

## Autocratic Electoral Management

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# Autocratic Electoral Management: Lessons From Thailand

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## Abstract

How can we ensure quality elections when the key institutions responsible for the organisation of polls are openly partisan and anti-democratic? In their 2017 paper, Birch and van Ham suggest that partisan electoral management bodies (EMBs) do not matter for the quality of polls so long as effective alternative oversight institutions exist, are active and independent. These institutions can make up for the EMBs' shortcomings and ensure that a relatively high-quality election is still achieved. I argue that the notion of active and independent alternative oversight institutions leaves us guessing under which conditions it works. Adopting James's network-based approach to electoral management, I show on the example of the 2019 Thai election that electoral governance networks that are characterised by high levels of political polarisation, the presence of entrenched authoritarian elites and formally independent EMBs that are too powerful make substitution untenable.

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## Keywords

electoral management, authoritarianism, election commissions, networks, Thailand

Sometime between June 2019 and May 2020, the Election Commission of Thailand (ECT) made an important change to its Thai-language mission statement.<sup>1</sup> Gone were the references to ensuring honesty, transparency, and fairness, strengthening democracy, supporting political parties, and enhancing its operational capacity and effectiveness. Its new

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mission statement promised to strengthen the country's electoral processes "in order to enable good people to govern the country." In the Thai context, "good people" is a political code used by the traditional elite—the monarchy, military, and senior bureaucracy—to refer to those who condone contentious political interventions, including military coups and the banning of opposition parties, to protect the power and interests of the traditional elite (Suraphot, 2017; Pad, 2021: 9–10). The new ECT mission statement was an open acknowledgment of the ECT's partisanship and a clear indication that the ECT saw itself in service of the traditional elite rather than people and democracy. It came after years of controversial and antidemocratic ECT behaviors, including several high-profile party dissolutions and electoral sabotage (Khemthong, 2019; McCargo, 2014: 428; McCargo and Desatova, 2016: 78–79).

The ECT mission statement highlights a pressing issue that affects electoral management in many countries: how can we ensure quality elections when the key institutions responsible for organizing polls are openly partisan and antidemocratic? Establishing formally independent electoral management bodies (EMBs), such as the ECT, has long been considered the key institutional mechanism to achieving quality elections especially in emerging democracies. But like the ECT, many formally independent EMBs have failed to guarantee quality elections let alone increased prospects for democracy (Norris, 2015: 154; Elklit, 2019: 3). A growing body of cross-national comparative scholarship shows that there is no positive correlation between formal EMB independence and the quality of polls (Norris, 2015: 151; Cheeseman and Klaas, 2018: 160–181; van Ham and Garnett, 2019: 329). In their 2017 paper, Birch and van Ham suggest that deficiencies in the formal electoral management caused by partial EMBs do not matter for the quality of polls so long as effective alternative oversight institutions such as the judiciary, the media and civil society exist, are active and independent. These institutions can make up for the EMB shortcomings and ensure that a relatively high-quality election is still achieved. They call this a "substitution effect" model (Birch and van Ham, 2017: 492).

In this paper, I test Birch and van Ham's "substitution effect" model on the 2019 general election in Thailand, the first election following the country's 2014 military coup. While nobody had expected the 2019 poll to be "free and fair" due to wide-ranging political restrictions and the ECT's pro-junta bias, the ECT still faced considerable public criticism and a wave of online and offline protests that called for the impeachment of the seven election commissioners (Desatova and Saowanee, 2021: 7–9). Despite this, substitution did not occur. By exploring the lack of substitution in the 2019 Thai election, I do not seek to challenge the viability of Birch and van Ham's model. My aim is to offer a more nuanced approach to the question of substitution that can be applied to cases beyond the Thai context.

Birch and van Ham's model is useful in focusing our attention on actors other than EMBs, but it does not delve deep into the roles, responsibilities, powers, and organisational structures of EMBs and their relationships with the three alternative oversight institutions. Without factoring in the EMB structure, authority, and inter-institutional relations, it is impossible to determine how plausible substitution is. To begin addressing this issue, I combine Birch and van Ham's "substitution effect" model with James's network-based approach to electoral management. James (2020: 89; original emphasis)

argues that while EMBs “play a key role in the delivery of elections,” there are networks of actors whose “*working practices, beliefs and power relationships*” steer and shape the delivery of polls. He refers to them as “electoral governance networks.”

Using the example of the 2019 Thai election, I show that electoral governance networks which are characterised by high levels of political polarisation, the presence of entrenched authoritarian elites and formally independent EMBs that are too powerful make substitution untenable. While Thailand might seem like an extreme case owing to its political system centered on a powerful monarchy-military alliance, political polarisation and increasingly entrenched authoritarian elites are a widespread global phenomenon affecting even once stable democracies (Carothers and O’Donohue, 2019: 4). Thailand should thus be seen as a cautionary tale that offers three broad lessons. First, it demonstrates the need for further case studies testing Birch and van Ham’s “substitution effect” model to identify additional factors that can help determine its plausibility in different contexts. Second, it shows that looking for alternative solutions—be they technical, institutional, or legal—to what are fundamental political problems reflected in partisan electoral management may yield few positive results in the long term. Third, it demonstrates that political polarisation and increasingly entrenched elites with a penchant for authoritarian-style governance pose a real threat to electoral management and the functioning of formally independent EMBs. It is therefore important to carefully consider whether and in which contexts these institutions are worth promoting.

