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# Explaining the Failure of Thailand's Anti-corruption Regime

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## ABSTRACT

Despite the presence of strong anti-corruption policies, state and regulatory capture may persist and thrive in the highest echelons of government. This article explores such a case, that of Thailand under former Prime Minister, Thaksin Shinawatra. The author argues that the primary explanation for this contradiction lies in Thailand's post-1997 anti-corruption framework. Because of the ascendancy of a business-politics nexus more powerful in blocking reform than Thai constitutional drafters had anticipated, and because of the decline in political contestability as a result of Thaksin's control of both the legislature and the executive, the stage was set for a dramatic increase in the levels of state capture. The author suggests that effective control of such political corruption calls for a strategy which extends far beyond the technocratic approaches used by Thai reformers in the mid to late 1990s.

## INTRODUCTION

'...corruption will not go away in Thailand. It is in the system.'  
Thaksin Shinawatra<sup>1</sup>

Corruption is a catch-all term that embraces a wide array of illicit and mostly particularistic behaviours including bribery, extortion, fraud, nepotism, graft, speed money, pilferage, theft, embezzlement, falsification of records, kickbacks, influence-peddling and so on. It has been widely studied and its various causes and effects on public and private life are well documented. Although several notable writers have suggested that, under certain circumstances, corruption may actually be beneficial (see for

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1. Thaksin Shinawatra, responding in an interview to accusations that he presided over a corrupt government. For full interview, see Beech (2006: 17).

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example Dwivedi, 1971; Huntington, 1968: 69; Leff, 1965; Nye, 1967), other scholars have been more circumspect, arguing that corruption will have differing socioeconomic effects depending on the political context (Gould and Amaro-Reyes, 1983; Khan, 1996; Mueller, 1989; Scott, 1967).

Most studies, however, hold that corruption has enduring deleterious effects, particularly when it involves the upper echelons of government (Caiden and Caiden, 1977; Krueger, 1974; Werlin, 1973). In the words of Myrdal (1968: 932), corruption is 'a force slowing down development'. Various studies have detailed how corruption can, among other things, undermine a country's policy and regulatory processes, disrupt the transparent and normal operation of markets, and subvert development plans and resources that may otherwise be invested productively (Bardhan, 1997; Bhagwati, 1974; Khan, 1996; Rose-Ackerman, 1979, 1999; Schakleton, 1978; Tanzi and Davoodi, 1998).

This article explores the paradox of how political corruption — normally defined as the misuse of power by government officials for illegitimate private gain — can thrive despite the existence of fairly comprehensive anti-corruption mechanisms, themselves often part of a larger and more extensive web of 'good governance' institutional arrangements. Using the case of Thailand during the administration of its former Prime Minister, Thaksin Shinawatra, the article suggests that a country's anti-corruption policies can prove woefully inadequate in certain cases, for instance when a powerful business-politics nexus is able to capture key state and regulatory processes, enabling it to block new reforms, stifle the enforcement of existing laws, or both. When that is combined with a decline in political contestability (due, in this case, to a dominant party's near-stranglehold of key political institutions), the country may experience dramatic increases in the levels of state capture. Unlike the common image of corruption — a fraudulent policeman or a bribe-taking taxman — this type of political corruption can cause potentially greater damage to a country, as the very rules of the game become biased towards a powerful elite. When anti-corruption efforts are unable to focus squarely on the problem of state and regulatory capture, as well as on the effective implementation of any previously adopted administrative corruption mechanisms, the country's potential for making progress in the fight against corruption is greatly undermined, particularly as political actors cynically and expertly exploit loopholes in what could arguably be some of the best crafted 'good governance' repertoires.

Given that it is, by definition, criminal, and thus generally a hidden activity that typically remains secret until scandals erupt, political corruption is a very challenging phenomenon to quantify. The lack of empirical evidence with which to delineate it is problematic in many ways. Not only does it make it difficult to explain in detail the nature and impact that such corruption has in any society, but it also poses the risk that vague references to corruption can be used to explain political phenomena that are simply too hard to disentangle from irregular political processes (Perry, 1997: 9). Is it possible to make

claims about changes in the pattern of political corruption in any country if the phenomenon can only rarely be observed directly? Many scholars believe so. Nonetheless, since one can only make inferences about corruption by studying the political context in which it occurs, and using the little evidence that does exist, it remains an indirect and somewhat speculative approach.

When studying the processes by which particularistic advantages are created and allocated by governments, academic literature often includes insights from two other inter-related phenomena — rent-seeking and clientelism. The presence of rents gives rise to incentives and opportunities for political corruption as well as other rent-seeking phenomena. Rents can thus be seen as explanatory factors for corruption. The kind of rent-seeking behaviour relevant to this article is that which creates profit opportunities from decisions by government. For example, a public agency may restrict certain kinds of businesses to a handful of operators thereby creating oligopolies or even monopolies, and granting privileges to the oligarchs and monopolists at the expense of customers, potential competitors, and so on. State-regulated monopolies, licensing, rationing, regulations, tariffs, quotas, and other measures by which the state restricts the free operation of markets, create so called 'rent havens', which can be 'captured' by some combination of well-placed businesspersons and bureaucrats (Hutchcroft, 1997). In order to capture rents, actors in public and private sectors alike engage in a range of mostly wasteful rent-seeking activities, both legal (such as lobbying) and illegal (such as bribery) (Mueller, 1989: 229–46). For its part, clientelism involves a distinctive kind of power arrangement whereby persons of higher social status (patrons) are linked to those of lower social status (clients) in personal ties of reciprocity that can vary in content and purpose across time (Hutchcroft, 1997). While such relationships need not necessarily be corrupt in nature, they lend themselves to corruption when patrons are in a position of public office, or when patrons are able to extract favours from those in public office.

Taking the case of Thailand under Thaksin, this article explores how political corruption thrived in the presence of strong anti-corruption policies. A case-based approach was chosen, in the first place, for its explanatory capability. Furthermore, it is a valuable method when the investigator has little control over events or, in the words of Yin (1994: 1), when the focus is on a contemporary phenomenon within some real-life context. The goal of this article is not analytical generalization, but rather analytical particularization. Because it focuses on a historical phenomenon (political corruption) within a macro-level context, some caution is warranted in the sense that the discussion tends towards the abstract, and less towards the concrete and directly observable that is the hallmark of the typical case study.

