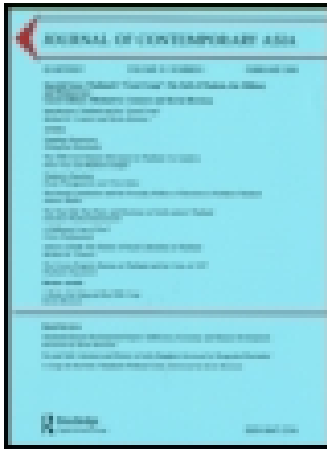


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# Branding Dissent: *Nitirat*, Thailand's Enlightened Jurists

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**ABSTRACT** *This article examines the political role of a group of academic lawyers based at Thammasat University who have been seeking to reform various aspects of the Thai legal and judicial system. The seven-member group started out by criticising the illegality of the 2006 coup. After the 2010 crackdown against redshirt protestors, the group named itself Nitirat and started to hold seminars, draft legal proposals, and campaign to amend various laws. Nitirat has repeatedly challenged the legal and constitutional underpinnings of three key elements of the Thai state: the judiciary, the military, and the monarchy. In doing so, the group has gained a mass following, drawn mainly from those sympathetic to the “redshirt” movement which broadly supports former Prime Minister Thaksin Shinawatra. Informally led by scholar Worajet Pakeerat, Nitirat has created a popular branding which is reflected in huge audiences for public events, and the sales of souvenirs. The article aims to answer the following questions: How does Nitirat combine the roles of legal academic and political activist? How does it differ from the traditional mode of Thai public intellectuals? How significant is the Nitirat phenomenon?*

**KEY WORDS:** Nitirat, Thailand, justice, monarchy, amnesty, reform, public intellectuals

In 2014, Worajet Pakeerat became one of the first Thai civilians to be court-martialled since 1976.<sup>1</sup> Worajet was no ordinary civilian: a distinguished law professor at Thammasat University and a former holder of the prestigious Ananda Mahidol royal scholarship, he was a leading critic of legal abuses by Thailand's military. Following the May 22, 2014, military seizure of power, the National Council for Peace and Order (NCPO) junta arbitrarily summoned and detained hundreds of people including academics, journalists, media hosts, politicians, and student activists, and established a military court to try cases that threatened “national security,” such as acts of defiance against the junta. This repressive climate contrasted starkly with the animated political debates that had erupted in Thai society over the previous four years, initiated by a group of legal academics turned public intellectuals known as *Nitirat*. It is no coincidence that *Nitirat*, led by Worajet, formed an important target for the NCPO.

*Nitirat* began life as “The Group of Thammasat Law Lecturers” (TLL), an ad hoc, four-member group formed in the wake of the September 19, 2006, military coup (on the 2006 coup, see Connors and Hewison 2008). The group comprised Piyabutr Saengkanokkul, Teera Suteewarangkum, Prasit Piwawattanapanich, and Worajet Pakirat. They were joined shortly

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afterwards by Thapanan Nipithakul, and were known for a time as the “the group of five Thammasat law lecturers.” The group only assumed the name “Nitirat” in 2010, on the fourth anniversary of the coup, by which time it comprised seven publicly declared members: Worajet Pakeerat, Jantajira Eiamayura, Thapanan Nipithakul, Teera Suteewarangkum, Sawatree Suksri, Piyabutr Saengkanokkul, and Prasit Piwawattanapanich. The group also has two unofficial associate members, including Phuttipong Ponganeikul, a law student who functions as its secretary and another working behind the scenes who wished not to be named.<sup>2</sup> Over the years, the membership of the group has fluctuated slightly. For example, Poonthep Sirinupong joined the group, while Prasit went to study abroad and has not returned to Nitirat. Generally, though, membership has been restricted to full-time academics teaching at the Thammasat University Faculty of Law – while Nitirat has welcomed support from lecturers at other universities and faculties.

This article is based on 19 semi-structured interviews with a range of informants, including all seven members of Nitirat, as well as participant observation at a number of the group’s events in 2012 and 2013, a close reading of articles and other publications by and about Nitirat, and the viewing of relevant video materials. The article raises some important questions about the group: How do members of Nitirat combine the roles of legal academic and political activist? How do they differ from the earlier model of Thai public intellectuals who communicated mainly through newspaper columns? How significant is Nitirat for Thailand’s politics?

### **Originating Dissent**

The Thammasat University Law Faculty has a long and distinguished history. Thammasat was founded in 1934 as the University of Moral and Political Sciences by Pridi Banomyong, a French-educated former judge, and the leading intellectual behind the People’s Party (คณะราษฎร *Khana Ratsadon* or, in short, *Khanarat*), which ended the absolute monarchy in 1932.<sup>3</sup> The People’s Party, Nitirat’s inspiration, was not a group of academics, but of elite revolutionaries dedicated to the transformation of the existing political order. During its early years, Thammasat was thus seen as a bastion of liberalism, in contrast with the older, more conservative Chulalongkorn University, which was closely linked to the monarchy. However, Pridi was forced into exile in 1949, and in subsequent decades – especially following the bloody crackdown against the student movement which took place on the university campus on October 6, 1976 – Thammasat became markedly less progressive in orientation. Thammasat graduates also came to dominate the upper echelons of the judiciary. By the onset of the twenty-first century, law at Thammasat was largely a conservative faculty with a progressive past. Forming TLL/Nitirat was an attempt to reclaim and revive that past, revisiting the spirit and inspiration of the People’s Party.

For university lecturers to address non-academic audiences is nothing new; by the early 1990s prominent academics such as Nidhi Eoseewong, Chai-Anan Samudavanija, and Kasian Tejapira were developing parallel careers as popular columnists in the pages of *Manager*, *Matichon*, and other newspapers, and before long these secondary activities were beginning to eclipse their work as scholars (McCargo 2000, 156–160; see also Chetana 1994; Thongchai 1994; Kasian 1996). Conservative reformers such as Thirayuth Boonmi and Prawase Wasi were also in great demand as speakers and commentators. By the second decade of the new millennium, prominent public intellectuals were becoming

Facebook stars, their opinions, musings and even personal spats tracked on social media by avid followers. Yet Nitirat, though also active on social media, comprised the first real Thai academic celebrities, able consistently to pack huge rooms with enthusiastic (though never pliable) members of the public.

In theory, the Nitirat group of critical legal academics does not have a leader. In practice, however, Worajet acknowledges that he is considered the prime mover (Interview, Worajet Pakirat, December 22, 2012), while Piyabutr – with his youthful looks and accessible speaking manner – enjoys a strong following among the group's supporters, largely because of his outspoken comments on the monarchy. Sawatree also has her own following, while other members are somewhat less prominent. Nitirat is more a virtual than a formal organisation, does not accept donations, has no office, and employs no staff.

### **Thailand's Changing Political Economy**

Since 2005, the public sphere has been highly polarised between supporters and opponents of former Prime Minister Thaksin Shinawatra. Thaksin was an ex-police officer turned telecommunications tycoon turned politician, who was supported by many and detested by many others. Thaksin won two landslide elections in 2001 and 2005, but was ousted in a military coup in 2006 (Pasuk and Baker 2009). Since 2006, pro-Thaksin parties have won two more elections, but have faced intense opposition from conservative networks linking the monarchy, the military, and the Democrat Party. Conflicts between pro-Thaksin and anti-Thaksin forces have regularly spilled onto Bangkok's streets: yellow-shirted or anti-Thaksin groups staged mass demonstrations in 2006, 2008, and 2013–14, while red-shirted pro-Thaksin groups held huge rallies in 2009 and 2010. While the majority of voters supported pro-Thaksin parties in successive elections, after 2006 most middle-class Bangkokians leaned in an anti-Thaksin direction – including most university lecturers. Nitirat is among a small group of prominent academics bucking the prevailing conservative trend.

Thailand has undergone very rapid socio-economic change since the early 1960s, characterised by high levels of economic growth and enormous expansion of the industrial and service sectors. While agri-business continues to be a major element of the economy, the number of Thais who earn a living primarily by working the land has declined dramatically. Millions now divide their time between the populous provinces of the north and north-east – where they remain registered to vote – and urban areas, especially greater Bangkok. These “urbanised villagers” form the bedrock of support for pro-Thaksin parties, and for the redshirt movement more broadly (Mérieau 2013, 9–11). Urbanised villagers have urban aspirations, seek to advance themselves economically, and reject the patronising attitudes of the Bangkok elite who depict them as uneducated and unfit to participate in politics. Their socio-economic grievances are linked to suppressed regional and linguistic identities (Naruemon and McCargo 2011).

