Thailand’s Elusive Quest for a Workable Constitution, 1997–2007

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The “People’s Constitution” drafted in 1997 was seen as a watershed event in Thai constitutional history due to the breadth and depth of its reforms. Yet just ten years later, in August 2007, a new Constitution was promulgated, the 18th since Thailand became a constitutional monarchy in 1932. The latest version followed the ouster in September 2006 of Prime Minister Thaksin Shinawatra in a military coup. This article examines the main differences between the 1997 and 2007 versions of the Constitution and how these changes relate to the current unrest in Thailand. The analysis suggests that Thailand’s current instability is best understood in terms of how social struggles over access to power played out in constitutional choices. Though Thailand’s urban elites and middle class had driven the drafting of the earlier Constitution, when the populist leadership it produced threatened their interests they were quick to support the traditional military and royal networks in ousting the elected government and replace the People’s Constitution with one that is deliberately less democratic. Yet, because the drafting process failed to generate support beyond narrow elite circles, and the new institutional arrangements no longer provide the inclusive governance Thai people have come to expect, the new Constitution has generated tensions that suggest Thailand is unlikely to experience stability any time soon.

Key words: Thaksin Shinawatra, Constitution, democracy, legitimacy, Samak Sundaravej, military.

In 1997 Thailand drafted its much-vaunted “People’s Constitution”1 which many observers saw as a watershed event in Thailand’s
convoluted constitutional history. In September 2006 popularly elected Prime Minister Thaksin Shinawatra was ousted in a military coup after weeks of protests in the capital about executive abuse and allegations of corruption. Less than a year later, on 19 August 2007, a public referendum approved a new Constitution. The Council for National Security (CNS), the military junta that had launched the coup but promised to return democracy to Thailand within a year, had appointed a Constitutional Drafting Assembly (CDA) to prevent further erosion of constitutional practice. The process was far from being as consultative as the previous exercise had been, but public approval of the CDA draft paved the way for parliamentary elections in December 2007, ending the military interregnum and returning Thailand to formal democratic practice, though under a drastically different Constitution.

Thailand’s constitutional history has been tumultuous, as the eighteen Constitutions it has adopted — usually under the control of the military and monarchical networks — surely attest. Since the country became a constitutional monarchy in 1932, Constitution drafting has generally been part of a vicious cycle of elections, instability and military coups in which the political elites in power used constitutional reform to legitimize whatever regime they put in place. Generally directed at limiting political participation, Constitution-making thus has been largely “a matter of consolidating elite power” and “diverting dissenting voices”.

The 1990s, however, produced something qualitatively new: with Thailand’s rapid economic transformation and new demands from the urban middle class and civil society generally, rural as well as urban, the dynamics of institutional reform began to change significantly.

Following the gradual democratic opening in the early 1990s, a broader public constitutional discourse evolved that culminated in the 1997 Constitution, the first in which a broad spectrum of Thais felt a sense of ownership — though in fact it primarily embodied the aspirations of Thailand’s urban middle class and the belief of its liberal elites that it was possible to “engineer” greater democracy and good governance. The new Constitution sought to radically alter the governance system in terms of executive stability, accountability and participation.

That many of the new arrangements worked as envisioned was vividly illustrated by the meteoric rise of businessman-turned-Prime Minister Thaksin Shinawatra and his Thai Rak Thai Party (TRT); after resounding electoral victories in 2001 and 2005, he oversaw a period of unprecedented single-party dominance and
executive stability. Unfortunately, his assertive leadership style also earned the enmity of Thailand’s royal networks and those who had made his ascent possible by endorsing the radical 1997 Constitution. The result, once again, was constitutional instability as the urban middle class, supported by Thailand’s traditional elites, rose up in revolt.⁸

This reversion to constitutional instability raises several questions: what led to the revocation of the 1997 People’s Constitution? In what ways does the new Constitution differ from the previous one? (which was one of Thailand’s longest and most democratic). How likely is it that the 2007 Constitution will bring lasting stability and enhance the quality of democratic governance in Thailand? These questions are of great relevance because, as recent events demonstrate, since the new Constitution was approved, political volatility has reached unprecedented levels — as have demands once again for constitutional amendments.