Some might question the article's particular focus on Thaksin, when political corruption is said to be endemic in Thai politics. Thaksin stands out for various reasons. From his metamorphosis from a little-known police colonel

into Thailand's only prime ministerial candidate, who went on to win the first ever absolute majority in Thai political history, Thaksin's career showed that he preferred to write his own rule books rather than abide by prevailing conventions. Although he was (ironically) forced out of power in a coup d'état in 2006, Thaksin had risen to become Thailand's most popular leader (as well as one of Southeast Asia's most controversial politicians) in recent decades. With his larger-than-life personality and, some would say, arrogant behaviour, behind-the-scenes wheeling and dealing seemed as important to Thaksin as what was presented to the public. Perhaps to a greater extent than ever before in recent Thai history, Thai democracy under Thaksin privileged a corps of business groups who took control and monopolized political power through the ballot box, championing a pro-poor, populist agenda that appealed to a grassroots electorate not used to getting its fair share of the country's economic pie. This enabled Thaksin and his associates not only to reap colossal rents, profits and graft, but also to commit and get away with far-reaching abuses of power and human rights.

Before examining some of the factors that may explain the alleged systemic political corruption that characterized Thaksin's Thailand, the article first provides some contextualization, beginning with a brief discussion of anti-corruption programmes in much of the developing world today, linking them specifically to the 'good government' and 'good governance' paradigms, and suggesting why most of them fail to curb state and regulatory capture. The subsequent sections discuss political corruption in Thailand, particularly during the 1980s and 1990s, in order to place Thaksin's regime in a broader context, and summarize Thailand's anti-corruption institutional framework, installed in the late 1990s. The main argument of the paper is then advanced — that Thailand's comprehensive post-1997 integrity and anti-corruption framework was from the very beginning ill-equipped to deal with the Thaksin phenomenon.

#### **ADMINISTRATIVE CORRUPTION, STATE 'CAPTURE' AND 'GOOD GOVERNANCE' IN CONTEXT**

Scholars routinely draw distinctions between different kinds of political corruption and have created entire typologies to make better sense of the phenomenon. Although the various typologies are impossible to enumerate here, common distinctions in the literature include 'systemic' versus 'individual' or 'opportunistic' corruption; 'grand' versus 'petty' corruption; 'good' versus 'bad' corruption; 'centralized' versus 'decentralized' corruption; and 'administrative corruption' versus 'state capture' (Huntington, 1968; Nye, 1967; Thomas and Meagher, 2004).

The latter taxonomy — 'administrative corruption' versus 'state capture' — is quite helpful here. It is commonly used in both practitioner and academic literature on political corruption as a practical heuristic device to

highlight analytically, and at times empirically, the differences in corruption patterns across as well as within countries (for example, Fogel, 2006; Hellman et al., 2000, 2003; Hellman and Schankerman, 2000; Lancaster and Montinola, 2001; Philp, 2001; Thomas and Meagher, 2004). In general, administrative corruption refers to the use of illicit favours to distort the implementation of existing policies whereas state capture refers to collusion between private and public agents, with the former providing illicit favours to the latter in order to influence the formulation of laws, regulations and policies, and to secure special advantages.

Countries can by and large be divided into four categories, according to the relative levels of state capture and administrative corruption (World Bank, 2000). One category is considered to have both types of corruption but at manageable levels; a second category includes countries where the central problem is administrative corruption, while the state is less subject to capture by the private sector. A third group of countries have largely been able to contain the level of administrative corruption, but within a context of high state capture. The final category represents those countries where both extreme state capture and administrative corruption are serious problems.

Obviously, the typology is not dynamic and can only represent corruption patterns statically at a given time. A more dynamic typology would allow for different patterns of development concerning corruption, as well as various evolutionary paths across those patterns. A country may register progress in one dimension of corruption while lagging or falling behind in another, or may even move ahead on both fronts concurrently. For example, Southeast Asia's rapid economic development over the last several decades is usually said to have engendered excellent conditions for both state capture and administrative corruption, the levels and extent of which have varied across countries, and even within countries over time, based on a complex set of interactions and lines of causality at different stages of the countries' development (see, for example, Khan and Jomo, 2000; Lim and Stern, 2002; Marsh et al., 1999; Quah, 1999). Countries where national wealth has generally been concentrated in a few key productive sectors have faced greater risks of powerful interests seeking to gain control over them, even while those interests have also 'invested' some of their gains in a bid to sustain and entrench their positions. Similarly, the sophistication of the public administrative machineries that countries have inherited from earlier eras, as well as the depth and strength of social networks and civil society in those countries, all have an impact on the level of administrative corruption and state capture in the institutional arrangements that have ensued.

As attention has increasingly been directed towards the corrosive effects of both administrative corruption and state capture in recent years, many countries have enacted anti-corruption policies, often part of 'good government' or 'good governance' reforms said to be pivotal to the development

process.<sup>2</sup> Good government, the argument goes, is not an end in itself, but rather an essential condition toward the wider goal of ‘good governance’. This is the other anchor of much of the anti-corruption literature; it is seen as concerning not just the organization and activity of government but also the ends to which both of those are working, in terms of achieving levels of economic, human and institutional development (World Bank, 1991).