Relatively few Thais would describe themselves as anti-monarchy, but many, including large numbers of urbanised villagers, are resentful of the Bangkok establishment and would like to see greater political space, more opportunity for free expression, and greater decentralisation of power. Thaksin and his allies have been able successfully to exploit both the aspirations and resentments of these people, which could be clearly seen in the 2010 redshirt protests in Bangkok. Yet although redshirt leaders such as Jatuporn

Prompan and Nattawut Saikua are extremely popular, their rabble-rousing upcountry image has limited appeal for the Bangkok middle classes, and so poses little psychological threat to the establishment.

But what if arguments and complaints closely resembling some redshirt views were voiced by a group of highly respectable middle-class Bangkokians, validated by their social status as lecturers at a prestigious university? Enter Nitirat, which was perfectly placed to exacerbate the fears of the urban middle class as their perceived sense of natural entitlement and prestige continued to unravel before their eyes (Interview, journalist, February 23, 2013).

### **Branding Dissent**

The original TLL group was criticised for misusing the name of Thammasat University – since they did not represent the views of the majority of lecturers in the Faculty of Law. As Teera put it, “To stop this annoyance and to create our own brand, we came up with the name, Nitirat (Interview, December 12, 2012). Their full name is *Nitirat: nitirat phua ratsadon* (นิติราษฎร์: นิติศาสตร์เพื่อราษฎร์, translated as Nitirat: Legal studies for the people); the short name echoes the shortened Thai name of the People’s Party, *Khanarat*, whilst the use of the word *ratsadon* (ราษฎร์ – people) makes the point doubly clear (Interview, Piyabutr Saengkanokkul, December 14, 2012). In Teera’s words: “By referring to *Khanarat*, we are inheriting their legacy (สืบเจตนา). We are taking up their aspiration, which had disappeared, and bringing it back. We are not saying we want to compare ourselves to them, but rather inherit their aspirations” (Interview, Teera).

On one occasion, Worajet declared in public that Nitirat had taken over (รับงาน) the People’s Party’s work (Interview, Thapanan Nipithakul, March 15, 2013). *Nitiratsadon* was discussed as a possible name, but rejected on the grounds that it was too long. The group also adopted an English name, “Enlightened Jurists,” suggested by Piyabutr, who wanted to convey positive connotations of brightness and light (Interview, Piyabutr). The use of the word “people” reflected an explicit desire to connect with a wider public beyond the academic sphere, and alluded to Thammasat’s pre-1960 status as an open enrolment university. The three terms Nitirat, Enlightened Jurists, and “legal studies for the people” summarised a range of aspirations: an outward-facing, forward-thinking grouping that nevertheless was explicit in expressing nostalgia for the legacy of Pridi and the People’s Party, and derived legitimacy from the legal and academic credentials of its members. While no longer using the name of Thammasat University, Nitirat evoked an imagined Thammasat – one that may or may not have actually existed in the Pridi era – at the core of what leading members referred to as their “brand.”

The language of “branding,” derived from the fields of advertising and marketing, might seem far removed from academic debates about progressive legal reforms. Here lies an important difference between Nitirat and earlier generations of public intellectuals; for Nitirat, raised in a booming economy where the tenets of management literature have shaped popular consciousness, notions of marketing and self-promotion are second nature. In interviews, Piyabutr, Teera, and Thapanan all made unprompted references to Nitirat’s “brand,” which was linked to their choice of both name and logo. Just as Thaksin’s Thai Rak Thai Party, which deployed images and slogans crafted by marketing consultants (McCargo and Ukrist 2005, 99–102; see also Nichapa 2003), so Nitirat academics were among the first academics to embrace modern modes of public relations. The group

commissioned a website and logo, launched to coincide with their re-branding as Nitirat in September 2010 (Interview, Sawatree Suksri, November 14, 2012; Interview, activist, June 11, 2013). No Nitirat event is complete without stalls selling a range of t-shirts and other accessories, bearing the group's logo – including cartoon stickers depicting judges as dinosaurs. One journalist explained:

Another thing is that Nitirat looks good. Each of them looks good: cool, handsome and pretty. Like celebrities. Especially since previously, we had only Phi Tu [Jatuporn]! [laughs] So provincial! (แบบ ลูท ฟุ้ง!) But after the look changed to Nitirat, wow! Middle class, good looking, smart and stuff. I think this worked to penetrate the hearts of those who hold different perspectives, to penetrate the hearts of the “salims” [a mildly derogatory term for the anti-Thaksin middle-class] to make them pay more attention. If Phi Tu were speaking, they may not even listen (Interview, February 23, 2013).

Nitirat did not invent anti-establishment dissent – which had already been on abundant display on the streets of the capital between March and May 2010. But Nitirat did re-brand that dissent to make it appear “educated” and middle class.

### **Legalism and Hyper-Legalism**

Thongchai Winichakul (2008, 32) has criticised the judicial system's “solid record of siding with whoever is in power.” Nitirat has made similar claims about the legal profession more generally. Prominent jurists and legal academics have been repeatedly pressed into service following military interventions into politics. In the wake of the September 19, 2006 military coup, jurists Borwornsak Uwanoo, Wissanu Krea-ngam, and Meechai Ruchuphan joined the team created by the junta to draft an interim constitution. All had lengthy track records of similar service to regimes of various political persuasions, both elected and otherwise.<sup>4</sup> One important issue that defined Nitirat members and set them apart from others in the legal field was their steadfast public opposition to the 2006 military coup and its aftermath. They argued that turning a blind eye to the illegality of successive military coups was a problem permeating the entire legal field. As Piyabutr stated in an interview, “it is very difficult to find a lawyer who would oppose the coup. Back then, [after the September 19, 2006, coup,] we discussed how nobody from this field opposed the coup at all; everyone ‘indulged’ it (เสพสม). So we decided to get together.” Mainstream media outlets all declined to publish TLL's critical statements about the military coup; the statement eventually appeared only in alternative outlets such as the Prachatai website (Interview, Pinpaka Ngamsom, January 21, 2013).

Following the coup, the junta undertook various legal manoeuvres to entrench its influence. These included an interim constitution that gave the coup-makers amnesty, the junta-appointed Constitutional Drafting Assembly, the new 2007 constitution, and the controversial popular referendum to validate it. TLL tried to persuade society that these manoeuvres were all illegitimate, pointing out, for example, that any charter clause granting amnesty to coup-makers was a constitutional self-contradiction (TLL 2007a).

The most important contribution of TLL was their criticism of the complicity of the judicial process in the coup. In an interview, Worajet argued that the coup began in September 2006 when the military overthrew the Thaksin-led government, but was only

completed in May 2007 when the new junta-appointed Constitutional Tribunal closed down Thaksin's party (Worajet 2012a, 188). The tribunal dissolved the Thai Rak Thai Party and banned 111 party executives from political office for five years for election fraud. TLL criticised the verdict for utilising a coup decree (Announcement 27, Clause 3) retroactively to ban politicians (TLL 2007b). TLL also argued that the tribunal had unreasonably punished all executive members for abuses committed by the party. The People's Power Party was subsequently established as Thai Rak Thai's successor and was voted into office in December 2007, only to be dissolved again by the Constitutional Court a year later, again on grounds of electoral fraud. Similarly, its executives and leaders were banned from politics for five years. TLL criticised this ruling as well, arguing that the Constitutional Court had declined to examine any witnesses or evidence presented by the defendants, displaying an extreme lack of objectivity (TLL 2008).

In the eyes of TLL members, other Thaksin-related lawsuits had also fallen prey to a politicised judicial process, notably cases filed by the junta-established Assets Examination Committee (AEC) (*Matichon*, May 30, 2012). Indeed, the AEC had been created specifically to file lawsuits against Thaksin and his party. On the verdict, Worajet contended "the reasons offered [for these verdicts] are not reasonable...When you adjudicate in court, there must be a standard that applies not only to Thaksin but to everyone" (Interview, Worajet). For instance, though Worajet believed Thaksin undeniably had conflicts of interest during his premiership, TLL argued that in convicting Thaksin for conflict of interest, the court had based its judgment on simple calculations about his increased share values, without stating which of Thaksin's improper actions led to their increase (Interview, Worajet; TLL 2010).