Scholars have differed in their answers to the question of why the 1997 Constitution failed. Some consider the political reform coalition, which brought together an unusual mix of liberal academics, reform-oriented technocrats and civil society activists, to have been unstable. The coalition, which had to overcome considerable resistance from conservative elements, not only produced a somewhat contradictory draft but also failed to sustain the reform momentum after the Constitution was promulgated, leaving it with little support beyond the urban reform constituency.⁹

Other scholars consider the institutional framework to have been too ambitious, if not an outright design failure. They cite the dysfunctional workings of oversight agencies, particularly the Senate, which though supposedly neutral quickly became home to the wives, children and relatives of leading politicians, a development that effectively neutralized any checks and balances on the executive branch.¹⁰ Finally, a popular line of argument in Thailand blamed the personality of the executive, arguing that Thaksin and his brand of business populism showed little inclination to honour the constitutional rules. In actively seeking to undermine them, he demonstrated the weakness of democratic political culture in Thailand.¹¹

Probably there is some truth to all these explanations, but they all fail to account for the setting in which constitutional struggles have taken place since the 1990s. A rapidly modernizing Thailand became increasingly complex and contentious. Elites modified institutions to restructure power in response to political pressures
from emerging social constituencies. This was clearly the case in 1997, when urban liberal elites and progressive activists banded together to confront the resistance of Thailand’s traditional bureaucratic elites and politicians and pushed for radically new constitutional arrangements that expressed the liberal aspirations of the urban middle class. A decade later, confronted with an unexpectedly populist leadership that used the new rules to establish alternate power centres among traditionally marginalized groups, the same urban actors rallied once more under the banner of “good governance”. They joined hands with the illiberal military and monarchical networks to oust the popularly elected government and draft a far less democratic Constitution. Thus, constitutional instability is best understood as a byproduct of continuing social struggles over access to power that play out in the constitutional realm.

Comparing the constitutional reforms in 1997 and 2007 illustrates the structural dynamics underpinning institutional developments. As an ambitious urban liberal elite project — which grew out of opposition against military rule and later incorporated frustrations over the poor functioning of Thai democracy — the 1997 Constitution, to a certain extent, “oversupplied” Thailand’s political system with complex democratic institutions. Many of these lacked societal support beyond narrow urban reform constituencies which created a constitutional void Thaksin quickly sought to fill, above all by using his strengthened executive position to establish populist linkages with a new voter base among the poor and low-middle-income classes, both urban and rural. In doing so he profited from the structural changes to Thailand’s political economy, in which modern bourgeois interests — like those of Thaksin and his inner circle — emerged alongside political demands from outside the capital. The latter is particularly true for the populous north and northeastern regions, which contain the highest number of voters but was the only region other than Bangkok to have seen its economic share decline. In short, by exploiting structural trends within the 1997 constitutional framework, Thaksin expanded his hold on power. In doing so, he altered policy dynamics at the expense of Thailand’s traditional urban elites.

The 2007 Constitution is clearly a deliberate attempt to counter these developments. Drafted in a highly exclusive manner directed by the CNS, the institutional choices it incorporates not only reflect the desire to correct the institutional failures of the previous document’s framework while reducing the influence of the rural and urban
majority in the electoral process. The critical choice made was to further promote the “judicialization” of politics by transferring even more power than the 1997 Constitution had from Parliament, the political centre, to judicial and quasi-judicial agencies that have limited accountability. Thus, the new Constitution, despite its liberal claims, is less a genuine extension of the governance franchise than a means to channel and deflect new societal demands in the interest of Thailand’s traditional elites. By failing to provide inclusive governance structures that could accommodate Thailand’s social fault lines — and lacking legitimacy due to the highly controlled drafting process — the new Constitution is unlikely, as recent events demonstrate, to promote stability and better governance any time soon.

This paper will first compare the 1997 and 2007 constitutional reforms, paying particular attention to the drafting process and the institutions they produced. Illustrating how the process and institutional choices did or did not differ allows us to understand the broader underlying trends the documents embody. It will also look at how recent developments illustrate why the new Constitution is unlikely to provide equilibrium for Thailand any time soon. The article concludes with some reflections on the future of constitutionalism in Thailand.

**Drafting Dynamics and Institutional Choices**

Constitution-making is about power and the construction of legitimacy: who drafts the Constitution, and what interests are represented in the process, clearly inform the choices made. Similarly, how the drafters are chosen, how representative of the population they are, and the degree of public participation, determine the final product’s legitimacy. The remarkably different dynamics of Constitution-making in 1997 and in 2007 vividly illustrate this point.

**The Process**

Dissatisfaction with the poor functioning of Thai democracy and the rise of money-based electoral politics underpinned the demands for constitutional reform in the 1990s; there was a sense that the reform process had been stalled in Parliament by traditional interests and self-interested politicians. Growing mass support for constitutional reform prompted an eight-month constitutional drafting process in
1997 that was unique in Thailand’s constitutional history: not only were the drafters elected, but there was an unprecedented degree of public consultation.\textsuperscript{18} In a compromise between Parliament and the reform movement, the process of drafting was left to an independent Constitutional Drafting Assembly (CDA), whose 99 members were composed of 76 delegates elected from each province and 23 experts chosen by Parliament from a shortlist provided by the universities. Parliament could not amend the final draft; it could only approve or reject it in its entirety. If it chose to reject the document, there would be a referendum.\textsuperscript{19}