For its part, good governance — another mostly normative framework — involves governmental arrangements accepted by participatory publics as legitimate, responsive to the preferences of the population and dedicated to improving public welfare, capable of managing law and order and delivering public services, and providing effective policy environments and open-handedness in conduct (see, for example, Ginther et al., 1995). In addition, such a system of government is seen as disengaging itself from direct involvement in other areas, particularly economic production, and concentrating instead on societal priorities. That argument, with its undisguised neoliberal bent, usually also suggests that once political reforms are in progress and centrally controlled economies dismantled, liberal market principles can then begin to advance economic development, which in turn should promote participation in political processes (Doig and Riley, 1998: 47). The culmination of this argument entails economic and political objectives complementing each other to work toward an educated populace with both political knowledge and the will to act, coupled with modern industrial economies and deep-rooted democratic political values.<sup>3</sup>

What is important for our purposes, is that whereas the good government and good governance literature tends to suggest that anti-corruption strategies should be situational, with variations based on the weaknesses of specific environments, the standard advice coming out of both these frameworks has mostly focused on measures geared toward addressing administrative corruption, at least in practice. Anti-corruption strategies based on either of these frameworks typically focus on one or more of the following recommendations: (i) formation of anti-corruption agencies; (ii) reliance on public opinion surveys; (iii) raising of public sector wages; (iv) reduction in the size of the public sector; (v) strengthening of financial accountability; (vi) increases in media freedom; (vii) strengthening of judicial independence;

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2. The ‘good government’ framework — mostly normative — is expected to include several key components: (i) political legitimacy for the state through democratic elections and the transfer of power, and an effective political opposition and representative government; (ii) accountability through transparency and the provision of information; (iii) separation of powers; (iv) effective internal and external audits; (v) effective means of combating corruption and nepotism; (vi) official competency, such as trained public servants; (vii) realistic policies and low defence expenditure; (viii) human rights as indicated by freedom of religion and movement; (ix) impartial and accessible criminal justice systems; and (x) the absence of arbitrary government power (Doig and Riley, 1998; Kaufmann, 2001).
  3. Admittedly, this is a disputed contention; see, for example, Bukovansky (2006); Nanda (2006).

(viii) boosting citizen participation; (ix) decentralization; (x) changes in bureaucratic culture.

However, there is mounting evidence that anti-corruption policies and mechanisms — even those that are steeped in the good government and good governance frameworks — often fail, and at times fail miserably. In some instances, policy makers have no intention of reforming the status quo, particularly when predatory elements within and outside government are engaged in looting the economy, and an appearance of reform allows policy makers to postpone far-reaching change. At other times, risk-averse policy makers are reluctant to enact meaningful reforms that might jeopardize domestic interests or constituents who profit from systemic corruption. Elsewhere, particularly for really poor governments requiring international investments and aid, anti-corruption efforts could simply be efforts to satisfy international donors and mollify domestic calls for reform in the short-term. In other circumstances — as we shall see shortly in the case of Thailand — political authorities operate in a system of so-called crony capitalism in which a circle of individuals close to the centres of state obtain extensive economic favours that allow them to extract profitable rents at higher rates than normal competitive markets would allow.

The next two sections outline, respectively, the nature of political corruption in Thailand, particularly in recent years, and the key elements of Thailand's extensive web of integrity, anti-corruption and good governance institutional arrangements encapsulated in its 1997 Constitution.

## **POLITICAL CORRUPTION IN THAILAND**

Corruption in Thailand has long been recognized as deep-rooted, diverse and complex in form, constantly adapting to the rapidly changing political, economic and social environment (see, for example, Doner and Ramsay, 1997; Nattakrit, 1996; Nishizaki, 2005; Pasuk and Sungsidh, 1994; Rock, 2000). A number of scholars (including Ingram, 1971; Myrdal, 1968: 394; Neher, 1976, 1977; Thinapan, 1977; Waterbury, 1973) have examined political corruption in Thailand's public sector, particularly in its historically powerful bureaucracy, and noted how corruption played a prominent role in shaping Thailand's political and economic life in much of the twentieth century. More recent work (including Arghiros, 2001; Callahan, 2005b; Ockey, 1994; Pasuk and Sungsidh, 1994; Pasuk et al., 1998) have detailed the collusion and political corruption between government and business which is at the core of Thailand's democratic system and often involves intricate business networks and even illegal business.

It is generally agreed that political corruption in modern-day Thailand is closely related to the country's political instability — demonstrated, for example, by the numerous prime ministers, coup d'états and constitutions which Thailand has had during much of the post World War II period, and

particularly during the 1980s and 1990s. The fluidity and instability of national politics meant that political actors were unable to guarantee the survival of many policy arrangements beyond the life-span of a particular government. Changes in government would be followed by scrutiny of major infrastructure contracts and government concessions handed out by previous governments to connected firms and individuals.

Another factor behind Thailand's political corruption has been the gradual but steady decentralization of the country's broader political system to allow for a growing number of social groups to gain access to the levers of power. This is in contrast to Riggs's (1966) classic characterization of Thailand as a 'bureaucratic polity' in which political struggles occurred almost exclusively within the state hierarchy. Starting in the 1970s, and certainly by the late 1980s, the country witnessed the rise of civilian political parties as potent political forces, and of political electoral politics as a means of interest articulation and contest. Actors from outside the bureaucracy, including groups from agriculture, labour and business, started participating in political life in more meaningful ways. Political parties, in particular, came to represent the interests of a powerful new extra-bureaucratic economic and political elite — mostly Sino-Thai businessmen and the so-called *chao poh*, or provincial, mafia-like bosses. The bureaucratic and military elites now had to compete with civilian politicians (Lim and Stern, 2002; Ockey, 1993; Pasuk and Sungsidh, 1994). This gradual democratization of Thailand, culminating in the establishment of civilian government in 1988, not only increased the number of legitimate political actors in the country's political system, but also chipped away at the ability of the bureaucracy to keep rents for members of its own group. Civilian politicians who had hitherto been insignificant outsiders suddenly became powerful insiders, so that the allocation of lucrative rents had to be shared between the bureaucratic elite, connected business moguls and the *chao poh*. The new situation also meant that the *chao poh* had to alter their *modus operandi* for rent seeking, from relying primarily on traditional prestige and authority in 'delivering' rural votes based on personalistic patron–client arrangements, to actually 'buying' votes not only in hamlets and villages, but entire towns, provinces and even regions. This required expenditure on an unprecedented scale (Neher, 1996; Ockey, 1993; Sidel, 1996). The practice of vote-buying not only put immense pressure on political incumbents and new candidates alike to exchange cash for votes; it also put corporate interests at the forefront of this new 'money politics' that required them to spend large sums on any number of parties to either preserve their political connections or ensure existing rent arrangements.