In September 2011, on the fifth anniversary of the coup, Nitirat made its most radical move up to that point, proposing the "nullification of the consequences of the 19 September 2006 coup." Nitirat called for:

1. The "nullification" of the coup and any legal actions pursued by the coup-makers during the period from September 19 to 30, 2006. They shall be treated as if they never happened or had any legal effect.
2. The nullification of constitutional clauses providing legal immunity for coup-makers (Section 36 and 37 of the 2006 Interim Constitution of Thailand).
3. The nullification of verdicts related to politicians made by the Constitutional Tribunal, the Constitutional Court, and the Supreme Court that relied on the 2006 coup decrees or which were initiated as a consequence of the coup, in particular those initiated by the junta-appointed Assets Examination Committee.
4. The discontinuation of lawsuits and investigations by the National Anti-Corruption Commission, the Anti-Money Laundering Office, and the Office of the Auditor General.
5. An acknowledgement that neither the nullification of verdicts (3) nor the discontinuation of lawsuits (4) constituted expungement. These cases could be filed again through standard legal procedures and judged on their merits.
6. A constitutional amendment which included the above points. The amendment should then be validated by a popular referendum (Nitirat 2011).

In contrast with TLL/Nitirat's earlier statements, the nullification proposal had immediate political and social implications. It called for a decisive break with the tradition of



colluding with coup-makers and granting them impunity: TLL showed how the framework of the existing justice system could be deployed to hold coup-makers accountable, revoke illegitimate laws, and overturn illegitimate verdicts.

Coup nullification became a topic of public controversy and debate. Launched in conjunction with a call to amend the controversial *lèse-majesté* law,<sup>5</sup> the proposal stirred so much public response that Siam Intelligence Unit (SIU 2011), a private think tank, dubbed this phenomenon the “Nitirat effect.” Over the following ten days, during which Nitirat held another seminar to clarify the details of the proposal, SIU counted over 30 responses reported by the media, mostly critical, from prominent figures including the deputy prime minister, prime minister’s spokesperson, leaders of the opposition, army generals, yellowshirt leaders, redshirt leaders, academics, jurists, writers, and prominent media columnists.

In the end, the overt hostility of their conservative critics backfired and provided a public relations bonanza for Nitirat. Piyabutr recalled a week of “bombardment” against Nitirat after the first seminar on September 18, which resulted in an explosion of attendance at the second seminar on September 25 (Interview, Piyabutr). The proposal to nullify the coup transformed Nitirat from a relatively obscure academic group to a much more prominent player on the political stage.

The proposal set the tone for Nitirat’s subsequent campaigns. Nitirat found fault with a political order in which legal practitioners, judges, and academic lawyers had consistently sided with the establishment and supported conservative positions. But Nitirat did not argue that lawyers had excessive influence in society, simply that they had used their influence badly. A more radical critique would argue that Thailand was suffering from hyper-legalism, as seen in the country’s record-breaking number of constitutions. Fred Riggs (1966, 53) argued long ago that “Constitutionalism was not designed so much to constrain the rulers as to facilitate their rule.” Nearly half a century later, the large and ever-ready constitution-drafting industry – one symptom of a “political disease” of restless constitutional tampering (McCargo 1998, 7) – was simply the most obvious manifestation of excessive faith in legal solutions. At the same time, far too much respect was paid to judges and to prominent lawyers, whose willingness to serve those in power had rendered them virtually untouchable. The high water mark of Thai constitutionalism, the much-heralded 1997 “People’s Constitution,” with its raft of rights and entourage of independent state agencies, singularly failed to firm up the legitimacy of electoral politics. In sum, legal conservatism forms part of a wider problem of hyper-legalism: an exalted belief in the efficacy of legal measures, despite the fact that a succession of constitutions has done nothing to stabilise the country’s political order. Hence the conclusions reached by Harding and Leyland (2011, 255) in their study of Thai constitutionalism:

In our view the solution is certainly not to draft another constitution from scratch in search of some constitutional nirvana which might be achieved by a particular form of words. Rather than attempting to introduce a radically new constitution, the factions simply need to agree to work with a particular constitution as the basis for a political settlement.

By contrast, Nitirat was intensely critical of legal conservatism, but remained embedded in hyper-legalism, persistently arguing that political problems could readily be addressed

through new or better laws, and even aspiring to draft a new constitution of its own (Interview, Piyabutr).

### **The Question of Monarchy**

One area where Nitirat had a significant impact was on the limits of free expression, especially concerning the monarchy. Prior to the 2006 coup, critical discussion of the monarchy in the public sphere was extremely limited. The monarchy's political role is difficult to debate and analyse for a number of reasons. McCargo (2005) coined the term "network monarchy" to describe the monarchy's indirect mode of political power: this indirectness conceals the institution's very real influence, much of it exerted behind the scenes or through extra-constitutional means. Streckfuss (2011, 277–285) has argued that applications of *lèse-majesté* in Thailand have resulted in a "truth regime" that locates the monarchy within the sacred sphere; the prohibition of rigorous historical discussion of the monarchy has shrouded the institution in nationalist myths and ceremonial eulogies. In recent decades, fear of transgressing socially accepted norms and anxiety concerning possible accusations of *lèse-majesté* have served to foster a cautious silence that further sacralises the monarchy. As Thongchai (2008, 19) observes: "During the past 50 years or so those who think otherwise have been penalised or under self-censorship in order to avoid trouble due to the serious nature of the *lèse-majesté* charge and the threat of rebuke from other people." Thongchai (2008) argues that the resulting mind-set implicitly extends the formal boundaries of *lèse-majesté* to create what he terms a culture of "hyper-royalism." The conviction of a man by the Supreme Court in late 2013 for *lèse-majesté* for allegedly criticising Rama IV (who died in 1868) supports Thongchai's argument: the law is supposed to apply only to the current king, queen, heir to the throne, and regent.

The monarchy's acceptance of the 2006 coup, royal advice for judges to act righteously – advice that appeared to influence a series of verdicts against Thaksin – and clear displays of support for the anti-Thaksin yellowshirt movement in 2008 triggered overt criticism of the institution (McCargo 2009, 14–15). As government and military pressure against the redshirt movement grew stronger, so did the intensity and frequency of criticism against Bangkok's establishment. Redshirt leader Veera Musikapong sarcastically depicted the redshirts as "orphans," children left behind by their "father," a term often used by royalists for the king (*ASTV/Manager Online*, April 10, 2010). The increase in *lèse-majesté* cases from an average of five new charges per year in the previous decade to an average of 191 charges per year during the period 2006–09 indicates both that the monarchy has become an increasingly controversial issue and that the tolerance for such debate has been very low (Streckfuss 2011, 6, 195). The statistics on internet censorship were equally astonishing: 77,491 URLs were censored for *lèse-majesté* between 2007 and 2012 (Sawatree, Siriphon, and Orapin 2012; Sawatree 2013).

Nitirat's attempts to challenge limits on free expression formed part of a wider social movement to amend the *lèse-majesté* law, though this was not an issue Nitirat had focused on from the beginning. In its early years, TLL's discussion of the monarchy was largely limited to the correct interpretation of the monarchy's function in a constitutional democracy. In contrast to the popular understanding that being "above politics" meant that the monarchy was at the pinnacle of power, TLL insisted that the monarchy should be "above

politics” in the sense of being outside politics (Piyabutr 2007, 2009; Worajet 2012a, 52). The monarchy should have no political power, and hence no political responsibilities (see Thongchai (2008, 14–15) for a discussion of how the discourse of the King’s being “above” politics legitimised the 2006 coup). The issue was graphically illustrated in the run-up to the 2006 coup, when the anti-Thaksin royalist “yellow shirt” movement, officially known as the People’s Alliance for Democracy (PAD), called for Thaksin to be replaced by a royally appointed prime minister. The PAD claimed this demand was in accordance with Article 7 of the constitution (Connors 2008a, 148–151). Article 7 states that where no provisions exist, “traditions/conventions of government” must be followed, but does not define these traditions or conventions.<sup>6</sup> The PAD insisted that Article 7 referred to royal sovereignty. Piyabutr (2007, 60) later argued that the PAD had deliberately misinterpreted the law, insisting that the traditions of Thailand’s “democratic form of government with the King as Head of State” do not allow the king to make political decisions; other bodies must exercise sovereign power on the king’s behalf. Piyabutr observed that the PAD’s distorted interpretation relied on the king’s popularity; theirs was an ill-considered attempt to oust Thaksin through any available means.