## The Problem of Partial EMBs

As the key institutions responsible for the organisation of polls, EMBs are important electoral players, but they do not compare easily due to the variety in their roles, responsibilities, powers, and organisational structures (van Aaken, 2009: 305). Despite this, recent years have seen an increase in global comparative studies that seek to determine which EMB factors impact the quality of polls. The results are by no means conclusive, but several studies suggest that formal or de jure EMB independence has only a weak or negative effect on electoral integrity (Birch, 2011: 122; Norris, 2015: 151; Birch and van Ham, 2017: 496; van Ham and Garnett, 2019: 329). Other factors, such as organisational EMB capacity, governance, administrative culture and de facto EMB independence—or how EMBs behave in practice—are seen as more important predictors of quality elections (Norris, 2015: 156; Birch and van Ham, 2017: 496; Cheeseman and Klaas, 2018: 161–163). These findings go against the prevailing trend of the past 30 years of offering institutional solutions to poor-quality elections that has fueled the rise of formally independent EMBs. Informed by classical liberal assumptions about the virtue of separation of powers, election practitioners, policy makers and civil society organisations have championed formal independence as a means of protecting EMBs from political manipulation and partisan interests. As a result, formal independence is now the most common EMB model worldwide, but many formally independent EMBs remain independent in name only (Cheeseman and Elklit, 2020: 9–10).

Formally independent EMBs often operate in contexts with underlying political problems and low democratic standards overall. A comparison of the Freedom House (2021) and the International IDEA (2021) data reveals that around 80 percent of autocracies worldwide have formally independent EMBs.<sup>2</sup> Even the best intentions of those designing the EMBs in these contexts can be misused to control the electoral environment and outcomes. For example, Cambodia's National Election Committee (NEC) was established as a formally independent EMB in 1997 but has struggled to maintain its de facto independence from the rising influence of the Cambodian People's Party (CPP) despite undergoing several organisational reforms that switched between different EMB membership models (des Pallières, 2014: 56; Un, 2019: 51–55). The result is a highly partisan NEC that joined the CPP in voter intimidation activities during the one-party sham election in 2018 (Human Rights Watch, 2018).

Achieving elections that are technically well-managed and comply with substantive democratic ideals (James, 2020: 43–44) is not on the autocratic agenda. This is reflected in the rising strategic manipulation of electoral contests that has part-fueled the global autocratisation trend over the past twenty years (Bermeo, 2016: 13). But while autocratic elections have received ample academic attention (Schedler, 2002; Magaloni, 2006; Blaydes, 2011; Little, 2012; Knutsen et al., 2017), autocratic electoral management has attracted little interest. This is surprising given the extensive scholarship that details how the adoption of quasi-democratic institutions, such as political parties and parliaments, can play into the hands of autocrats by helping them co-opt or deter their challengers (Gandhi and Przeworski, 2007; Blaydes, 2011; Gandhi et al., 2020). Formally independent EMBs are no exception. As Cambodia's NEC shows, they can be easily co-opted by autocratic rulers to provide vital gatekeeping functions. This brings us back to the question of quality elections in environments with openly partisan and anti-democratic EMBs. Here, Birch and van Ham (2017) suggest that so long as effective alternative oversight institutions such as the judiciary, the media and civil society exist, are active, and able to maintain some independence, they can substitute for partial EMBs. They argue that it is often enough if only one such alternative institution exists for the elections to be “relatively clean” (Birch and van Ham, 2017: 505). While this is a tantalizing proposition, it comes with many problems that remain unaddressed.

Birch and van Ham do not specify the conditions under which substitution works. Based on the results of their cross-national quantitative data analysis, they argue that active and independent alternative oversight institutions can compensate for partial EMBs but this does not mean that they will. Birch and van Ham then provide a brief qualitative analysis of the substitution effect model in three African countries—The Gambia, Madagascar, and Guinea-Bissau—between 1992 and 2012. But it remains unclear how powerful and interventionist the three African EMBs were during the studied period (Birch and van Ham, 2017: 501). It is also unclear how The Gambia's judiciary, Madagascar's media and Guinea-Bissau's civil society maintained independence despite wide-ranging restrictions on political rights and freedoms and low democratic standards overall.

They also assume that each of the three alternative oversight institutions wields enough power and influence to compensate for deficient EMBs. But even the judiciary does not have guaranteed oversight over EMBs in each context. Judicial review is one of many different EMB accountability options; its effectiveness greatly depends on its permitted scope (van Aaken, 2009: 309). The individual effect of the media and civil society is limited to public naming and shaming, but this might do little to change EMB behavior (Lean, 2012: 79; Grömping, 2021: 117). For example, the Election Commission of Kenya still read out the wrong results of the 2007 presidential election despite widespread public concerns and evidence from domestic and international observers that the vote count was rigged in favor of the incumbent (Cheeseman, 2008: 176–177).

This does not mean that there are no merits to Birch and van Ham's model, but rather that we need to recognise that the question of when and why substitution works is more complex and context-dependent than what the basic tenets of the substitution effect model imply. For example, Chernykh and Svolik (2015: 409; original emphasis) show that alternative oversight institutions do not need to be independent to have a positive effect on the quality of polls, they need to be "acceptable to *both* the opposition and the incumbent" which often requires a level of proincumbent bias. Similarly, when it comes to the role of the courts, Popova (2012: 100) and Harvey (2022: 1326) demonstrate that high electoral competition incentivises incumbents to interfere with the courts more as it increases incumbents' likelihood of losing the polls. Low electoral competition, on the other hand, can reduce electoral manipulation. Incumbents who are electorally secure can tolerate a level of judicial independence and may "voluntary engage in less [electoral] manipulation" over time to avoid potential legitimacy costs of adverse court rulings (Harvey, 2022: 1325–1326).

Whether the media will take on an election watchdog role, and whether this role will have positive electoral integrity effects, also depends on factors other than their activeness and independence. For example, media cultures that comprise journalists who define their roles in terms of influencing public opinion, supporting the government and its policies, and providing news with mass-appeal have been associated with lower levels of electoral integrity (Norris, 2017: 202 and 207–210). Similarly, political polarisation has been shown to compromise media's ability to perform positive democratic functions. Vitriolic media criticism of elected governments has led to rapid democratic breakdowns in regimes with weakly institutionalised political systems (Thompson, 2015: 277–288). Even when conditions are more favorable, there are often limits to what alternative oversight institutions can achieve. For example, Alianza Cívica, Mexico's leading domestic election monitor, successfully discouraged election-day fraud throughout the 1990s, helping the country transition to electoral democracy, but has since struggled to dissuade strategic forms of electoral manipulation that happen before the election day (Lean, 2012: 79).