It is against that backdrop that the rise of Thaksin Shinawatra can best be understood. His chameleon-like nature first emerged when he resigned from the police in 1987 and used his police connections to establish a software marketing company named after himself, the Shinawatra Company, which was subsequently granted a lucrative but controversial 20-year cellular network concession by the then military government. He went on to build



one of Southeast Asia's largest telecommunication conglomerates. By the early 1990s, however, the military had returned to the barracks, and concessionaires like Thaksin had to either look to new civilian politicians for the continuation of their lucrative business arrangements with the state, or become politicians themselves. As an extremely wealthy mogul who had conquered the business world and was equipped with a doctorate in criminal justice from the USA, Thaksin turned to politics in 1994 (Ukrist, 1998; Ungpakorn, 2002). Under the aegis of the now defunct *Phalang Dharma* party, Thaksin first served briefly as the information minister — the minister directly responsible for his own line of business, telecommunications. Following the Asian financial crisis, during which he had abstained from direct participation in a political party, Thaksin re-entered politics in 1998, started a new party, *Thai Rak Thai* (Thais Love Thais), and launched the first of his bids for the premiership. Thaksin made history by leading his *Thai Rak Thai* (TRT) party to overwhelming victories in two back-to-back elections in 2001 and 2005<sup>4</sup> (Kuhonta and Mutebi, 2006; Nelson, 2002). Under Thailand's parliamentary system, Thaksin's majority virtually ensured his long-term position as prime minister, and gave him an even firmer grip on the various political and socio-economic organs of the state than many of his thirty or so predecessors (Chambers, 2005; Ganesan, 2004; Hicken, 2006; Ockey, 2003).

The key to Thaksin's electoral appeal was his populist economic platform, dubbed 'Thaksinomics'. Primarily designed to support farming and cottage industries and to boost the incomes of the country's downtrodden, the policies quickly turned him into something of a popular hero. Not only was he hailed by his admirers as a decisive, no-nonsense leader who had restored Thai pride by lifting his compatriots from the despondency of the Asian financial crisis; his leadership was also seen as critical in the impressive economic mini-boom that occurred during his time in power. In his first term, for example, Thailand's GDP surged by 22.2 per cent — at the time, this was the second fastest rate in East Asia, after China. To his detractors, however, Thaksin was a semi-autocrat who ran roughshod over opponents and relentlessly extended his own power, a leader who sat at the apex of 'money politics' and presided over an administration that had largely been captured by business interests close to him (see, for example, Kurlantzick, 2003; McCargo, 2002; Ockey, 2004).

Ironically, pre-Thaksin Thailand had seen promising trends in which political corruption, though not necessarily reduced, had been brought more

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4. During Thaksin's first term (2001–05), his government consisted of several coalition parties including several large ones: the New Aspiration, the Chat Thai, and the Chat Pattana parties. The New Aspiration and Chat Pattana parties were later dissolved and merged into Thaksin's TRT party. Several powerful factions from the Chat Thai party, notably the so-called Chonburi and Buriram factions, were also compelled to join Thaksin's party. As a result, the TRT won an overwhelming majority in the February 2005 elections, and was able to form a one-party government.

into the open. This was mainly the result of various awareness-raising campaigns organized by local and international civic organizations, as well as the country's increasingly dynamic media, which thrived in the wake of a coup in 1991. That coup removed from office a government that was considered to be excessively corrupt, with the coup leaders citing corruption as the main reason for their putsch. When Thailand adopted a reformist constitution in 1997, the document encompassed not only most of the standard provisions said to underpin good government and good governance, which one finds in the constitutions of most Western liberal democracies, but it specifically included provisions for increasing transparency and probity in public officialdom. In particular, the constitution required the establishment of a number of independent agencies to provide checks and balances in the political system. This was primarily meant to lead Thailand towards a less corrupt and better-governed society.

However, under Thaksin — who had ridden to power on the coattails of that 1997 constitution — Thailand's new public integrity and anti-corruption institutions, laws and regulations turned out to be spectacular disappointments. Many of the fledgling independent institutions mandated by the constitution struggled to establish their authority and credibility (Callahan, 2005a; Ockey, 2003; Ungpakorn, 2002); at the same time, Thaksin and his close interests were accused of insidious forms of political corruption (see, for example, Bidhya, 2004; McCargo and Ukrist, 2005; Pasuk and Baker, 2004).

This is not the place to detail the various corruption scandals that dogged Thaksin and other leading public figures close to him, but one case early in his premiership is symbolic of the kind of politics he represented. As deputy Prime Minister in 1997, Thaksin had been charged with failing to declare assets after officials discovered shares from his corporation, worth a large fortune, in the bank accounts of his maid and his driver. As Prime Minister, a guilty verdict from the country's Constitutional Court would carry the real possibility that his tenure would be cut short. Thaksin defended himself by blaming his wife and claiming that his actions were in any case commonplace (for details, see Pasuk and Baker, 2004: 1–7). In the weeks leading up to the verdict, Thaksin essentially ran a campaign against the country's highest court, crisscrossing the country and telling his party's rural base that he and he alone could make Thailand prosperous. The implication was that, were court to rule against him, his voters should not stand for it (Greenfield, 2001). Indeed, some in his TRT party even warned of mob violence in the event of a guilty verdict. The ensuing verdict was predictable: the seemingly invincible new Prime Minister beat off the charges by a slim majority of one vote (seven to six). His critics allege that rather than being shaken by the close call, Thaksin was instead emboldened and then set out to pursue not only his populist and strong-man economics and politics, but also policies that specifically benefited his own companies as well as the business interests of those around him (Ukrist, 1998).

**THE INTEGRITY AND GOOD GOVERNANCE REPERTOIRE  
IN POST-1997 THAILAND**

It is not possible in an article of this scope to disentangle the intricate interactions and lines of causality that have shaped the development of Thailand's integrity and anti-corruption institutions over the last several decades. However, we should note that Thailand's anti-corruption laws generally reflect the character of the country's various short-lived administrations. Accordingly, they are far from coherent and fail to reflect a single national approach with regard to curbing corruption, with some administrations allowing for more discretion than others in the determination of corrupt practices.