Nitirat’s fame – and notoriety – grew after holding a seminar on the monarchy in December 2010. Only then did it begin to attract large audiences to its events (Interview, Piyabutr). Recordings of the seminar became a best-selling CD at redshirt rallies (Interview, journalist, February 23, 2013). Nitirat members were now on the road to becoming celebrities, with a mass appeal to audiences far outside academic circles. From early 2011, Nitirat developed a systematic critique of the *lèse-majesté* law and associated royalist ideology. Nitirat criticised several aspects of the law, including the harsh jail terms for those convicted, its status as a crime against national security (allowing anyone to file a complaint), and questionable practices related to its application, such as default denial of bail for alleged offenders.<sup>7</sup> For Nitirat, these legal aberrations reflected an outdated royalist ideology held by state officials and especially by judges, as opposed to a democratic ideology, which would prioritise rights and freedoms.

On January 15, 2012, Nitirat co-instigated the first sustained and expensive campaign in recent Thai politics to change the *lèse-majesté* law (known as Article 112). The Committee for the Amendment of the Article 112 (CCAA 112) was created to oversee the campaign. It consisted of a broad coalition of activists, writers, artists, and academics, most of whom either self-identified as redshirts or were redshirt sympathisers.<sup>8</sup> Launched several months after the controversial proposal to nullify the coup, the unprecedented scale of the campaign generated tremendous publicity, much of it hostile, and intensified the controversy surrounding Nitirat.

Nitirat held a second mass event a week later, at which it proclaimed its determination to follow up Article 112 reform by overhauling all the major institutions of the state – including the military, the bureaucracy, and the judiciary – topped with a provocative demand for a new oath to be sworn by the monarch. These proposals for radical reforms were the most explicit statement so far of Nitirat’s larger agenda, and had the effect of intensifying the conservative backlash. In retrospect, the aggressive approach taken in the second event was counter-productive, obscuring the logic of the original proposal and mobilising hostile voices. While Worajet acknowledged this might have been a tactical mistake, he defended Nitirat by insisting somewhat disingenuously that its members were merely academics: “We are not a political movement in that we do not consider political strategies” (Interview, Worajet).

Hostile responses aside, Nitirat also received encouragement and help from many sources for the campaign. For instance, award-winning writers such as Sujit Wongthet and Prabda Yoon showed solidarity with the Article 112 campaign by heading a parallel move to gather signatures from writers (*Matichon*, January 12, 2012). One notable means of expressing solidarity was via the use of social media. Facebook users who supported the campaign attached the Nitirat button to their profile pictures and used Nitirat banners as their cover photos. Over the course of 112 days, CCAA 112 collected 39,185 signatories, but ultimately submitted only 26,958 since many of the forms were not filled out correctly. After parliament bizarrely responded to CCAA 112 that around 31,000 signatories of the 26,958 submitted were valid (personal communication, CCAA 112 member, May 8, 2013), the petition was turned down by the president of parliament with a one-line response that the amendment was “Not in accordance with the provision on Rights and Liberties of Thai People, Chapter 3, and Directive Principles of Fundamental State Policies, Chapter 5” of the 2007 constitution. This decision was challenged by Nitirat and CCAA 112, but to no avail as indicated by a written reply from the Secretariat of the House of Representatives to the CCAA 112 on October 11, 2012.

The campaign’s limited success partly reflected Nitirat’s political naiveté. Despite the support noted above, the group made no significant attempt to build a broad alliance for Article 112 reform, despite the fact that even some prominent royalists had called for change. Just a few days before the launch of the Nitirat campaign, former attorney general and Truth for Reconciliation Commission of Thailand (TRCT) chairman Kanit Na Nakorn proposed reforming the law, reducing the maximum jail term to seven years and making the Bureau of the Royal Household responsible for bringing forward all cases. Nitirat’s proposal was quite similar: reducing the maximum jail sentence to three years, and making the Office of His Majesty’s Principal Private Secretary responsible for bringing forward all cases. Nitirat never sought to create a common cause with Kanit or other advocates of Article 112 reforms, preferring to go it alone. At one point, Kanit even invited Nitirat to a TRCT panel to discuss the problems of Article 112 but Nitirat declined, reasoning that it had “already made public statements so if he [Kanit] wanted to continue Nitirat’s work [in his own capacity], he could” (Interview, Phuttipong Ponganekgul, June 25, 2013). Within the CCAA 112, Nitirat limited its role to proposing and explaining the law, relegating the task of alliance building to others. The first campaign signatories comprised mostly academics who self-identified as either red or neutral. Though lack of diversity among signatories was a concern – Puangthong Pawakapan, coordinator of the CCAA 112, claimed the royalists she approached declined to sign up – the lack of priority placed on alliance building made it unsurprising that the great majority of signatures gathered were from red supporters (Interview, Puangthong Pawakapan, June 13, 2013).

More surprisingly, the amendment proposal was not especially well received by the majority of those who signed the petition. The loud cheers at the two Nitirat seminars held in January 2012 whenever there was a suggestion of abolishing the *lèse-majesté* law indicated that many, if not the majority, in the audience favoured abolition over reform (Field notes, January 15, 2012). Tellingly, those who joined the rally to submit the petition to parliament yelled “Abolish!” even though CCAA 112 members tried to get them to yell “Amend!” (Interview, Wad Ravee, CCAA 112 member, June 15, 2013). The proposal to reduce the length of jail terms was presented by the group as a pragmatic compromise. Yet many Nitirat supporters would have preferred to see custodial sentences eliminated altogether. A lot of those who signed the petition did so *in spite* of the detailed legal

proposals crafted by Nitirat, rather than because of them: they supported the petition simply as a significant move in the right direction. Nitirat had crafted a new *lèse-majesté* law that appealed to virtually nobody except itself.

Nitirat delegated campaigning tasks to other members of the CCAA 112, including academics from other fields, because members were anxious to preserve a scholarly detachment. It was only when rumours started circulating that the campaign might fail to gather enough signatures that Nitirat began visiting the provinces (Interview, CCAA 112 member interview, January 29, 2013). In sum, Nitirat drafted a compromise bill, one which retained jail terms for *lèse-majesté* and did not sit well with most prospective signatories; but the drafters were reluctant to engage in the kind of pragmatic bridge-building that would have been needed to create a broad political alliance. Given how uninspiring the Article 112 reform proposal was, and how reluctant Nitirat had been to promote the petition actively, it is an impressive testimony to the strength of feeling that so many signatures were collected.

Overall, the Article 112 campaign further burnished Nitirat's standing, reputation, and notoriety. The group became a rallying point for those who believed much-needed changes to the law were both legally and socially possible. Members of the CCAA 112 considered the campaign a success in terms of opening up greater public discussion and debate about the role of the monarchy. While their core demand – reform of the problematic *lèse-majesté* law – was eminently reasonable, group members made strategic and tactical blunders in advancing their cause, crafting a legalistic compromise which they tried to advance through dogmatic methods. Reforming Article 112 was a difficult proposition, not least because judges often saw themselves as servants of the king, dedicated to following the wishes of the monarchy.

### **Problematising the Judiciary**

In two remarkable speeches given on April 25, 2006, King Bhumibol urged judges to help resolve the country's political problems, which he described as “the worst crisis in the world” (*Manager Online*, April 30, 2006). Over the next few years, judges of the Supreme Court, Constitutional Court, Constitutional Tribunal and Administrative Court made a series of contentious decisions that undermined pro-Thaksin forces. These included annulling the results of the 2006 general election (a decision made in 2006), dissolving various political parties (in 2007, 2008), banning Thaksin and numerous of his allies from political office for five-year periods (2007, 2008), removing Samak Sundaravej from office for illegally hosting a television cooking programme (2008), sentencing the self-exiled Thaksin to a two-year jail term in absentia (2008), confiscating a large proportion of Thaksin's assets (2010), declaring the 2014 election null and void (2014), and retrospectively removing Yingluck Shinawatra from office (2014).

For many, especially for critics of Thaksin, the growing involvement of the courts in politics was a positive development. Prominent Thammasat social critic Thirayuth Boonmi (2006) argued that Thailand was experiencing a “judicialization of politics”; the judicial system was expanding its role in order to help citizens keep political bodies accountable, thereby improving the quality of democracy and discouraging corruption. But for Nitirat, this new pattern of judicialisation was an alarming trend; it argued that the actions of the courts resembled a series of judicial coups, aimed not at implementing the law, but at serving the political interests of the country's traditional elite. Piyabutr argued

that the legitimacy of the courts had been exploited instrumentally for partisan ends (Interview, Piyabutr).