These arrangements ensured that the drafters were well insulated from politicians; it also meant that the group of academic experts had considerable influence — indeed they came to dominate the central drafting committees of the CDA. Among the leading figures were CDA head Uthai Pimchaichon, a respected former student activist and provincial Member of Parliament (MP); Anan Panyarachun, former Prime Minister and Chairman of the Constitutional Drafting Committee (CDC); and Borwornsak Uwanno, professor of constitutional law and CDC secretary.\textsuperscript{20} This triumvirate exemplified the major streams within the urban liberal coalition — reform-oriented technocrats, academics and civil society activists, each pulling the process in a slightly different direction. Academics and technocrats wanted to make governance more stable and efficient and less vulnerable to money politics while activists emphasized liberal rights and greater participation through decentralization. The creation of horizontal accountability for institutions and commitment to royal prerogatives offered room for interests to overlap and overcome resistance by Thailand’s traditional, especially monarchical networks.\textsuperscript{21} All this paved the way for a surprisingly comprehensive reform.\textsuperscript{22}

Careful to muster support from outside to further legitimate the essentially elite-driven exercise, the CDA invited wide public involvement. According to the CDA Public Opinion and Public Hearing Committee, over 850,000 people were consulted and more than 300 organizations participated; about 87,000 people responded to questionnaires alone. Early on, non-governmental organizations (NGOs) submitted a 25-page joint statement outlining what they considered should be in the Constitution. The Women and Constitution Network (WCN), a coalition of 54 NGOs, lent extensive support to the six female CDA members while lobbying other members on specific issues.\textsuperscript{23} All these influences help explain the lengthy and heterogeneous nature of the final draft, which although inherently reflective of the urban
elites also contained surprisingly progressive clauses in areas such as human rights, welfare and local governance.

When the final draft was sent to Parliament, CDA members relied heavily on their allies in civil society to maintain pressure on the legislature to approve it despite widespread resistance from politicians and conservative elements within the civilian and military bureaucracies. It helped that the unfolding Asian financial crisis had weakened the political class. Parliament eventually passed the draft by an overwhelming majority. Perceptions of the integrity and independence of the drafters, the degree of public involvement, and approval under the auspices of an elected government were all critical in creating widespread public support for a document that, although inherently the reform project of urban elites and their middle-class constituencies, became revered, however inaccurately, as the “People’s Constitution”.

The drafting of the 2007 Constitution was a very different affair (see Table 1). The interim Constitution passed by the CNS after the 2006 coup assigned the drafting process to a separate Constitutional Drafting Assembly (CDA), which had six months to prepare a draft for public referendum. The process was closely supervised by the sponsoring military-bureaucratic elites who issued binding guidelines for the drafters. The CNS also threatened that if the public rejected the draft, the military would pick one of the previous seventeen Constitutions (and undoubtedly not the previous one). This highly controlled and often deeply flawed exercise produced the results desired by those who ran the process but failed to muster public support.

Table 1
Constitutional Drafting Processes, 1997 and 2007

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<tr>
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<th>1997 Constitution</th>
<th>2007 Constitution</th>
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<tr>
<td>Drafting period</td>
<td>8 months</td>
<td>6 months</td>
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<tr>
<td>Public participation</td>
<td>Medium</td>
<td>Low</td>
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<td>Key actors</td>
<td>Academics</td>
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<tr>
<td>Bargaining outcomes</td>
<td>Progressive</td>
<td>Regressive</td>
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<td></td>
<td>Strong Mass legitimacy</td>
<td>Low Mass legitimacy</td>
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Questions about the legitimacy of the process were raised even as the drafters were selected. The military’s interim Constitution (Articles 19–25) stated that, first, 200 CDA members would be elected from the National People’s Assembly (NPA), the 2,000 member legislative assembly the military had appointed from different functional groupings. The CNS would within seven days choose 100 members from the short list that would constitute the CDA. The CDA would then elect 25 members to the Constitution Drafting Committee (CDC), where they would be joined by ten experts appointed by the military. Thus, the military (and the royal networks behind them) influenced both the selection of the drafters and the actual process. Moreover, once the CDC had produced an actual draft, it would take a qualified majority of 60 drafters within the CDA to make any changes.

The process of selecting drafters was marred from the beginning. Apart from the skewed pool of candidates, all from within the NPA, nomination procedures were greatly undermined by ballots that circulated hours before the vote, inviting widespread lobbying, bloc voting and possibly vote buying. Well-known reform activists received far fewer votes than virtually unknown personalities who had ties to coup leaders: the most votes went to Okas Tepalakul, a virtually unknown car dealer from Chachoengsao province who had been a classmate of CNS Chairman General Sonthi Boonyaratglin in the National Defence College’s Joint State-Private Course. BMW Thailand executive Pharani Leenuthapong received the second highest number of votes, followed by Suwit Pipatwilai, a little-known building contractor from Nong Buah Lamphu. Meanwhile, respected former Senator (and Thaksin critic) Chirmsak Pinthong came in only 10th, anti-corruption crusader Klanarong Chantik 19th and rural development activist Raevadee Prasertcharoensuk 149th.