Combining Birch and van Ham's "substitution effect" model with James's network-based approach to electoral management provides a more nuanced reading of autocratic electoral management. According to James (2020: 102), there are three key dimensions to

focus on when analysing electoral governance networks: (1) the range and type of actors involved in steering and delivering polls, and the degree of their integration; (2) the level of contestation among these actors over how elections should be delivered; and (3) the diffusion of power and resources across the network. While the full application of this framework is beyond the scope of this paper, the analysis below focuses on highlighting the formal and informal power relations and political orientations of the ECT and the three oversight institutions *vis-à-vis* the broader power networks that dominate Thai politics. It draws on qualitative data generated as part of a larger election-related project on the 2019 Thai election, long-term observation of Thai politics, and secondary data from news reports, electoral analyses and the 2022V-Dem dataset.<sup>3</sup>

## **Weaponising the Election Commission of Thailand**

Thailand's electoral governance network is akin to what James (2020: 153) calls the "contested statist system" characterised by low levels of power diffusion, medium levels of actor involvement, and high levels of contestation. Before the ECT was established in 1997, the responsibility for managing elections rested with the Ministry of Interior. The official motivation for absolving the Ministry of this responsibility was to clean up the polls from irregularities, fraud, and vote buying (Sombat, 2002: 204). Unofficially, the ECT was established to protect the traditional elite from the ambitions of elected politicians. Comprising of the monarchy, military and senior bureaucracy, the traditional elite is Thailand's leading anti-democratic force (Baker, 2016: 394–397; Prajak, 2019: 28; Khemthong, 2023: 162). Having survived the transition to constitutional monarchy in 1932, it has been working hard to counter the rise of elected politicians whilst searching for a suitable form of rule to protect its power and interests (Baker, 2016: 396–397). The result is a vicious cycle of political crises, military coups, and new constitutions in which elections often play second fiddle.

The ECT was part of broader quasi-liberal political reforms aimed at breaking this vicious cycle by institutionalising "a form of semi-monarchical rule" that had dominated Thai politics since the early 1970s, and that McCargo (2005: 501) has famously called "network monarchy"—an ambiguous power network centered on the Thai king that exercises royal authority through informal influence and "self-interested actors responding opportunistically" to royal wishes and proclamations. The institutionalisation of network monarchy culminated in the passage of the 1997 constitution that introduced a new check and balance system on executive power by creating formally independent oversight institutions—including the ECT, the Constitutional Court (CC), the Administrative Court and the National Anti-Corruption Commission (for the full list, see Khemthong, 2023: 163)—and populating them with "good people" who would stay loyal to the traditional elite (McCargo, 2005: 512). To ensure such loyalty was possible, the 1997 constitution exempted these institutions from political oversight and gave them significant *de jure* independence, extensive powers, and decision-making autonomy (Desatova and Saowanee, 2021: 5; Khemthong, 2023: 163). Their task was to prevent

elected politicians from challenging the power and interests of the traditional elite through means other than military coups.

Controversial former Prime Minister Thaksin Shinawatra (2001–2006) soon tested this theory. He removed key network monarchy members from positions of power in the military and the bureaucracy, replaced members of the formally independent oversight institutions with his own loyalists and built a loyal voter base in Thailand's two most populous regions, the North and the Northeast (Kuhonta, 2008: 386). Unable to defeat him at the polls, the traditional elite ousted him from power in the 2006 military coup and redesigned the 1997 check and balance system to prevent its future capture by elected politicians like Thaksin. The key changes introduced in the 2007 and 2017 military-drafted constitutions concerned the composition of the ad hoc panel responsible for selecting ECT commissioners, and the composition of the CC and its nomination process: Both became dominated by career judges who are loyal to the traditional elite (Dressel and Khemthong, 2019: 5; McCargo, 2019: 62; Desatova and Saowanee, 2021: 7; Khemthong, 2023: 165). These changes essentially weaponised the ECT and the CC by removing all traces of political and public accountability. Another important change included the expansion of the ECT and CC powers to disqualify elected politicians and dissolve political parties (Dressel and Khemthong, 2019: 6; Desatova and Saowanee, 2021: 7). As a result, much of the power of Thailand's post-2006 coup electoral governance network rests in the hands of a few powerful and politically unaccountable actors: the traditional elite, the ECT and the CC.

In the years since the 2006 coup, the ECT and the CC have become highly partisan bodies that prioritise the loyalty to the traditional elite over quality elections and democracy (Desatova and Saowanee, 2021: 6; Khemthong, 2023: 165–166). The ECT orchestrated a dissolution of a pro-Thaksin party that won the 2007 election, laying grounds for an unelected government favored by the traditional elite (McCargo, 2014). It sabotaged the 2014 snap election called by the government of Yingluck Shinawatra, Thaksin's younger sister, creating conditions for the CC to annul the poll and for General Prayuth Chan-o-cha and his military junta, the National Council for Peace and Order (NCPO), to seize power by force (McCargo and Desatova, 2016: 78–79). It then helped the NCPO push a draft constitution—which also increased ECT powers—through the 2016 popular referendum by outlawing public criticism of the charter and campaigning in its support (McCargo et al., 2017: 69–71).

When the NCPO announced the 24 March 2019 poll, the ECT—staffed with new commissioners who were loyal to the traditional elite—created an unfair electoral advantage for the main pro-junta Palang Pracharat Party (PPRP) that was designed to legitimise the NCPO and prolong its grip on power (Desatova and Saowanee, 2021: 10–12). It used every opportunity to weaken the main anti-junta parties: the pro-Thaksin Pheu Thai, its sister party Thai Raksa Chart, and the newly formed progressive Future Forward Party. It orchestrated the dissolution of Thai Raksa Chart and Future Forward and tinkered with the proportional formula for calculating party list seats until it generated results most favorable to PPRP (Desatova and Saowanee, 2021: 9). PPRP was then able to form a coalition government even though it came second to pro-Thaksin Pheu Thai.