The allegation that the judiciary – including judges of the “independent” Constitutional Court, some of whom were not career jurists<sup>9</sup> – serves the interests of the political establishment is already a serious one. But Nitirat’s criticisms of the judiciary do not begin or end with the highly charged period around the time of the 2006 military coup. For Nitirat, the willingness of the judiciary to do the bidding of the monarchy, the military, and the traditional elite reflected long-term structural problems in Thailand’s legal system. The courts had never checked the military’s repeated seizure of power, the abrogation of constitutions or its impunity. Many judges see themselves as working on behalf of the monarchy, rather than administering laws which belong to the people under a constitutional order. Nitirat has argued that this crucial misunderstanding goes to the core of Thailand’s legal and political problems, reflecting how the end of the absolute monarchy did not produce a fundamental shift in judicial culture and thinking (Worajet 2012b).

One essential driving force behind both hyper-legalism and the exaggerated respect for judges is the understanding of law as a highly technical matter. Legal education has helped create a culture that prizes technical knowledge, detached from its social and political context. Facetiously dubbing the discipline “legal letters studies,” former Chiang Mai University Dean of Law Somchai Preechasilpakul has argued that over the past several decades, the study of law has been characterised by an emphasis on rote memory of legal statutes and previous Supreme Court rulings (Somchai 2010). The verdicts of Supreme Court justices are considered definitive; they serve as correct answers in the bar examinations and no points are earned by criticising them. Law programmes offered at universities mimic the approach adopted by the Bar Association and are essentially a preliminary preparation for the Bar. This leaves legal education little room for competing interpretations. Most law programmes do not offer courses that examine normative assessments of the law and the reasons offered by the courts. After being schooled in cut-and-dried technical understandings, judges are recruited through a highly competitive entrance examination – essentially a much more difficult version of the Bar examination – typically when they are in their mid-twenties, and often have no other professional or life experience. By passing the rigorous entrance examination, judges assume their place at the pinnacle of the legal-justice hierarchy. Nidhi Eoseewong (2013) compares the expertise of judges to that of respected technicians such as skilled barbers or typists, jobs that may be performed without any critical reflexivity.

Particularly alarming for the judiciary were Nitirat’s detailed and academically grounded critiques of important judgments, which challenged the monopoly of judges as the arbiters of legal wisdom. Before Nitirat’s formation, TLL began criticising court verdicts with the 2007 and 2008 party dissolution decisions. As time went on, Nitirat complemented its analyses of judgments with criticisms of the judicial institutions and organisational culture which produced these contentious verdicts. In March 2013, it drafted an “Open Letter to Judges in Thailand,” outlining how different court decisions related to Article 112 have violated legal principles, arguing that courts ignored the principle of “benefit of the doubt,” there was a ritual-like denial of bail requests without any substantive reason, and the Constitutional Court’s affirmation that Article 112 was constitutional, without offering legal reasons, was rather a “lavish description” of the monarchy (Nitirat 2013). Most impressively, Nitirat invited a former Deputy Chief Justice to read aloud the open letter on its behalf, so upending the culture of judicial seniority.

While strict contempt of court laws combined with lack of technical knowledge have generally inhibited the media from openly questioning verdicts, criticisms of the courts from within the Thammasat University Law Faculty challenged the institutional structures of authority and deeply-held notions of deference. By highlighting problems in the workings of the judicial system, and disputing the legal logic to be found in Supreme Court judgments, Nitirat was creating new forms of public scrutiny that made senior judges more accountable for their actions. These forms of scrutiny formed part of Nitirat's *modus operandi*, deploying the law in order to practice political dissent.

### Practicing Dissent

How should Nitirat's activities be characterised? The range of its activities extended well beyond academic legal questions, to proposing bills, instigating campaigns for law reform, and opening up space for debate. By doing so, it deployed the law as a practice of dissent. This may be understood in two ways.

Nitirat's proposals sought first and foremost to challenge the unprincipled behaviour of the legal fraternity. Their September 2011 proposal to nullify the legal consequences of the 2006 coup was a prime example of this. By exposing how the legal system was selectively deployed in order to provide legitimacy for those who had gained power illegally, and simultaneously demonstrating how the law should have been used against these usurpers of power, Nitirat re-deployed legalism, this time against coup-makers rather than on their behalf. Nitirat advanced a different role for lawyers who, rather than offering technical legal interpretations that invariably justified and legitimated the activities of those in power, would offer interpretations based on ideological assumptions, principles, or values that would support alternative ways of understanding, organising, and practicing politics. Nitirat's critiques of the 2006 coup and the laws promulgated in its wake offered a serious challenge even to those who rejected them. Nitirat's aspiration to draft a new constitution also reflects this strategy. Unlike past constitutions drafted by lawyers who "competed to serve authority," Piyabutr conceived Nitirat's constitution as a disruptive one: "it would put forward a new state ideology and provide a point of reference for critiquing the current constitution" (Interview, Piyabutr). In other words, Nitirat's constitution would offer a definitive statement of progressive, rights-based legal principles.

Second, Nitirat's activities sought to counter a culture of self-censorship by fostering dissent through legal debates. Worajet admitted he did not believe the petition to amend *lèse-majesté* would succeed, but he hoped that the move would promote debates both in parliament and the wider society (Matichon, July 31, 2012). Because the monarchy was often deemed to be sacred and inviolable, as Worajet put it, Nitirat saw the campaign as an act of "opening up space for discussion" (*Thai Freedom*, April 2–6, 2012). The proposal's content was drafted with such a goal in mind. Worajet argued that proposing to abolish the law was too simple and could shut down, rather than open up, the issue (Interview, Worajet). While the proposal was not ideal, it would prove "most difficult to argue against for those who do not agree" (*Thai Freedom*, April 2–6, 2012). By encouraging debate as to whether the penalties for Article 112 were excessive and out of step with other laws, Nitirat hoped to introduce legal arguments into a previously closed discursive realm, and promote a new culture of critical inquiry. As Worajet put it: "112 is merely a starting point in allowing Thai society to discuss the status of the monarchy from a broader perspective"

(*Thai Freedom*, April 2–6, 2012). In this sense, Nitirat conceived legal debates as a venue through which dissent could be articulated. The proposal to nullify the coup and the open letter to judges shared similar features. They both sought to raise the level of critical inquiry about politics and the broader society by proposing new laws and interpretations.

In the Thai context, raising such critical questions directly to the public was a transgressive act. However, it was not the activities of Nitirat alone that stimulated criticisms of the monarchy, military, and judiciary. Such criticisms were already available, the product of conflicts and tensions over how politics should or should not be organised, who should or should not be permitted to participate, and on what terms. What Nitirat brought to this debate was a new brand of legal respectability: faces and voices that, because of their elite academic standing, technical expertise, and social status, could not be readily dismissed. Nitirat's respectable branding and carefully crafted proposals offered new rallying points for those opposed to the conservative establishment.

### **Positioning Dissent**

Nitirat defies ready classification, deploying multiple identities for a range of different purposes. Its members' relationship with the Thammasat University law faculty is an intimate and complex one. Nitirat's membership is strictly limited to academic staff of the faculty. As Thapanan stated in an interview: "you must understand that though we are not exclusive, the path that the seven of us took didn't emerge out of nowhere. It was a path that had both roses and rocks. Many spotlights are shining on us. Asked whether we could have more members, of course, but we would want to take time to accept them..." Nitirat is a self-selecting grouping with a strong sense of its mission, operating within an elite sphere of society.

At the same time, Nitirat was a kind of endangered species within Thammasat where its members have suffered various forms of hostility and exclusion. Sawatree explained that while many of the cleaners and janitors supported them, there was no overt support from colleagues, and quite a lot of hostility – some fellow lecturers would no longer talk to the Nitirat members or even look them in the eye (Interview, Sawatree, November 14, 2012). Jantajira told a story about an incident shortly after the Article 112 proposals were announced. She walked into a room where two colleagues were talking. Both fell silent and ignored her greetings until she eventually left (Interview, Jantajira Eiamayura, December 14, 2012). The rector of Thammasat, Somkit Lertpaithoon (Interview, June 12, 2013), a former dean of the law faculty, claimed that Nitirat members never tried to reach out to colleagues and isolated themselves by assuming that others were against them, when this was not necessarily true. He insisted that Nitirat refused to attend the faculty's annual meeting or to interview prospective law students with other faculty members. Somkit insisted that he himself had no problem with most of Nitirat's proposals, only with the way its members behaved and introduced their ideas.

