happened right back to the 1980s with the Cambodian conflict where you can see the prime minister's office under Chatichai Choonavan pursuing one policy, the foreign ministry pursuing a kind of conservative, traditional policy, and the military pursuing its own extremely opportunistic, resource-driven policy.

So, it's hard to know what the stance of Thailand actually is towards its neighbors at any given time because there are multiple stances based on the different foreign policy actors. At the moment, the military is completely in the ascendant, so foreign policy is military policy, but the moment that we have a government again, the same kind of internal contradiction, is likely to open up, but it was very interesting that, you know, when there was this anti-foreigner rhetoric -- Thailand is in incredible denial -- by the way, do you know that Thailand's birthrate is the same as Japan, 1.41, it has an incredible falling birthrate problem. And if you look at the Japan graph, it just goes like this. If you look at the Thai graph, it goes like that.

Please do a Google search and look at the Thai birthrate graph. It's going through the floor. Without illegal migrant workers, primarily from Burma and Cambodia, Thailand would be completely impossible to operate as a country.

So, when Prayut made these anti-Cambodian statements in the few days after the coup, hundreds of thousands of Cambodians fled back to Cambodia and basically had to be begged to return. Please, all you illegal migrants that we've just insulted, come back and do our work or us because we've got nobody to do any domestic work, nobody to work on construction sites, nobody to do any agriculture, because Thais

don't do agriculture anymore, and so on.

So, there's an incredible level of denial that -- and Thailand's hardly the only country, my own country is currently going through -- Britain is going through this election where we have political parties campaigning on completely spurious anti-immigration bases as well. So, it's by no means unique to Thailand.

But Thailand really needs Cambodia and really needs good relations with Cambodia, and now all the Cambodians have come back and Prayut went and made his visit to Cambodia and made up with Hun Sen because they really can't afford to alienate the source of all these workers without whom Thailand actually can't function. And that was a reality check for the regime. You can engage in this nationalist rhetoric, but if you push it too far and they actually leave, you'll sink, you'll completely sink.

MR. LIOW: One more question. Yes.

SPEAKER: Hi. Nishad from the Institute of International Finance. Economic policy question. As you know, the rice subsidy program was part of Yingluck's undoing, very expensive and benefitted mainly the (inaudible) constituencies. Is there anything on the constitution or any policies you foresee to address kind of this appropriation issue that is very politicized?

MR. McCARGO: Yes. There's some stuff in there, and I can't remember exactly which clause it was, but there's discussion about monopolistic practices and measures to try to counter the emergence of monopolistic business and I could flick through and try to find it, but you can also probably find it yourself because the English version is now available online.

So, there is this rhetoric about trying to clamp down on abuses of power and monopolistic practices, and when we have all this talk about the National Morality

Council and so on, it's supposed to deal with exactly these things. If there's a policy, which is unfairly benefitting the nepotistic interests of politicians, then the National Morality Council is going to be able to demand a recall.

Although, curiously, the recall votes will take place at the next election and not right away because it would be too expensive to hold elections every time they want a recall vote. But you can see this -- potentially the National Morality Assembly is going to be wanting to recall a huge number of politicians, and that's supposed to put the fear of the lord Buddha into them and stop them from doing these kind of things.

But whether it will really work, I have to express my doubts.

MR. LIOW: Okay. Yes?

SPEAKER: (Inaudible) is going to happen in the next election, the candidates are going to be recalled or can they be candidates in that election?

MR. McCARGO: It looks like they can. This is one of the things I can't really understand about the draft. I've got to go back over those clauses again. But, yes. But I guess if they were recalled, then they would be kind of retrospectively impeached, so you get the same kind of -- maybe a parallel situation is the Yingluck situation where she's impeached and is no longer prime minister eight months after she was no longer prime minister anyway.

SPEAKER: In which case you have to organize new elections to fill those seats.

MR. McCARGO: Well, I think if you do it at the time of the election and the recall vote goes through, then those people will not be elected, but they will also be deemed not to have been in office or something. I haven't got to the bottom of this yet, but there's an attempt to insert a new level of demonization that goes beyond just losing

the election. They'll lose it, but they'll also have lost the right to have lost it.

SPEAKER: And one other quick clarification. The sunset clause, you said, five years, five years, possibly another five years. What is covered by the sunset clause? All these institutions that are being created?

MR. McCARGO: No, the 16 areas for reform and the reconciliation process. I'm not totally sure about the -- beyond -- what happens if it's extended, whether it can be extended beyond another five years. It's unclear, actually. It's not actually completely clear to me that the extension would be for five years. It could be possibly a shorter period of time.

MR. LIOW: I think it's a rocky road ahead for Thailand. We'll gather again in five years.

MR. McCARGO: That's right.

MR. LIOW: To do another --

MR. McCARGO: When those clauses have expired.

MR. LIOW: But until then, I think it was indeed a tour de force by Duncan. He has given us a lot to not just think about, but to look out for in the coming weeks and months as Thailand sort of bundles along.

But for now, please join me in thanking Duncan for a fantastic talk. And thank you again for coming.

(Applause)

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