Prior to 1975, investigating and fighting corruption had mostly been the responsibility of regular government agencies (mainly the police) who relied on the criminal law and an assortment of regulations applicable to public officials who, if found guilty, would face disciplinary reprimand. After the public uprising against the government of 14 October 1973, there was a crisis of confidence in Thailand's public institutions. This compelled the promulgators of the 1974 Constitution to target the issue of corruption for the first time. The constitution stated that 'the State should organize efficient systems of government . . . and should take all steps to prevent and suppress the quest for benefits by corrupt means'. In 1975, a Counter-Corruption Act was promulgated and a specialized agency, the Office of the Counter-Corruption Commission (OCCC), was established to carry out the legislation.

Between 1975 and 1999, the OCCC operated as a special government unit within the Office of the Prime Minister. However, levels of corruption remained high, thanks to the absence of a code of ethics for public officials, a generally tolerant environment for corruption, ineffectual enforcement, inadequate co-ordination of anti-corruption efforts, and the close relationship between the OCCC and the executive branch. Furthermore, there was general public mistrust concerning the OCCC and other integrity agencies, in particular the criminal justice system (on this, see UNDP, 2005).

As noted above, Thailand's contemporary anti-corruption repertoire is largely anchored in the country's 1997 Constitution, written by a generally non-partisan assembly, selected after the political upheavals of the early 1990s. This constitution, which contains thirty-three articles, includes provisions similar to those in the constitutions of Western democracies. It led to the restructuring in both the public and non-public sectors, including the legislature, electoral system, judiciary, cabinet, bureaucracy, and so on. The Constitution Drafting Assembly (CDA) was composed of various elite factions, some of whom had only reluctantly joined the reform bandwagon

(see Freedman, 2006).<sup>5</sup> However, the CDA also included some genuine reformers who set out to tackle the problem of political corruption head-on. The reformers in the CDA laid the foundation for the eventual introduction of global best-practice good government and good governance technocratic anti-corruption measures.

To ensure transparency and accountability, the 1997 Constitution established several new oversight institutions that were independent of executive interference, or restructured existing ones to make them so. Among the most notable were those aimed at balancing and controlling administrative power, including a Constitutional Court, Administrative Courts, a National Committee on Human Rights, a State Audit Commission, and an Ombudsman. Other institutions were aimed at checking political power, including a National Election Commission (EC) whose rulings were beyond appeal, and a National Counter Corruption Commission (NCCC) composed of various administrative bureaus.<sup>6</sup> Table A1, in the Appendix, summarizes the key functions of each of these institutions. In addition, the new constitution mandated, for the first time in Thailand's history, that the 200-member Senate would be directly elected, and that senators would be non-partisan. This was aimed at increasing the Senate's oversight role of both the Executive and the House of Representatives.

Further measures to improve governance in Thailand were encapsulated in new set of guidelines, the Regulations of the Prime Minister's Office on Good Governance, in 2001. These guidelines sought to promote transparency in government, improve the quality of public services, and strengthen integrity in public life, with the ambitious aim of preventing corruption, misconduct and malpractice for personal gain in both the public and private sectors, as well as creating a sense of mutual responsibility towards society. The 'Rule of Integrity' and the 'Rule of Value for Money' were also included in the Regulations as key good governance goals. Many of these measures were themselves linked to much larger civil service reform efforts enacted in the aftermath of the 1997 Asian financial crisis. The civil service reforms involved various external actors, including the two Bretton Woods organizations and other multilateral and bilateral partners, providing technical assistance with Thailand's anti-corruption strategies (Painter, 2006).

A number of other laws were already in place to regulate the conduct of public employees. These included the Civil Service Act (1992); the Act

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5. The CDA was led by two distinguished Thai statesmen, Uthai Pimchaichon and Anand Panyarachun, and included some 99 representatives, 76 delegates from each of Thailand's provinces, 8 public law experts, 8 political and public administration experts, and 7 officials with experience either in drafting constitutions and laws, or in bureaucratic regulation.
  6. In addition to administrative units, NCCC comprised seven main bureaus: Corruption Prevention Measures; Public Relations and Ethics Promotion; Policy and Planning; Corruption Suppression in Local Government and the Social Sector; Corruption Suppression in other sectors; Asset Inspection; and Legal Affairs.

Governing Liability for Wrongful Acts of Competent Officers (1996); the Whistle Blower Protection Act (1997); the Thai Official Information Act (1997); the Organic Law on the Election of Members of the House of Representatives and Senators (1999), which contained regulations on electoral fraud and corruption; the Act Regulating Offences Relating to the Submission of Bids or Tender Offers to Government Agencies (1999); and the Act on the Management of Partnerships and Securities Owned by Ministers (2000).

In comparison with many of its Southeast Asian neighbours, what set pre-Thaksin Thailand apart may not have been the relatively modest political corruption challenges facing the country, but the level of development of many of its key institutions and measurements to confront these challenges. These included the evolving system of institutional restraints within the state mentioned above, as well as fairly well-developed public administration institutions, a civil society that was beginning to grow in sophistication and strength, particularly following the 1991 coup, a relatively dynamic independent media, more robust political competition than before, and an increasingly sophisticated electorate. One could argue that the problem of corruption in Thailand in the 1990s had greater exposure and hence greater public recognition than in many other countries.

By the late 1990s, then, Thailand had in place — at least on paper — some very strong institutional arrangements for reducing certain forms of political corruption and for promoting good governance. The new integrity framework was intended to increase transparency in the public sector, promote integrity among public servants and reduce corrupt practices, as well as building and empowering domestic constituencies that would, in turn, generate sustained demand for anti-corruption measures and good governance. The 1997 Constitution was seen as providing critical tools for public monitoring and accountability that would be essential for placing constraints on politicians and bureaucrats. These tools would also underpin a degree of state capacity that enabled politicians to assert greater control within public bureaucracies if they choose to do so.

This was the regime that Thaksin's TRT party inherited when it came to power in 2001. Why, then, is his administration believed to have presided over widespread corruption? Why, in particular, did the reformist constitution of 1997 fail to reduce political corruption? The next section proposes a possible explanation for this contradiction. It argues that the circumstances that allowed state and regulatory capture at unprecedented levels under Thaksin had two key elements: a business-politics nexus more powerful than ever before, and reduced political space and contestability. It is these two elements that combined to allow for the seeming paradox of the persistence of high levels of political corruption in the presence of strong anti-corruption measures.