Thapanan claimed that most members of the faculty regarded Nitirat as "crazy" for engaging in provocative moves that undermined their members' academic standing and limited their chances of promotion (Interview, Thapanan). Worajet insisted: "I still see us as an academic group...There are those who respect us and are willing to follow. This didn't happen because of us; we simply did academic work...I have also always remained within the university's gates" (Interview, Worajet). However, Nitirat's critics often complained that the group had underwhelming academic credentials. Worajet is a full



professor and Sawatree an assistant professor, while the others hold the entry-level academic status of “*ajarn*” (lecturer), and only four of the seven currently hold PhDs. While limited academic standing in no way invalidates the important arguments advanced, in Thailand’s hierarchical society the group is vulnerable to the charge of failing to “earn their spurs” before adopting outspoken critical stances – a view echoed even by some colleagues who share Nitirat’s progressive thinking.

Nitirat’s entitlement to the “academic immunity” (a degree of critical license, somewhat comparable with diplomatic immunity) granted by lecturer status in society has been repeatedly challenged.<sup>10</sup> At one point around 23 academic lawyers joined together to oppose Nitirat, accusing it of not listening to other people, distorting legal principles, and engaging in academically unethical behaviour (*Matichon*, October 2, 2011). In February 2012, an anti-Nitirat protest called “Journalism Against Nitirat” was held at Thammasat, in which speakers called for Nitirat to be driven out of the university and even out of the country (*Manager Online*, February 2, 2012). Many of those taking part were lecturers and graduates from Thammasat’s Faculty of Journalism. Ironically, the protest was held in front of a statue of Pridi. At the protest, a woman carrying a small pro-Nitirat banner had to be rescued from a hostile crowd by the police. Subsequently, Somkit apparently banned Nitirat from holding meetings on campus (*Bangkok Post*, February 6, 2012), although he denied this (Interview, Somkit). Later he relented on the ban, but special rules were introduced to set high fees of up to 50,000 baht for “external” groups renting rooms – rules which Nitirat members claimed were targeted at them (Interview, Sawatree).

From 2011 to 2013, Nitirat events held at Thammasat drew significant audiences. Most participants were not students or academics, and indeed many had never attended a university. Nitirat’s facility for public engagement has been both a strength and weakness. For the group’s supporters, their willingness to push the boundaries of what it meant to be a lecturer was provocative, progressive, and exciting. For the group’s opponents, by contrast, Nitirat’s popularity was yet more evidence that the group was opportunistic, untrustworthy, irritating, and even dangerous.

Piyabutr explained that their public outreach was inspired by Pridi’s emphasis on the idea of *ratsadon* (“the people”). In the wake of the April–May 2010 crackdown on the redshirt movement, many redshirt leaders faced legal charges or were lying low at home or abroad. Nitirat’s seminars drew a ready audience from redshirts seeking inspiration and leadership (Interview, Piyabutr; Interview, activist, February 23, 2013). Thapanan explained that they had to tailor their messages to this audience:

When Nitirat goes public, there is an atmosphere of a classroom where we must be slow and clear. Worajet does this best. My friends and I really admire him. He is slow, clear, and precise. [When speaking to the public] I realise that sometimes, I have many thoughts that need to be managed immediately; Worajet does this even better than me. So you will see that he is a very good speaker (Interview, Thapanan).

While the credibility and importance of Nitirat’s arguments derived from their status as lecturers at a prestigious university, this identity also boxed in Nitirat, limiting its capacity to have an impact beyond the university. To engage in celebrity-style practices such as brand-building, and promoting leading figures such as Worajet and Piyabutr, would undercut the academic positioning on which their celebrity was based. This may account for Nitirat’s insistence that its members’ status as lecturers meant everything. As Thapanan

explained in an interview, “Let me honestly tell you, Worajet and I came to the group with a similar standpoint: we want to be teachers...So I think that’s a point that is already shared among us.”

Despite their apparent preoccupation with campaigning for radical changes to institutions and society, Nitirat’s members insisted that they really just wanted to be teachers. In fact, the group was seeking to redefine what teaching meant: being a teacher was not about preserving order, hierarchy, and prevailing social values, but about challenging them. The inspiration for this position is Pridi. Of the pre-1932 period, Pridi (2000, 35) wrote that he “[t]aught at the law school in a way to arouse, by stages, the consciousness of students to be interested in the necessity of changing the absolute monarchy to a form of monarchy under a democratic constitution.” Pridi’s course on administrative law, the first ever offered in Thailand, actually contained a good deal of politics and sociology (Pridi 2000, 36–60). Many of his law students later became members of the People’s Party. Nitirat’s members expressed interest in offering formal classes to a wider audience, thereby recovering Pridi’s ideal of an open university, though they had no way of realising this goal. To some degree, members of Nitirat saw themselves as a reincarnation of Khanarat. Worajet was asked “Would you compare yourself to Pridi?” He responded:

No, I would not dare. First, we belong to a different time and context. Pridi was 32 [when the absolute monarchy was brought down], whereas I am already 43. It would be hard to compare. Of course, I may have more experience in terms of learning from mistakes and success. I know where Pridi went wrong and where he was right... We do not say we are like Khana Ratsadon but we consider ourselves contemporaries who have taken on their mission... We are not Khana Ratsadon but we have taken up their ideas about democracy and equality which have yet to be fully realised, for further advocacy as much as we could. And as much as we achieve, the next generation could take over [the mission] until it is achieved, in which we do not know when that would be. But at least we would have tried it at one point in history (Interview, Worajet).

Nitirat’s agenda involved reviving the legacy and aspirations of those who had brought Siam’s absolute monarchy to an end, but subsequently failed to transform society along progressive lines.

Was Nitirat a political movement and were its members political activists? Thammasat rector Somkit insists they were (Interview, Somkit) the latter but Nitirat members were reluctant to accept these labels. A related question concerned the connection between Nitirat and the redshirt movement. Since 2011, their events had been packed with cheering redshirt supporters, and Nitirat had come to be seen as a think tank for the pro-Thaksin movement. Ironically, Worajet had been an early critic of Thaksin.

Asked about their relationship with the redshirts, Worajet was clear:

None, I affirm this. The relationship is like this. When Nitirat was created, we were not concerned about red shirts at all. We speak academically. However, the principles that we speak of happen to “serve” and “satisfy” red shirts. The red shirts felt they lacked academics who could speak like this because most academics are yellow shirts. But we don’t claim to be red; we simply talk out of principles, which happen to contradict the old groups and “serve” the red shirts (Interview, Worajet).

On the issue of Nitirat as a political movement, Worajet explained:

I still see us as an academic group. However, the academic topic is closely related to politics and when we express ourselves, it has a political impact. I still see myself this way; not a political movement which tries to get into a position of authority... But if you define political movements as not necessarily desiring positions of authority, then we may be one, based on our impact. Nowadays, I think it may be difficult for us to assume that status since Nitirat has become an idol that people cheer on and admire. There are those who respect us and are willing to follow. This didn't happen because of us but rather others; we simply did academic work. In this sense, the question of whether we are a political movement depends on how we define one. If we are, we are not the same as those that existed before. But we would also be a political movement with many limitations (Interview, Worajet).

Thapanan offered the following argument:

I think we are clear about this issue. We work on creating an intellectual movement as academics...If you are a political actor, your intentions are no longer making an academic contribution but rather of appealing to the people, which is what rhetoricians do: persuade. But we have never done that. We propose one, two, three, four, five, and if you do not want it, that is fine. [W]hen we discussed the issue of the Constitutional Court, we suggested the parliament fight the Constitutional Court's authority. In the end Worajet said "If you do not do this, then that is up to you. You are the politicians and I am just speaking as an academic." I never thought we had any power. I see this as the most gentlemanly manner of expressing academic opinions (Interview, Thapanan).

This kind of logic – that academics could urge politicians and the public to take specific action, without these suggestions constituting a political act – typified the ambiguity around Nitirat's position. While acknowledging that Nitirat represented a political ideology, Jantajira was firm in rejecting the "political movement" label:

We are definitely not a political group. Can we frame it this way? We do academic work but by the nature of our field, public law, it is related to politics. We do not have goals to change politics, as political parties or political movements do, but we do not deny that our academic work seeks to change the mind of people (Interview, Jantajira).