Tendentious Substitutes

Given the ECT’s partisanship, could substitution work in Thailand? To find out, I replicated Birch and van Ham’s coding decisions for key “substitution effect” variables: electoral integrity, de facto EMB independence and judicial, media and civil society independence. Starting in 1992, the same year used by Birch and van Ham, I extended the overall period of study by seven years to allow for the inclusion of the 2014 and the 2019 Thai elections (Table 1).

Birch and van Ham use a combination of V-Dem and the Cingranelli and Richards Human Rights datasets: V-Dem for The Gambia, Madagascar and Guinea-Bissau’s electoral integrity and de facto EMB independence scores, and the Cingranelli and Richards Human Rights dataset for their judicial, media and civil society independence. Because the Cingranelli and Richards Human Rights dataset has no data for years 2012 onwards, I used V-Dem data for all five variables. To ensure consistency, I followed Birch and van Ham’s V-Dem data choices in their robustness checks and applied them to the entire study period.<sup>4</sup> The resulting Thailand table works with a 0–4 scale across all five indicators instead of the 0–2 scale for judicial, media and civil society independence used by Birch and van Ham. This does not change Birch and van Ham’s key hypothesis that substitution can be expected to kick in at around mid-point value for judicial, media and/or civil society independence (2017: 500–505).

**Table 1.** Scores for Key “Substitution Effect” Variables in Thailand. Based on V-Dem Data by Coppedge et al. (2022).

Thailand	Electoral integrity (0–4 scale)	De facto electoral management body (EMB) independence (0–4 scale)	Judicial independence (0–4 scale)	Media independence (0–4 scale)	Civil society independence (0–4 scale)
1992	1.74	0.93	2.38	1.49	2.11
1995	2.04	0.93	2.38	1.79	2.57
1996	2.04	0.93	2.38	1.79	2.57
2001	2.44	2.80	2.38	1.79	2.87
2005	2.19	2.60	2.38	1.74	2.78
2006 (election annulled)	Missing	2.22	2.25	1.5	2.35
2007	1.98	1.99	2.56	1.36	2.24
2011	2.15	2.46	2.76	1.63	2.64
2014 (election annulled)	1.86	1.24	1.79	0.81	1.42
2019	1.39	1.41	1.44	1.41	1.99

The V-Dem Thailand table indicates that substitution was more plausible before rather than after the ECT was established, which is reflected in the qualitative data that I present in the sections that follow. As I explain on the example of the 2019 election, the lack of substitution is a result of high levels of political polarisation, the presence of entrenched authoritarian elites and a formally independent EMB that is too powerful. While the 1995 and 1996 elections organised by the Ministry of Interior were seen as exceptionally “dirty” due to the prevalence of vote-buying, this perception was shaped in large part by the increased reporting of electoral irregularities by the media and PollWatch, Thailand’s first independent domestic election monitoring network (Callahan and McCargo, 1996: 389). PollWatch “helped to curb electoral fraud” in the 1995 election as its election monitoring activities made vote-buying more difficult (Callahan and McCargo, 1996: 390), explaining the increase in post-1992 electoral integrity scores.

Following the ECT establishment, Thailand’s electoral integrity has experienced a downward trend reflecting the ECT’s capture first by Thaksin (2005 and 2006), and then by the traditional elite (2007 onwards). Even in years when substitution seemed likely, it did not happen. For example, the relatively strong judicial and civil society independence scores of 2007 mask the limited domestic election monitoring (ANFREL, 2007: 33–35 and 45) and the controversial dissolution of Thaksin’s Thai Rak Thai Party by the junta-appointed Constitutional Tribunal, an interim version of the CC that was abolished temporarily following the 2006 military coup (McCargo, 2017: 427–429). Similarly, the near mid-point value for civil society independence in 2019 would imply a possible substitution case, but as I explain below this did not happen.

### *Judiciary*

Judiciary is one of the key checks on executive power. Yet, over the last fifty years, its roles and responsibilities have expanded in many countries into areas of governance previously dominated by representative institutions – a phenomenon known as the “judicialization” of politics (Dressel and Mietzner, 2012: 391–392). In the electoral realm, this has resulted in increasingly frequent judicial interventions in electoral processes (Dressel and Mietzner, 2012: 394). Some EMBs, like the Election Commission of Pakistan, could at one point only be composed of high court judges, highlighting the need to understand the EMB-judiciary power relations. Judicial intervention is at the heart of the “substitution effect” model but this is based on two troubling assumptions: first, that an increased judicial involvement in electoral processes is desirable; and second that such an involvement has a positive effect on democratic governance. Judicial intervention posits law above politics as “morally superior,” but law is “a politically devised set of rules” administered by actors who are not bias free (McCargo, 2019: 24). Whether judicialisation of electoral politics leads to a better electoral governance depends on the political context and the type and behavior of political elites. In countries where political power is diffused among multiple elite groups, such as Indonesia, the judiciary is more likely to retain its independence and impartiality as no single group is powerful enough to impose its will on the judges (Dressel and Mietzner, 2012: 405–

406). In such contexts, judicial activism might encourage electoral competition and foster democratic governance. However, in countries like Thailand where power is centralised, “elites have both the motive and the means to turn judicial activism to anti-democratic ends” (Dressel and Mietzner, 2012: 408).

Over the past twenty-five years, Thailand’s judiciary has amassed a record of controversial electoral interventions in favor of the traditional elite. This is particularly true of the CC, one of network monarchy’s key formal institutions that was established under the same constitutional provisions as the ECT. Following the rise of Thaksin, the traditional elite weaponised the CC, just like they did the ECT, making it one of the most visible electoral governance network actors in recent years (Dressel and Khemthong, 2019; McCargo, 2019: 9–11; Khemthong, 2023: 162–166). By the time of the 2019 election, the CC had annulled two snap elections called by Thaksin-aligned governments (2006 and 2014), dismissed three pro-Thaksin prime ministers, dissolved two major Thaksin-aligned parties, and temporarily banned more than one hundred pro-Thaksin party executives from politics.