## **EXPLAINING THE FAILURE OF THAILAND'S POST-1997 ANTI-CORRUPTION REGIME**

Although there is a wide range of models for structuring anti-corruption efforts, most share the key goals of enhancing state capacity and public sector management, strengthening political accountability, enabling civil society, and increasing economic competition. However, many anti-corruption efforts fail primarily because they are too narrowly focused and do not target broader structural relationships, including the internal organization of countries' political systems, relationships among core state institutions, interactions between state organs and private firms, and relationships between the state and civil society (Huther and Shah, 2000; Larmour and Wolanin, 2001). An important factor in the success or failure of any reform, is the range of relationships between the various interest groups in favour of, or opposed to, the measures and other state and non-state actors. Powerful interests that face significant losses from reforms will invariably oppose them, and often deploy their resources to contest any changes to the status quo (Grindle and Thomas, 1991; Waterbury, 1973). In weak democratic polities, reformers are often politically weak and ineffectual, in part because they rest on broad and unstable coalitions dependent on the goodwill of numerous state and non-state actors, many of whom are wary of change. Sustaining a supportive coalition in such conditions where political will is unpredictable and transient, and reformers are weak and can be neutralized, can spell disaster for campaigns against political corruption (Theobald, 1990).

There are two key elements behind the failure of Thailand's post-1997 anti-corruption efforts and the increase in state and regulatory capture: first, the rise of a powerful business-politics nexus which proved to be more powerful in blocking reform than the country's constitutional reformers had anticipated; and second, a noticeable decline in political contestability that ensued from Thaksin's political party's virtual stranglehold of the legislature as well as the executive.

As noted earlier, some of the most powerful vested interests in Thailand, as in other parts of the world, feature the interaction of businessmen and politicians, with the former 'purchasing' opportunities and favours that only the latter can provide (Doner and Ramsay, 1997). In many parts of Southeast Asia that nexus of big business and public servants is linked to well-connected family dynasties who, through their power and influence, control politics (Hutchcroft, 1997; Kang, 2002; Kidd and Richter, 2003; Lim and Stern, 2002). Thaksin added an extra dimension: rather than remain on the sidelines and selectively 'purchase' opportunities and favours from politicians, he became a politician himself and literally took over government (Pasuk and Baker, 2005b: 61-5, 67-8). This is not to suggest that the business-politics nexus has necessarily been a negative phenomenon in Thai politics. In Thailand as in many high-growth East Asian countries, close interactions between big business interests and politicians are so commonplace that

they have been said to engender positive effects, for example, in enhancing policy co-ordination and ensuring that market regulatory reforms and other economic measures meet the needs of business. Doner and Laothamatas (1994), for example, studied the joint public–private sector consultative committees in Thailand in the 1980s, where businesses could raise concerns about credit limits, government effectiveness, taxes, and export incentives. By providing access and meeting some business demands, this helped to secure support for other reforms, including painful stabilization. Ironically, the significant GDP growth recorded during Thaksin's first term — a level of growth that indicated a recovery which few people had expected — may very well have been facilitated by such interaction. The interesting question here is how such positive business–government consultation crossed the line in Thaksin's Thailand to become state capture. There are no clear answers.

What is clearer is that the main obstacle to further progress on anti-corruption reform during the late 1990s lay not so much in the weakness of state institutions, but rather in the nexus of powerful business interests and the private interests of influential politicians, with Thaksin at their apex (Imai, 2006; Ukrist, 1998). Thaksin's TRT government was basically a coalition of some of Thailand's major business groups who had 'entered politics in order to use state machinery to protect domestic capitalism in the face of global forces, and to block internal pressures to reorient the state toward alternative agendas' (Pasuk and Baker, 2005b: 67). Following the reforms inaugurated in the wake of the financial crisis of 1997, the capacity of these powerful vested interests to influence the country's fast-changing legal, legislative and regulatory frameworks appears to have outpaced the constraints imposed by competing interest groups, civil society and Thailand's reasonably strong public administrative system (Wingfield, 2002). National efforts to reduce corruption never moved beyond a narrow response to old forms and manifestations of corruption, to embrace a broader approach specifically targeted at the increasingly powerful business–politics nexus. This meant that the underlying causes of political corruption were never tackled.

The contention here is that the anti-corruption institutional framework set up in the late 1990s failed largely because the extent of state capture that ensued during the Thaksin era simply overwhelmed it. Using the typology of administrative corruption vs state capture presented earlier, Thailand's pre-Thaksin integrity and anti-corruption institutional structure belongs in the medium state capture/high administrative corruption segment, the second of our four categories. However, the kind of highly concentrated economic interests which were present in Thailand during Thaksin's term in office — interests capable of blocking reforms, as well as the generally restricting channels of access for countervailing interests — could be more appropriately placed in the fourth category. To be effective, anti-corruption strategies for countries facing this level of state capture ought to focus on breaking the hold of vested interests on the process of reform (see World Bank, 2000). This did not happen under Thaksin.

The second key element was that the authoritarian tendencies of Thaksin's regime did much to reduce political contestability in the country (McCargo, 2002; Pasuk and Baker, 2005a). While there is no definitive link between regime type and reform policy outcomes, there is some evidence, notably in the literature on the implementation of reforms, that suggests that more democratically open regimes provide more opportunities to a wider range of actors to pursue policy change than do authoritarian regimes dominated by a closed circle of elites (Brinkerhoff, 1996). Leaders of regimes with authoritarian tendencies are less likely to tackle corruption seriously, and less likely to motivate citizens to articulate concerns about corrupt behaviour. On the other hand, more open regimes usually institute the basic elements of rule of law, accountability, transparency and access, at least to the extent that they have effective democratic governance systems. Active competition and accepted rules of accountability make it more difficult for any individual, faction or interest group to dominate politics or the economy, while clearer distinctions between those two areas check the worst types of abuses. Leaders of more open regimes are often more willing to address corruption, and more likely to seek and obtain the support of other societal groups for anti-corruption activities.