These descriptions of Nitirat as a new kind of political movement – one derived from academic work, with the purest of intentions, and no aspirations to attain power – again speak to a kind of lofty detachment reminiscent of the disdain with which Thailand's conservative traditional elite typically views the political sphere. Nitirat members see themselves as a new breed of non-political political activists.

In a similar vein, Piyabutr complained that people criticised him and suggested he was becoming a politician, when in fact "I want to teach, speak and do what I'm doing" (Interview, Piyabutr). This implied aversion towards being labelled as political reflects the strength of the conservative discourse of "dirty-corrupted politicians" in Thailand

(Connors 2007, 97). At least since Chamlong Srimuang's election to the Bangkok governorship in 1985, some political candidates have sought electoral success by adopting the moral high ground, assuming anti-politician rhetoric (McCargo 1997, 147). It is striking that Nitirat echoed this discourse despite its claims to be progressive – an example of the ambiguities evident in the group's thinking. Despite its insistence that it was not a political movement, Nitirat enjoyed consistent support from redshirt activists. Asked about this, Nitirat members tended to respond that they “could not prevent” redshirts from attending their seminars. Thapanan was frank about the relationship Nitirat enjoyed with its audiences:

I suppose you can't deny the truth. If we are celebrities then they are the fan club. As I told you, it's the nature of things. If we have fan clubs then we have to “keep” them but at the same time we must maintain our duty on par with the academic standard that is responsible to the public. I can't just speak to please the red shirts without considering principles, academic rigour and reasoning. If some issues are too personal, then I don't mention them. Perhaps I discuss them among my group. We are well aware of what is principled and that we must be responsible for what we say and to the public (Interview, Thapanan).

Nevertheless, it would be wrong to see audiences for Nitirat as simply passive and adoring. Though arguably a “fan club,” the crowds did not hesitate to express their disagreements with speakers. Taking part in these events – often in cramped and stiflingly hot rooms – was an expression of solidarity, and an opportunity to hear about and debate matters close to their hearts.

Nitirat could be understood and analysed on various different levels. On one level, this was a group of academics doing academic work on legal questions; on other levels, it functioned as a campaigning organisation and at times closely resembled a political movement. Though Nitirat members benefitted from their positions as legal academics at a prestigious university when they campaigned, they also rejected a more political label which could jeopardise their academic credibility and immunity. Some members of Nitirat, notably Piyabutr and Worajet, had achieved a high public profile which went far beyond conventional notions of Thai academics as public intellectuals. Though inspired by the aspirations of Pridi and the People's Party, to date the group has not elaborated a broader set of economic and political positions; its proposals have been focused on legal reforms.

### **Nitirat's Critics**

In response to their proposal to nullify the coup, conservative forces attacked Nitirat members claiming they were “Thaksin's men.” They were accused of being academics in disguise who had a hidden agenda to expunge the former premier's alleged crimes.<sup>11</sup> Others attempted to undermine Nitirat members' academic credentials through verbal assaults, calling the proposals dim-witted, idiotic, self-interested or partisan.<sup>12</sup> Following the Article 112 campaign, the Democrat Party seized the opportunity to try and drive a wedge between the ruling Pheu Thai Party and its redshirt followers. The Democrat Party called on the ruling party and redshirt leaders publicly to repudiate the Nitirat campaign (*The Nation*, January 17, 2012). *Manager Weekly* (January 21, 2012)

magazine cropped Worajet's face onto a chimpanzee, dubbing the cover photo "Wora'jiak" – *jiak* is a monkey sound in Thai. The accompanying story claimed that Worajet was manipulating society against the monarchy.

The Article 112 campaign triggered alarming calls for violence by conservative royalists – part of a long-standing enthusiasm for the use of violence to defend the state, as a mechanism of political control in a context where the challenge to royalist hegemony has become stronger and more overt. The *Manager* website was flooded with comments advocating violence against Nitirat. A royalist group called *Khon thai huachai rak chat* (คนไทยหัวใจรักชาติ – Thais Whose Hearts Love the Nation), rallied to the Supreme Court to submit a petition of 53,948 signatories, asking the judiciary to stop the destruction of the nation by Nitirat. On their way, they stopped in front of Thammasat to burn an effigy of Worajet. In the north, a threat was passed via a student to Nitirat members that they would be shot if they ventured up to Thammasat's Lampang campus (Front Line Defenders 2012). These calls culminated in an assault against Worajet in late February 2012, when he was punched in the face and hit several times on the head in the law faculty car park by thuggish twin brothers who had apparently attended the effigy burning (*ASTV Manager*, February 29, 2012).<sup>13</sup> The twins claimed that they had acted independently, a claim viewed with scepticism by local police. The pair was publicly thanked by a royalist group, Siam Samakkhi (*The Nation*, March 4, 2012).

Many royalists consider Nitirat a group of closet republicans, proposing subversive bills in order gradually to undermine or "bring down" the monarchy (ล้มเจ้า). In an interview, royalist Komsan Pokpong (June 5, 2013) claimed: "In their minds, they definitely want to overthrow the monarchy." Komsan is a member of Siam Pracha Piwat, a group of royalist academics. Nitirat members insisted that clarifying the monarchy's constitutional role was an entirely different objective from "overthrowing" the institution.

Not everyone in the progressive camp agreed with the way Nitirat sought to combine academia and campaigning. Some of the most interesting commentary on Nitirat is offered by critical sympathisers. A progressive academic who shared many of Nitirat's views argued that the group was insufficiently versed in the realities of Thai society, tending to apply Western ideas rather than working closely with ordinary people. For him, Nitirat was an integral part of the metropolitan elite (Interview, academic, August 31, 2012).

A problem with Nitirat, identified by some critical sympathisers, was its tendency to issue fully-formed proposals which were not based on any consultation. As already noted, many CCAA 112 members wanted to abolish the *lèse-majesté* law, but Puangthong observed: "Even among the hundred academics that signed, not all of them agreed with the proposal entirely. However, they agreed to sign...because they probably similarly thought that you could not change it after all" (Interview, Puangthong).

One activist who worked closely with Nitirat explained that it was not interested in alternative ideas, and was not influenced by the views of followers: "They [Nitirat] just say what they want and then it ends...I do the work that follows" (Interview, activist, February 4, 2013). Asked whether Nitirat looked down on others, a member of the Article 112 campaign said, "this is the character of those in the legal field, in which Nitirat is no exception" (Interview, Wad Ravee). Another declared: "I don't want the atmosphere of people waiting to hear what Nitirat has to say, though Thai society may be used to [ready-made products] from listening to the king's speeches" (Interview, activist, January 30, 2012). Overall, Nitirat members' attempts to maintain their academic standing and distance themselves from politics emulated some of the very tendencies displayed by the

traditional establishment, such as the judiciary, that they had strongly criticised: top-down didacticism, detachment from society, and preoccupation with preserving professional (or even vocational) image and standing.

More than half of those who attended Nitirat events were redshirts who were there primarily to show political support.<sup>14</sup> Cheers erupted whenever Nitirat condemned or ridiculed the state for injustice or unequal treatment; but disapproval was voiced if speakers criticised Thaksin (Interview, journalist, January 21, 2013). By framing political issues as legal ones, Nitirat limited critical discussion of the proposals' contents to those with legal expertise. Only legal academics and a couple of prominent historians have seriously engaged with and criticised Nitirat's legal arguments (Interview, Phuttipong). Nitirat was aware of the challenge its audiences faced. Comparing Nitirat seminars to law classes, Sawatree remarked, "If a hundred people came and ten understood what we are saying, then I am satisfied" (Interview, Sawatree). Another problem with Nitirat's approach was that legal solutions – proposing new laws and amending existing ones – were not always appropriate to address essentially political problems. When Nitirat came up with a draft bill for political amnesty in April 2012, it went nowhere and the mainstream media hardly covered it. Most redshirts were already satisfied with an amnesty bill drafted earlier by government member of parliament Worachai Hema. There was already a glut, rather than a shortage, of draft bills. The real obstacle to passing an amnesty law was the lack of a political consensus, not a lack of legal options.

Reflecting on Nitirat's proposals, Piyabutr said, "I plan to decrease these activities... Even if we make many proposals, they will not be successful. This is because of politics; no political side would accept [them]" (Interview, Piyabutr).