Despite this, the CC is not “a prime mover in its own right” (McCargo, 2019: 28). Its judges are reactive rather than proactive, their decisions on sensitive political issues are often tentative, and they display a degree of reluctance to being dragged into politics. They are not as politically assertive as it is often believed, which is also true for their relationship with the ECT. On several occasions during the 2019 election, the CC was reluctant to pass opinion on politically sensitive issues of technical nature. When a sudden announcement of King Vajiralongkorn’s coronation dates derailed the planned election timeline, threatening to make the process unconstitutional, the CC refused to offer its interpretation claiming it could do nothing until a problem arose (Bangkok Post, 2019). This left the ECT in an uncomfortable position: delaying the polls could have led to criminal lawsuits against the commissioners and a potential poll nullification. The ECT decided to push the election date back by a month to 24 March and the announcement of the official results to 8 May – a few days after the key coronation activities were over and a day before the final 150th day of the constitutional window for “completing” the polls. The ECT found itself in a similar situation one month after the polls when the CC rejected its petition to rule on the interpretation of the new proportional formula for calculating party list seats. The judges claimed that there was nothing they could do until an issue arose (The Straits Times, 2019). When the ECT finally settled on an allocation formula that openly favored the pro-junta PPRP and the CC was petitioned to adjudicate, it ruled in the ECT’s favor (BBC Thai, 2019). Palang Pracharat was permitted to form a coalition government consisting of 19 parties, 11 of which were incredibly small, even though it was not the largest party in the new parliament.

The CC’s reluctance to rule on politically sensitive issues of technical nature contrasted with its willingness to cooperate with the ECT on politically sensitive issues of substantive nature. Just like the ECT, the CC did not care about safeguarding Thailand’s democratic processes. It swiftly dissolved two anti-junta parties on absurd, politically motivated charges. The Thai Raksa Chart Party was dissolved for nominating the king’s older sister and former princess Ubolratana Mahidol as their sole prime

ministerial candidate. The nomination was controversial because Thai Raksa Chart was a sister party of the pro-Thaksin Pheu Thai Party, but it was not illegal. Because Ubolratana lost her royal title in 1972, she was technically a commoner and could be nominated for office. The ECT initially endorsed her nomination signaling that there was nothing wrong with it. Yet, following King Vajiralongkorn's public intervention against the nomination, the commissioners quickly changed tack and petitioned the CC to dissolve the party. Whether the king wanted Thai Raksa Chart to be dissolved is beside the point. His intervention sent a clear message that he did not wish Ubolratana to be nominated for office. The ECT responded to his wish, making full use of its extensive powers. The CC dissolved Thai Raksa Chart on 7 March 2019 without citing any laws, claiming a breach of Thai norms and values instead. The fact that the ECT failed to properly investigate the case did not matter to the CC that prioritized upholding the king's wishes over fair and democratic processes.

The Future Forward Party, a political upstart with a progressive antimilitary agenda, was dissolved on 21 February 2020, 11 months after finishing third in the 2019 poll. The Party was a breath of fresh air in the otherwise conservative Thai politics, but its strong electoral performance threatened network monarchy's power and interests. The CC first disqualified party leader Thanathorn Juangroongruangkit from his MP status for holding shares in a defunct magazine company at the time of his MP application. Despite presenting evidence that he had transferred his shares before applying to become an MP, the CC disqualified Thanathorn on 20 November 2019 on a technicality that had no basis in law (Khemthong, 2020). Shortly after, the ECT petitioned the CC to dissolve the entire Party claiming that Thanathorn's 191-million-baht (USD 5.87 million) party loan was an illegal donation that went against campaign finance rules. The CC refused Future Forward the opportunity to present evidence, disregarded the party's repayment plan including evidence of repayments, and upheld the controversial ECT claim (Khemthong, 2020). It used the party's full financial transparency as a pretext for the dissolution, banning the Party's 16 executives from politics for 10 years.

Would a more independent judiciary make a difference to the integrity of the 2019 Thai election? Most likely, at least as far as the party dissolutions are concerned, but this does not mean that a more active judicial involvement in electoral matters should be encouraged. Thailand's judicial independence scores for 1992–2019 seem to support this: While there is no clear link between higher judicial independence scores and better-quality polls, the two election years with considerable judicial interventions (2014 and 2019) have some of the lowest electoral integrity scores (Table 1). As the Thai case shows, judges can be co-opted by dominant power networks and even seemingly technical issues such as a party seat allocation formula can have serious political ramifications. Asking courts to rule on such issues is “an inherently and substantively political exercise that extends beyond the application of rights provisions or basic procedural justice norms to various public policy realms” (Hirschl, 2011: 258). Put simply, the outcome of polls should not be decided by courts. This is especially true in authoritarian regimes where electoral rules and regulations are neither apolitical nor democratic.

## Media

Active and independent media are the second alternative oversight institution in the “substitution effect” model. They include traditional media channels, such as broadcast and print, and new media forms like social media. While these are key electoral governance network actors, they wield no formal powers over EMBs. According to Birch and van Ham (2017: 491), their role is to “expose misconduct and condemn it” laying grounds for popular mobilisation against electoral abuse and injustice. Viewing the role of media in this way, however, does not make space for political polarisation, an indicator that is left out of Birch and van Ham’s media independence score. As the 2016 and 2020 presidential election in the United States show, political polarisation can fuel voters’ distrust in the integrity of electoral processes even in contexts of high media freedom and private ownership. Instead of promoting democracy and enhancing public trust in the integrity of polls, polarised media can subvert them as the 6 January 2021 US Capitol riot demonstrated.