Whatever label one uses to describe Thaksin's regime, there is little doubt that his administration demonstrated greater authoritarian inclinations than those of his immediate predecessors (Ganesan, 2006; Simpson, 2006). Violations of Thailand's democratic institutions during Thaksin's tenure as prime minister were so frequent that Thailand was often portrayed as failing to meet conventional minimum standards for a true democracy (McCargo, 2002). Levitsky and Way (2002: 51–4) coined the term 'competitive authoritarianism' to describe Thaksin's Thailand. In this type of regime, violations of democratic criteria are both frequent and serious enough to give the incumbent an unfair advantage over the opposition. The incumbent routinely abuses state resources, harasses and denies media coverage for the opposition, and spies on, threatens, harasses, or even arrests government critics. This was indeed how Thaksin behaved. Although Thailand's basic institutions for political and civic engagement were much more developed in the 1990s than at earlier times in its history, many of the country's mechanisms of accountability were attenuated at the onset of the Thaksin era (McCargo, 2002).

Many scholars, particularly Thais, have detailed how Thaksin used his consolidation and monopolization of state power to block political access for some societal groups, weaken institutional constraints within the state, or reduce political contestability (Bidhya, 2005; Chirmsak, 2004). One example of Thaksin's political machinations must suffice here. Early in 2001, Thaksin's government blatantly used the excuse of an anti-corruption crusade to carry out witch hunts of its opponents by unleashing the powerful Anti-Money Laundering Office (AMLO), which reports directly to the prime minister, onto several senior journalists of *The Nation* newspaper, all of whom



had been vocal critics of the Thaksin government (Mutebi, 2003: 105). Two foreign journalists with the *Far Eastern Economic Review* had their visas revoked (a sanction later withdrawn after the magazine apologized). This was typical of Thaksin's use of state organs to pressure or even harass any critical societal and media voices that dared to report his regime's shortcomings (Kurlantzick, 2003; Mutebi, 2003: 104–6, 2004: 78–9). He thus reversed much of the progress made in the 1990s, when media and Thai civic groups such as Transparency Thailand, the Anti-corruption Network and the Foundation for Clean and Transparent Thailand had served as watchdogs that tried hard to enforce the accountability and transparency of public officials.

Under such circumstances, sections of Thai society became uneasy about whistle-blowing or exposing corruption, afraid of the consequences. An unfettered civil society and media should be in a position to act as either countervailing forces against government excesses or as sources of encouragement to the efforts of reformers (Johnston, 2005; Norris, 1999). Partnerships with the media and civil society, as well as building alliances with interested anti-corruption partners within the state, are also a strong foundation for a credible and comprehensive anti-corruption strategy. Such interventions from below in the civic republican tradition tend to be longer lasting and help build the social capital necessary for the consolidation of democracy.

The absence of meaningful anti-corruption partners within Thailand was echoed by the altered nature of the relationship between Thailand and the international donor community. International donor involvement can play a critical role in pushing countries toward greater progress on their anti-corruption agendas, particularly by preventing political complacency and generating political will among reformers. Although Thailand had long ceased to be a major aid recipient by the late 1980s, the Asian financial crisis of 1997 temporarily thrust it back into this situation, receiving funds from the World Bank and the International Monetary Fund. In particular, the IMF reached an agreement with the government to adopt a comprehensive reform programme that included, among other things, radically cutting expenditures, decreeing many corporations bankrupt, liberalizing foreign investment laws, and privatizing state enterprises, in exchange for a multi-billion dollar rescue fund. Much of the assistance from the World Bank, included programmes requiring administrative reforms to control corrupt practices and move Thailand towards good governance (World Bank, 1999). A number of bilateral donors also became involved in supporting various anti-corruption initiatives, thus providing additional knowledge and partnerships to advance some of the most difficult areas of governance. But because Thaksin's government was able to pay off the bulk of this multilateral debt by the middle of his first term in office, the international donor community lost much of its leverage for buttressing the efforts of local counterparts in tackling corruption. At the same time, Thaksin's ability to stave off pressures from international donors enhanced his managerial credibility and fed into his populist appeal at home.

Thaksin's hegemonic control of the country's political institutions allowed prominent business interests close to him, both within and outside government, to use their power and influence to shape the country's legal and regulatory framework to their own advantage, thereby exacerbating the corruption problem. With the increased power of the business-politics nexus, and the reduced room for political contestability for opposition political actors, civic group and the media, the conditions were in place for state capture to reach unprecedented levels. Conflicts of interest grew as the various business interests around the prime minister blurred the boundaries between private interest and the well-being of the state. The absence of the political will to combat corruption, coupled with the inability to create enduring anti-corruption coalitions, proved to be major setbacks for Thailand's post 1997 good governance, anti-corruption regime. The unwillingness of Thai politicians to enforce existing laws and regulations by tackling political corruption at the very top, allowed for complacency to creep in at all levels of the state, and for cynicism to grow among the public.

Thus, rather than fostering good governance, as originally intended, Thailand's 1997 Constitution paved the way instead for Thaksin's clever use of his party's dominance to outweigh and outwit the various purportedly 'independent' bodies that the CDA had set up to balance government power, as well as other oppositional voices. The newly-elected Senate became a prime example of how the various fledgling independent institutions struggled to establish their authority and credibility in the face of the vested interests that were bent on maximizing their rewards at the public's expense. After coming to power in 2001, the TRT party quietly (and illegally) built a majority in what was supposed to be a politically-neutral Senate, ensuring that the upper house would use its power to appoint political affiliates, relatives and friends to various 'independent' agencies created by the reformist constitution. This was one of Thaksin's most important manoeuvres in his project to capture key state and regulatory institutions, as any contestations of key appointments by critical and progressive forces within the Senate were doomed to fail (Mutebi, 2006).

Another example of influences close to Thaksin using their position to manipulate the country's legal and regulatory frameworks involves a scandal in which Thaksin's wife, Pojaman Shinawatra, purchased a strategic piece of land in Bangkok, in direct contravention of the country's Counter Corruption Act. The disputed land was originally bought in the mid-1990s by a state agency, the Financial Institutions Development Fund (which later became the Thai Asset Management Corporation) during the administration of former Prime Minister, Banharn Silapa-Archa. The land was then controversially sold to Pojaman Shinawatra in 2003, with written permission from the Prime Minister. The sale was legally (and successfully) contested by three state agencies (the Assets Examination Committee, the Bank of Thailand and the Financial Sector Restructuring Authority) — but only after Thaksin was ousted from power.

