

## **Security and Liberty in Thailand.**

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Since it's a Monday, many Thai residents in Bangkok are wearing their 'Long Live the King' polo shirts, and the students in my class tonight are no different: I face a sea of yellow to talk about American legal practice relating to the 4<sup>th</sup> Amendment's protections against unreasonable search and seizure. The lessons of the Framers, and of our constitutional cases, make for an awkward discussion, since these Thai law students are living through what we would call a "constitutional moment" as their predominantly Buddhist, peaceful culture struggles to reconcile recently imposed martial law, their nominally democratic constitutional monarchy and an increasingly divided society. They surely have as much to teach me as I have to offer them.

A year ago, when I first visited Thailand, the government of Thaksin Shinawatra faced street protests and media scrutiny over the recent sale of Thai satellites to a holding company controlled by Singapore. Prime Minister Thaksin was using aggressive tactics to fight Muslim extremism in the south, and people in Bangkok were becoming angry at what they perceived to be his corrupt and unaccountable regime. Within the year, with the blessing of their revered King, the military would step in to depose Thaksin and impose martial law. Now, with the insurgency in the south gaining strength, the country's military and civilian leaders are facing an extraordinary challenge: how to reinstate the democracy and reconcile the Thai people while continuing to ride globalization's unpredictable roller coaster.

A little background may help to make sense of the current situation: After the economic meltdown of 1997, when Thailand's currency and its economy were devastated by the abrupt flight of foreign capital, the country stepped back into the global economy with some caution. When Thaksin Shinawatra and his Thai Rak Thai (Thais Love Thais) party came into power, they aggressively courted foreign investment, which returned with a vengeance. Bangkok boomed, and the fruits of the economic policies that came to be known as "Thaksinomics" were used to fund a range of populist measures targeted to the rural areas of the country (coincidentally Thaksin's electoral base.) Government funds were used to provide inexpensive health care, and economic development projects including roads and electrification schemes were implemented. Thaksin and his party were overwhelmingly elected three times, and while there were some who argued that the country was traveling down an unsustainable path, their traditional Thai caution was dismissed as old fashioned and naïve.

Thaksinomics also included a generous dose of crony capitalism, so urban elites close to the Prime Minister and his party prospered. More and more everyday Thais began to see their democracy as being eroded by corruption at the top, as associates of Thaksin and his party made out like bandits while promoting unregulated economic development and the rapid reintegration of Thailand into the global economy. The final straw came when it was revealed that Shin Corporation, which was the Thaksin family media and telecom business, had sold itself to Temasek Holdings of Singapore in a transaction that netted Thaksin's family billions yet somehow managed to avoid any significant tax liability. Since the sale included satellite assets that Shin held as a result of sweetheart deals with the Thai government, street protests erupted, stoked by the opposition "People's Alliance for Democracy." It all came to a head last September when, sanctioned by the King, the military seized power.

Since the coup, Thai society is trying to return to democratic self governance, and a new constitution is currently being drafted and debated. Meanwhile, the military leaders are trying to calm things down in the south, so far without success. Indeed, the insurgency is gaining strength even as the government attempts to address the violence with peaceful means: the general in charge has explicitly implemented political and community outreach efforts to the Muslim communities in the south to try to empower the moderates and isolate the extremists. Unfortunately, a terrible climate of mistrust and fear has taken hold and Muslims and Buddhists are barricading themselves off from each other. The extremists are targeting the moderate Muslims who work with the government, in particular the primary school teachers and the health care workers. With schools and clinics being bombed, the villagers are setting up armed patrols and locking themselves in at night.

The people of Thailand's south as well as its north are understandably nervous: they yearn for prosperity, peace and democracy as much as anyone, but the threats to their security are all too apparent and each day brings new headlines about violence in the south and warnings about potential bombings in Bangkok. Even as they are rallying for peace and working to reestablish participatory democracy, they face an ongoing and apparently escalating threat of violence and destabilization.

As opposed to Thailand, in the US we still purport to have a functioning participatory democracy. Our recent elections held the promise of a new direction in our foreign and domestic policies, not to mention a long overdue congressional review of the actions of our current executive branch. These welcome policy debates are overshadowed, however, by a constant drumbeat of fear mongering, and the lame duck Bush administration seems hell bent on ignoring the recent repudiation of its unilateralist approach to global affairs. Now we are being primed for war with Iran, though how escalating that fractious relationship will do us any good is hard to imagine.

Some are saying that if the Taliban and Al Qaeda succeed in attacking us again, we could see mercenary Blackwater SUVs in our streets and the suspension of our democratic state – after all, we are not immune to the siren call to cede liberty for security in the face of enemy attack. How we respond to the threat –or God forbid the reality - of an attack will color how well we insure that our democracy survives these dangerous times. Our Framers deliberately enshrined in our founding constitutional order the notion of judicial protection from arbitrary military authority: the Fourth Amendment requires the government to constrain itself even as it fights lawlessness. Our scholars tell us that the essence of the 'Rule of Law' in a democracy is the requirement that the government "fight with one hand tied behind its back," and while surely we can all agree with Judge Posner that the Constitution is 'not a suicide pact,' we can also look at Thailand's situation and shudder: could we debate and ratify our Constitution today, in the midst of a "global war on terror"?