Thailand’s media landscape has changed dramatically since the ECT was formed. Throughout most of the 1990s, Thai press was one of the freest and most outspoken presses in Pacific Asia (except for the coverage of the monarchy) even though the country’s broadcast media were firmly under state control (Aim and Wimon Siri, 2019: 257–259). Political polarisation wrought by the rise of Thaksin split the country’s media landscape between the pro- and anti-Thaksin lines. Many new media channels set up by previously marginalised groups emerged during this time, bringing their voices closer to the people, but instead of promoting rational political debate, they were reinforcing Thailand’s political polarisation fueling the rise of increasingly vitriolic and populist politicians, many of whom started off as prominent media figures and protest leaders (McCargo, 2017: 4141; Aim, 2021: 139–169). This trend was amplified by the rise of social media that contrary to some initial optimism generated by the events of the Arab Spring did not foster greater deliberation and respect for democracy in Thailand (Grömping, 2014: 40; Aim and Wimon Siri, 2019: 271–276; Aim, 2021: 139–169) or elsewhere (Lim, 2017).

The 2014 coup followed by almost 5 years of direct NCPO rule put further pressure on the already polarised Thai media. Using frequent censorship, intimidation, and legal proceedings against critical individuals and the main pro-Thaksin media outlets, such as Voice TV and Peace TV, the NCPO stifled opposition voices and increased levels of self-censorship among critical Thai journalists. As one Thai journalist explained, there had always been restrictions on free speech in Thailand, but the difference was in their application under the junta.<sup>5</sup> The repeated albeit temporary suspensions of Voice TV by the National Broadcasting and Telecommunications Commission for airing content critical of the junta in the years and months leading to the 2019 election, left the pro-Thaksin media afraid to “push too hard” and report “too freely” during the election. The same journalist noted that it was like walking on “very thin eggshells” as they could not be sure what the government would try to use against them. Combined with restrictions on media campaigning and laws governing online activities of individual internet

users, the 2019 election took place in a highly restricted media environment, which without a doubt contributed to its low quality (ANFREL, 2019).

The new ECT commissioners also helped the NCPO control the media environment highlighting the low and unequal power diffusion within Thailand's electoral governance network. Less than a week before election day, a team of Reuters journalists was given an exclusive access to the ECT media war room called the "E-War Room" which monitored online media content for 8 hours a day for breaches of the new electoral laws (Patpicha, 2019). These included social media posts deemed untrue, rude, or slanderous which given Thailand's polarised political environment amounted to highly subjective interpretations. Adopting vague cyber laws and regulations is a shared trait of many Southeast Asian countries (Aim, 2020: 35), but given the ECT's partisanship to the traditional elite and its powers to disqualify candidates and dissolve political parties (via petitioning the CC), its media monitoring activities threatened anti-junta parties and candidates. Several leading Pheu Thai figures and candidates suspended their social media accounts ahead of the poll out of fear of arbitrary prosecutions while leading Future Forward Party figures sought legal counsel before posting online (Patpicha, 2019). Conservative anti-Thaksin media, on the other hand, enjoyed freedom in their activities. When Nation TV, acquired in January 2018 by a conservative royalist news corporation, aired a doctored audio clip that featured Future Forward leader Thanathorn supposedly taking orders from Thaksin, there were no formal repercussions. Instead, the broadcaster demanded an apology from Thanathorn, who publicly criticised Nation TV for airing the clip, threatening legal action against him (Asaree, 2019).

Despite all the restrictions and controls, Thai media were still "visibly active" during all stages of the electoral cycle, but the quality of reporting and electoral analysis suffered as many journalists were self-censoring (ANFREL, 2019). The same was true of Thai political parties: many actively engaged the media but under a heavy dose of self-censorship. This leads to an important question: Would a freer media environment improve the quality of the election? Possibly, but given Thailand's political polarisation and high levels of media partisanship its effects would have been limited and insufficient to fulfill the expectations of the "substitution effect" model. Thailand's 2011 election took place amidst lesser media restrictions than the 2019 poll, but the quality of the Thai media landscape and its ability to foster democratic processes remained low (ANFREL, 2011). Thailand's 2011 media independence score (1.63) is higher than other post-2006 media independence scores, but it remains well below the scale's mid-point and is lower than all but one of the pre-2006 media independence scores (Table 1). Even if political polarisation was not an issue, the Thai media's ability to force a change in the ECT's behavior would have been limited. Because the ECT is designed to be politically and publicly unaccountable (Desatova and Saowanee, 2021: 7; Khemthong, 2023: 165), none of the highly publicised cases surrounding the 2019 election—including the ECT's delays in publishing full election results, its tinkering with the seat allocation formula and its decision to disqualify more than 1,500 overseas ballots that the ECT itself had failed to deliver in time for counting—led to any changes in the commissioners' behavior.

## *Civil Society*

Civil society organisations engaged in domestic election monitoring are the final alternative oversight institutions in the “substitution effect” model. Birch and van Ham (2017: 491) suggest that if these domestic election monitors are independent and active, they can help publicise information about potential electoral fraud and abuse, push for electoral reforms, alert politicians and political parties to issues of electoral malpractice, organise public protests, and petition courts to investigate election-related crimes. Such understanding is underpinned by broader liberal assumptions that civil society organisations are positive democratic actors and that those involved in them are interested in advancing democracy. But in highly polarised political contexts, partisan interests often override democratic principles as each side of the political conflict is willing to sacrifice democracy to preserve their interests and prevent the other side from gaining power (Svolik, 2019: 24 and 28; also see Thorn, 2016). Civil society organisations can quickly turn “uncivil” if their interests are at stake as seen in the 2001 urban anti-Estrada movement in the Philippines (Arugay and Slater, 2019: 127–131), the 2005–2014 anti-Thaksin movements in Thailand (Prajak, 2016: 473–476; Janjira, 2020; Aim, 2021), the 2016–2018 right-wing Taegeukgi rallies in South Korea (Han and Hundt, 2021) and the January 2021 storming of the US Capitol (Polizzi, 2021: 223–243).

Thailand’s PollWatch was established in January 1992 in response to the growing public concern of rampant vote buying (Callahan, 2000: 3). In 1998 PollWatch joined around a hundred other NGOs to create a volunteer election monitoring network called the People Network for Elections in Thailand or P-NET. Over the past twenty years, P-NET has been Thailand’s leading domestic election monitoring body but its effectiveness in promoting electoral integrity and supporting Thailand’s democratic processes has ebbed and flowed.