Thus, despite the presence of strong anti-corruption policies, Thailand experienced unchecked levels of state and regulatory capture under its former Prime Minister, Thaksin Shinawatra. The explanation for this contradiction lies in a combination of the ascendancy of a very powerful business–politics nexus, which was able to block measures that Thailand's constitutional reformers had anticipated; and the decline in political contestability resulting from the TRT's hegemonic grip on the country's key political institutions.

## CONCLUSION

This article has examined how corruption can thrive despite the presence of anti-corruption and good governance mechanisms, based on the case of Thailand during the administration of its controversial former Prime Minister, Thaksin Shinawatra. Of course, political corruption in Thailand predated Thaksin; it has long been recognized as deep-rooted and complex. Yet, although Thailand had many unresolved problems with political corruption, it had by the late 1990s put in place an anti-corruption regime which appeared more comprehensive both in comparison to its own earlier history and to other countries in the region with similar levels of socioeconomic development. In spite of this, the system failed to stop rampant state and regulatory capture during Thaksin's term in office — at least until a military junta calling itself the Council for National Security overthrew his government in a bloodless coup while he was attending a UN meeting in New York in 2006.

A simple explanation for this failure might point to the country's historic legacy of political corruption, arguing that it would have overwhelmed any leader. Even if Thaksin inherited or accelerated certain technocratic reforms for tackling endemic political corruption, such efforts were no match for an inherently kleptocratic polity. Such an argument, however, is clearly inadequate.

The 1990s saw reformers in Thailand craft a comprehensive anti-corruption institutional framework that was based in part on the ideas and assumptions of good government and good governance. Many of the optimistic expectations generated by the new anti-corruption regime proved unfounded. This article has proposed that two key elements are critical to explaining why Thailand's anti-corruption and integrity initiatives failed during Thaksin's premiership. First, although Thaksin was by no means the first premier to rise from the ranks of the country's business–politics nexus via the ballot box, he was the first to use his political party machine so successfully to tighten his grip on the major political offices. That hegemonic control is key to understanding how Thaksin and his party were able to subvert vital aspects of the country's anti-corruption reforms. Second, and relatedly, Thaksin shrewdly used his popularity and virtual stranglehold of political power to significantly limit arenas of political contestation in the country. Governments need the support of the private sector, civil society

and the media to fight political corruption. Thaksin not only failed to engage with other societal voices, he actually intimidated and silenced critical voices whenever he got the chance, and in doing so, greatly proscribed the sort of national consensus necessary for a genuine anti-corruption crusade.

Some might argue that the explanation advanced here for the failure of Thailand's anti-corruption institutions under Thaksin tends towards circularity. For example, Thaksin's authoritarian style and harsh treatment of critics were simply part of the Thai fabric in earlier periods of military dictatorship. My response to that is that Thaksin was an elected prime minister; he could only revive such actions because his electoral appeal and his money gave him full control, not only over his TRT party, but also over the legislature, other state organs and of course, the executive over which he presided directly.

Although case studies may be criticized for not providing any solid basis for generalizations, they can be used for exploratory, descriptive and even explanatory purposes (Garson, 1976: 163). Thus, while I make no attempt to generalize from this one case, I do believe that it advances our understanding of how corruption can thrive despite the presence of strong public integrity, anti-corruption and good governance policies.

## APPENDIX

*Table A1. Key Integrity, Transparency and Good Governance Institutions of Thailand's 1997 Constitution*

| Institution/Agency                                   | Key Functions   |
|--|---|
| <b>Election Commission (EC)</b>                      | <ul style="list-style-type: none"> <li>● Conduct elections and regulate political parties</li> <li>● Eliminate rampant vote-buying at election time</li> <li>● Investigate all alleged electoral fraud and disputes; where necessary, order new elections or referenda in any or all polling stations</li> <li>● Order re-elections, ban cheats from running again, or dissolve political parties that did not follow regulations</li> </ul>  |
| <b>National Counter Corruption Commission (NCCC)</b> | <ul style="list-style-type: none"> <li>● Oversee mandatory annual disclosures of assets and liabilities of most politicians and senior bureaucrats</li> <li>● Inquire and decide whether public officials are 'unusually wealthy', demonstrate corruption, or make false or incomplete declarations (as stipulated by the Organic Law on Anti-corruption 1999 and authorized by the Constitution)</li> <li>● Bar offenders from office for up to five years, subject to the approval of the Constitutional Court</li> </ul> |
| <b>State Audit Commission (SAC)</b>                  | <ul style="list-style-type: none"> <li>● Under the leadership of an independent and impartial Auditor General, examine state expenditures for evidence of misappropriation of funds</li> <li>● Audit all public receipts and payments each fiscal year</li> <li>● Audit country's currency reserve account</li> <li>● Examine fees and other income of audited public agencies in connection with the collection of taxes</li> <li>● Search and seize suspects and offenders in the exercise of the above duties</li> </ul> |

Table A1. Continued

| Institution/Agency                             | Key Functions  |
|--|--|
| <b>Constitutional Court (CC)</b>               | <ul style="list-style-type: none"> <li>● Oversee and decide on all organic laws, bills, decrees, and ordinances under the new Constitution</li> <li>● Establish the Administrative Court system</li> </ul>   |
| <b>Administrative Court (AC)</b>               | <ul style="list-style-type: none"> <li>● Rule on cases between government departments or officials and private organizations or ordinary people, and between government departments or public officials</li> </ul>   |
| <b>Office of the Ombudsman</b>                 | <ul style="list-style-type: none"> <li>● Oversee administrative problems in cases where state organizations are accused of either failing to comply with the law, exercising powers beyond their authority, or failing to perform their duties. These transgressions would trigger independent recommendations to the Constitutional Court or the Administrative Court for further action</li> </ul> |
| <b>National Human Rights Commission (NHRC)</b> | <ul style="list-style-type: none"> <li>● Safeguard constitutional human rights, primarily through examining allegations of human rights violations and reporting findings to the National Assembly</li> </ul>  |

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