## Conclusion

Nitirat has brought a new dimension to Thai politics. During the 1970s, student leaders played a prominent role in calling for social and political change, organising mass rallies to articulate their demands. By the 1990s, some of this role had been assumed by public intellectuals who were often academics turned newspaper columnists. During the twenty-first century, much of the critical debate migrated online. Many of the most heated online exchanges have been inspired by Nitirat. Its members were more than just popular academics, becoming academic celebrities. Like many celebrities, the Nitirat members provoked mixed feelings among the public: some adored them, and others were filled with violent rage towards them.

Nitirat's members were, first and foremost, academic lawyers, which was both a strength and a weakness. Because of their academic credentials, Nitirat members were able to offer substantive critiques on a range of issues, including the legitimacy (or otherwise) of legal moves following the 2006 military coup, the quality of verdicts issued by the Courts of Justice and the Constitutional Court in various prominent cases, the possibility of reforming the controversial *lèse-majesté* law, and revising the constitution.

One contentious aspect of Nitirat's advocacy, however, was a tendency to propose legalistic solutions to complex political problems. The *lèse-majesté* law was a case in point. Many conservatives and royalists agreed that the law needed to be reformed, but rather than make common cause with those who had adopted similar positions, in 2012 Nitirat went out on a political limb by drafting a new *lèse-majesté* law which still included jail terms for those convicted, and then gathered signatures in support of their proposal

only from one end of the political spectrum – the redshirt movement and its sympathisers. While Nitirat was correct that the *lèse-majesté* law needed reforming, its proposed solution pleased few of its own supporters. In similar fashion, Nitirat (see 2012) also proposed an ill-conceived amnesty bill – which fell flat – and hasty, muddled plans to abolish the Constitutional Court and replace it with a new body less capable of opposing parliament. Nitirat also began drafting a new constitution, in a country which already holds the world record for drafting constitutions. Members of Nitirat appeared not to see that Thailand's culture of hyper-legalism, like its culture of hyper-royalism, might be at fault: more or better laws are not in themselves the answer to complex political problems. In certain respects, Nitirat emulated the conservative establishment it critiqued, favouring top-down legalistic utterances, and maintaining a certain lofty distance from the very “people” (*ratsadon*) with whom they sought to engage.

But despite its limitations and shortcomings, Nitirat performed invaluable political functions. By deploying the law as a practice of dissent, opposing mainstream narratives and explanations, exposing the hypocrisy and opportunism of the legal establishment, and above all by subjecting the judiciary to an unprecedented degree of sustained critical scrutiny, Nitirat articulated a shifting social landscape. The conservative elite could no longer maintain the same conditions of domination as before. Nitirat was especially effective in exposing the complicity between Thailand's legal establishment and those who sought to subvert electoral democracy.

Nitirat was not the People's Party, and 2012 was not 1932. But for the first time since the 1970s, royalism faced a serious intellectual challenge from progressive political forces. To be clear, Nitirat had not itself created this challenge; rather, the group capitalised upon seismic changes in Thai society which had shifted the ground from beneath the feet of the royalist elite. Nitirat forged a new role for public intellectuals, grounded in academia but reaching out to a genuinely mass audience. In doing so, Nitirat served an important need for redshirt supporters – many of a lower social class – to whose aspirations the group gave voice, and for whom Nitirat had become a badge of honour and a solidarity marker. In an increasingly authoritarian context, Nitirat provided a legitimising face and a voice for particular coalitions of social forces and interests denied the political space to openly organise and express their interests. While Nitirat sometimes “worked” its audience, that same audience was sometimes also “working” Nitirat, seeing in them an opportunity to gain more legitimacy in their struggle to express and pursue their political interests. At the same time, Nitirat also achieved remarkable success in branding dissent as middle class, smart, and “cool” – important prerequisites to mainstreaming the group's ideas.

In the wake of the May 2014 military coup, the important debates that Nitirat helped stimulate were almost completely suppressed. Familiar faces such as Wissanu Kruangam and Bowornsak Uwanno were soon back at work, drafting yet another constitution for the generals. Nitirat's successful branding of dissent backfired when the group was quickly identified by the NCPO as a potential threat.<sup>15</sup> Worajet and Sawatree were promptly summoned for questioning (see *Prachatai*, June 18, 2014). While Sawatree was soon released from detention, Worajet was subsequently court-martialled for twice defying the NCPO's summonses. Nitirat was obliged to adopt a low profile, joining activities only on an individual basis. Yet, in the longer term, the always dissenting, often provocative, and invariably legalistic arguments Nitirat had raised about the military, the monarchy, the judiciary, and the legal profession remained more salient than ever.

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## Notes

- <sup>1</sup> Information about Worajet’s 2014 case may be found on iLaw’s website, as of February 9, 2015. There are more details on the Thai version of the page than the English version. <http://freedom.ilaw.or.th/en>
- <sup>2</sup> The second unofficial associate preferred not to be named.
- <sup>3</sup> Pridi was the first Thai to gain the French degree of *Docteur en Droit*, and became a judge at the age of 27. He served for a time as regent, and was briefly prime minister in 1946.
- <sup>4</sup> All three jurists were part of the toppled Thaksin regime as well as the post-coup regime. Borwornsak had been cabinet secretary-general to former premier Thaksin Shinawatra before abruptly resigning in 2006 and reverting to a conservative royalist stance. Wissanu was Thaksin’s deputy premier for four years; like Borwornsak, he resigned shortly before the 2006 coup, following political pressures from the anti-Thaksin movement. Meechai served as the president of the senate from 1992–2000 before becoming a legal advisor for the Thaksin-led government from 2001 to 2006. After the 2006 interim constitution was promulgated following the military coup, Borwornsak joined the drafting assembly for the 2007 constitution, Meechai became the chair of the junta-appointed parliament, and Wissanu became a member of that parliament.
- <sup>5</sup> The *lèse-majesté* law, Section 112 of the Thai Criminal Code, reads “Whoever defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years.” *Lèse-majesté* is commonly referred to as “112.”
- <sup>6</sup> The official translation of Article 7 of the 1997 Thai constitution states: “Whenever no provision under this Constitution is applicable to any case, it shall be decided in accordance with the constitutional practice in the democratic regime of government with the King as Head of the State.” Connors (2008b) rightly argues that that “traditions/conventions of government” is a better translation for the term ประเพณีการปกครอง than “constitutional practice.”
- <sup>7</sup> See Worajet (2011) and Sawatree (2011) (Nitirat Announcements 16 and 17) for the arguments presented at the seminars in written form.
- <sup>8</sup> Details of CCAA 112 activities may be found on their website (Thai only) but after the 2014 coup, the junta closed down and it could only be accessed from outside Thailand.
- <sup>9</sup> The Constitutional Court did not come under the jurisdiction of the regular judiciary, but was a special independent agency – albeit one that was often politicised. To complicate matters, following the 2006 coup the Constitutional Court was temporarily replaced by the Constitutional Tribunal, which performed substantially the same functions.
- <sup>10</sup> Nitirat members have always been extremely careful to avoid violating the *lèse-majesté* laws, recognising that to cross this line would invalidate their academic immunity.
- <sup>11</sup> See “Nitirat Effect” (SIU 2011) for a collection of verbatim commentaries on Nitirat’s proposal from different news outlets. In particular, see the statements of General Somjet Boonthanom (*Manager*, September 20, 2011), a former junta leader; Prapan Khunmee and Tuang Anthachai (*ASTV*, September 20, 2011), members of the junta-appointed parliament; and Democrat Party politicians Abhisit Vejjajiva (*ASTV*, September 19, 2011) and Thawon Senniam (*MCOT*, September 19, 2011).
- <sup>12</sup> Similarly, see “Nitirat Effect” (SIU 2011). In particular, see the statements of PAD leader Pipop Thongchai (*Manager Online*, September 23, 2011) and *Thai Post* editor and columnist, Pleo Si Ngoen (*Thai Post*, September 22, 2011).
- <sup>13</sup> The twins were sentenced to six months in jail, which was halved because they confessed to their crime.
- <sup>14</sup> Based on observations by authors while attending these events in 2012 and 2013.
- <sup>15</sup> Coup leader General Prayudh Chan-ocha had previously described Nitirat as “abnormal.” See Saksith Saiyasombath’s blog on this on the Asian Correspondent website, February 7, 2012.



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