The heyday of Thailand’s domestic election monitoring was in the 1990s, before the ECT was formed (McCargo and Desatova, 2016: 83). The ECT holds considerable sway over Thai civil society during the time of elections, highlighting the low diffusion of power within Thailand’s electoral governance network. The ECT issues permit for registered election observers and allocates funds for voter education and election monitoring activities. While the ECT used to allocate some funds to P-NET to support their election monitoring activities, this has not been the case over the past few years. In a 2014 interview Sakool Zuesongdham, then acting P-NET director, admitted that the relationship between P-NET and the ECT had been strained (McCargo and Desatova, 2016: 84). As a result, P-NET had become reluctant to ask the ECT for funding and the ECT was not always keen to register P-NET to monitor the polls.

The ECT registered P-NET to monitor the 2019 election, but it did not release any funds to support its election monitoring activities. This was despite the ECT having 97 million Baht (approx. 2.9 million USD) earmarked for election promotion and publicity, voter education, public participation campaigns and election monitoring.<sup>6</sup> P-NET received funding from the British (approx. 7,950 USD) and Swiss Embassies (approx. 11,766 USD), while the International Republican Institute funded another domestic Thai election monitoring

network called WeWatch. Foreign donor funding was not enough to cover the costs of extensive election monitoring. P-NET had 600 observers to cover the entire country which meant that it could only concentrate on monitoring the most contested provinces.<sup>7</sup> WeWatch did not fare much better: It had 119 long-term observers, 2,810 election-day observers and 1,000 key informants deployed across the entire country. Despite insufficient funding, there was no cooperation between P-NET and WeWatch.<sup>8</sup> Sakool saw the two networks as having somewhat different roles: WeWatch was focusing on monitoring the election day, whereas P-NET was monitoring the whole electoral process starting from the candidate registration. This distinction made little sense in practice and did not justify the lack of cooperation between the two networks, demonstrating the weakness of Thai civil society in coordinating and pushing against the ECT.

Thailand's civil society, just like the media and the judiciary, has never truly recovered from the political polarisation wrought by Thaksin. Leading P-NET members assumed strong anti-Thaksin positions, effectively collaborating with network monarchy in the years leading up to the 2019 election. This compromised P-NET's election monitoring abilities and democratic commitment. Under Somchai Srisuthiyakorn P-NET refused to monitor the 2006 snap election called by Thaksin's government, while under Sakool Zuesongtham it refused to monitor the 2014 snap election called by the government of Thaksin's sister Yingluck (McCargo and Desatova, 2016: 84).

In the run-up to the 2019 election P-NET turned increasingly critical of the NCPO and the ECT and their handling of the 2019 election. This came as a surprise given P-NET's record of less-than-tacit support of anti-Thaksin forces. Personal grievances of P-NET-linked figures, such as Somchai Srisuthiyakorn, a former P-NET director and ECT commissioner, and Laddawan Tantivitayapitak, a serving vice-president and secretary general of P-NET, might offer partial insights. Somchai Srisuthiyakorn became a vocal critic of the NCPO when the latter decided to change for a new set of commissioners. The NCPO expected Somchai and his fellow ECT commissioners to provide caretaker duties until the new commissioners were found, but this did not sit well with Somchai who turned to publicly criticise the junta and their election laws and plans. Junta leader-cum-Prime Minister General Prayuth eventually fired Somchai from the ECT, using his near absolute powers vested in Article 44 of the 2017 constitution, citing Somchai's "inappropriate behaviour" (Bangkok Post, 2018). Somchai's removal sent a clear message that the NCPO had the power to interfere with the ECT and was willing to do so whenever the ECT stepped out of the line.

Somchai's public criticism of the junta was not a sign of his sudden democratic awakening. Before his early ECT dismissal, he spoke publicly against holding the 2014 snap election and worked closely with the junta to stymie criticism of the draft charter in the run-up to the 2016 constitutional referendum (The Nation, 2018). He also publicly defended the ECT's handling of the Thai Raksa Chart case despite acknowledging that the ECT did not follow proper investigation procedures (The Nation, 2019). Somchai may have fallen out with the junta, but his loyalties lied with network monarchy. He ran as a candidate for the Democrat Party—the main electoral vehicle for network monarchy in the years preceding the 2014 military coup (McCargo, 2005: 508–510)—for



district 2 in the Samut Sakhon province in the 2019 election (PPTV Online, 2018). When the Party entered the coalition government with the NCPO-proxy PPRP, Somchai resigned his membership and later joined the anti-military Seri Ruam Thai (The Standard, 2019).

Laddawan, on the other hand, was one of the 26 candidates who failed to qualify for the new ECT commissioner selection process despite having relevant experience through working with the ECT for 15 years. Like Somchai, Laddawan was not always critical of the ECT's antidemocratic attitudes: she praised the ECT for organizing the 2014 poll amidst immense public pressure (Thiti, 2019), conveniently overlooking its role in first opposing and then sabotaging the polling. Her public Facebook page also reveals a degree of sympathy with the People's Democratic Reform Committee (PDRC), a mass anti-Thaksin, antidemocratic movement that disrupted the 2014 election, and indicates that she might have even joined the PDRC-led election-day "picnic" protest. Her comparison of the PDRC protests to the 1986 People Power Revolution movement in the Philippines conveys a contingent understanding of democracy. Unlike the 1986 People Power Revolution movement, the PDRC protests were demanding a less democratic form of government (Prajak, 2016: 475–476; Aim, 2021: 170–191). Directed against an elected prime minister, the PDRC called for an early election, but as soon as Yingluck dissolved the parliament and announced the snap poll, they upped the ante by disrupting electoral preparations and demanding political reforms first. Their efforts helped pave the way for the 2014 military coup (McCargo and Desatova, 2016: 68; Prajak, 2016: 476).

What the above examples show is that civil society organizations might not be the most reliable substitutes for deficient EMBs as they can succumb to partisan interests and be mobilized against elections (as seen in the run up to the 2014 snap election), be saddled with personal ambitions and grievances, and have only a contingent commitment to democracy. The overall decline in Thailand's civil society independence scores since 2005 attests to that (Table 1). Would a more independent Thai civil society make a difference to the integrity of the 2019 poll? The answer is most likely no. Even if political polarisation was not a problem, the ECT's ability to directly impact the effectiveness of civil society organisations by refusing to issue permits for their election monitoring activities or releasing much-needed funds leaves Thai civil society organisations at a considerable disadvantage. The absence of effective formal accountability ECT mechanisms then ensures that these civil society organisations do not have any effective levers to push for a change in ECT behavior. Popular protests demanding the impeachment of the seven ECT commissioners in the days that followed the 2019 polling made no difference. Instead, the commissioners filed several defamation lawsuits against the leading protest members highlighting the limited powers people have over the ECT (Prachatai, 2019).

## **Conclusion**

This paper tested Birch and van Ham's "substitution effect" model in the context of authoritarian electoral management using the example of the 2019 general election in

Thailand. According to this model, deficiencies in formal electoral management do not matter for the quality of elections so long as effective alternative oversight institutions such as the judiciary, the media, and civil society, exist, are active and independent. As such, Birch and van Ham propose that electoral assistance should also focus on strengthening these alternative institutions not just EMBs. Adopting James's network-based approach to electoral management, I argued that the "substitution effect" model did not account for important contextual nuances that shape the performance and behavior of EMBs and the alternative oversight institutions. Using the example of the Thai 2019 election, I illustrated that electoral governance networks characterised with high levels of political polarisation, the presence of entrenched authoritarian elites, and formally independent EMBs that are too powerful make substitution untenable. While the Thai judiciary was not overly keen to interfere in the country's electoral processes and showed a great deal of reluctance to rule on contentious matters of technical nature, when it came to contentious matters of substantive nature that threatened the country's political status quo it acted in line with the wishes of the traditional elite. As such, it is questionable whether more active judiciary is desirable in contexts vulnerable to political polarisation that have little liberal democratic tradition as this might embolden its anti-democratic attitudes.

The same was true for the media and civil society. Although the Thai media environment during the 2019 election was highly restrictive, and the junta placed much pressure on critical individuals and pro-Thaksin media, lesser media restrictions would not automatically guarantee more quality reporting and electoral analysis given Thailand's deep-seated split along the pro-/anti-Thaksin lines. As for Thai civil society, there was no co-operation between the two domestic election monitoring bodies that were officially permitted to observe the polls. P-NET's history of anti-democratic attitudes and a record of open partisanship defies the pervasive notion of civil society's positive effects on democracy. In both cases, the ECT also used its powers to curb their potential effectiveness pointing toward an inherent power imbalance. It helped monitor the Thai media landscape, spreading fear and fueling self-censorship, and refused to release funds earmarked for monitoring and voter education to domestic monitors.

Thailand's general election on 14 May 2023 was organised under less restrictive political environment than the 2019 poll. With the pro-military camp split between the PPRP and the newly formed United Thai Nation Party, and rumors of a possible post-election deal between PPRP and pro-Thaksin Pheu Thai circulating since well before the poll (Termsak 2023), the ECT was under less direct pressure from the traditional elite. It managed to avoid major political controversies in the run up to the poll, but when the poll delivered the "wrong" result—a strong opposition vote with a surprising victory for Future Forward's successor, the Move Forward Party—it dragged its feet through the result certification process taking 36 days in total. The ECT is still investigating several election-relating complaints, including against Move Forward leader Pita Limjaroenrat, that might alter the outcome of the poll. It remains to be seen what happens next and whether the ECT will intervene on behalf of the traditional elite again.

Moving beyond the Thai case, there are at least three broader lessons with far-reaching implications for academia and electoral assistance. First, we need more case studies testing the viability of Birch and van Ham's "substitution effect" model to identify additional factors that can help determine its plausibility in different contexts. Such case studies need to provide a detailed analysis on not only the EMBs but also their formal and informal power relations with other electoral stakeholders. James's network-based approach to electoral governance provides a useful analytical framework and a good starting point for such studies. Second, the Thai case shows that looking for alternative solutions—be they technical, institutional, or legal—to what are fundamental political problems reflected in partisan electoral management may yield few positive results in the long term. Third, political polarisation and increasingly entrenched elites with a penchant for authoritarian-style governance pose a real threat to electoral management and the functioning of formally independent EMBs. It is important to carefully consider whether and in which contexts these institutions are worth promoting. As the Thai case shows, it is relatively easy for powerful unelected actors to subvert formal EMB independence, while preventing them from doing so is much more difficult. Thailand should serve as a cautionary tale for other autocratising and authoritarian countries, such as India, Kenya, and Uganda, with similar contextual factors (entrenched authoritarian elites, political polarisation and powerful EMBs) and formally independent EMBs.

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## Notes

1. See Wayback Machine [https://web.archive.org/web/20190629010613/https://www.ect.go.th/ect\\_th/news\\_page.php?nid=2385](https://web.archive.org/web/20190629010613/https://www.ect.go.th/ect_th/news_page.php?nid=2385).
2. Autocratic regimes here are those labelled “Partly Free” or “Not Free” by the Freedom House.
3. The author spent a total of 16.5 months in Thailand between September 2009 and March 2019. The three interviews used in this paper were part of a larger United States Institute of Peace-funded (Grant SG-477–15) project on Thai elections.
4. I used the average scores on high and lower courts’ independence to calculate the judicial independence score, the average scores of print/broadcast censorship, harassment of journalists, and media self-censorship to determine the media independence score, and the average scores of civil society organizations’ entry and exit, repression and participatory environment to calculate the civil society independence. See the online Appendix in Birch and van Ham (2017).
5. Interview with a Thai political journalist working for Khaosod English, Bangkok, 21 March 2019.
6. Interview with Sakool Zuesongdham, 22 March 2019, Bangkok.
7. Ibid.
8. Ibid.; Interview with an ANFREL representative and WeWatch advisor, 6 April 2022, online.

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