The shortlist of 200 candidates reflected the dominance of the bureaucracy, the private sector and urban elites; farmers and workers were not represented at all. This bias carried into the quota-based list of 100 drafters chosen by the CNS and predominated in the critical CDC, where interim rules stipulated that eligibility required either a full professorship or a position equivalent to director general, former Senator or MP. Last-minute efforts to widen the circle of drafters were denied because the CNS argued that the drafting schedule was too tight. Thus the drafters overwhelmingly represented the traditional bureaucratic civilian and military elites associated with the Thai monarchy.
Critical leadership positions within the CDA and CDC also went predominantly to personalities associated with the junta or the monarchy. In elections overshadowed by accusations of bloc voting and surprising last-minute withdrawals of alternative candidates, as everyone expected, Noranit Sethabutr, a former rector of Thammasat University with close ties to the monarchy, was elected to chair the CDA. One of the military-appointed experts, former intelligence chief and Squadron Leader Prasong Soonsiri, was made chairman of the CDC and Somkit Lertpaitoon, a legal expert from Thammasat University, was elected CDC secretary. Some CDA members were unable to prevent the military-appointed experts from assuming leadership positions; reform candidates like Chirmsak Pinthong were left with such minor roles as Chairman of the Information and Public Dissemination Committee.

Not surprisingly, no one had much interest in the drafting except the royal military bureaucratic circle and anti-Thaksin academic counterparts. Conforming to guidelines laid out by CNS Chairman General Sonthi, the debates sharply differed from those in 1997, which had emphasized greater stability and efficiency through a strengthened executive and party system. Instead, reacting to problems with the previous Constitution, the debates in 2007 were focused on institutional arrangements to prevent a concentration of executive power and single-party dominance by reinforcing the independent oversight agencies (i.e. the Election Commission, National Counter Corruption Commission and National Human Rights Commission) and especially the judiciary, which would now play a major role in selecting candidates for independent agencies and the partially appointed Senate. (This decision led to unease even among the judges themselves.) In general, the exercise reinforced the trend towards “judicializing” Thai politics that had begun with the 1997 Constitution: the electoral democratic content of the Constitution was deliberately weakened by replacing Parliament with largely appointed judges and technocrats in oversight agencies. This created what one observer described as a “postpolitical democratic structure”.

These developments were rooted in an emerging ideological consensus among military-bureaucratic and academic elites about a distinct “Thai way of democracy”. For instance, in a series of interviews, Assistant Army Commander General Saprang Kalyanamitr — then Deputy Secretary-General of the CNS and a trusted colleague of General Sonthi — spoke admiringly of technocratic and bureaucratic leadership in government, arguing that soldiers and bureaucrats can be considered more honest than elected politicians. Similarly, the
President of the NPA, Meechai Ruchupan, one of Thailand’s foremost legal experts, said he would like to see a “Thai kind of Constitution” free of imported ideas that could prove counter-productive for the country — ideas like the provisions in the 1997 Constitution for independent agencies and non-partisan Senators as a check and balance on the executive.37

As for academic circles, during a political seminar in the run-up to the drafting, the former Dean of Chulalongkorn University’s Political Science Faculty, Professor Amara Pongsapitch, suggested it was time to accept “varieties” of democracy, depending on different social and historical contexts, which would not necessarily include western-style elected representation.38 Thammasat University historian Professor Chaiwat Boonnag added that a new form of parliament in which different sectors (including the monarchy) elected or appointed their representatives would be better for Thailand, given that villagers still operate under a patronage system that produces “godfathers who lack human conscience”.39

Views such as these are common among Thailand’s traditional elites and urban middle classes; they reflect the dominant “royal liberalism” defined by Connors as “a liberalism shaped by the fear of an uneducated citizenry unschooled in appropriately restrained democratic practice and manipulated by demagogues, otherwise known as the ‘tyranny of the majority’”.40 How generally this view was shared by the drafters became obvious when one of them, former judge Wicha Mahakhun, defended the decision to appoint Senators with the argument that “we all know that elections are evil” and that “people, especially academics, who want to see the Constitution lead to genuine democracy, are naïve. Electing Senators is a problem, as seen in the past, so why don’t people want judges to help select Senators?”41

Limited public consultation and military dominance during the drafting process meant that public support for the new Constitution was minimal. Despite initial support for the coup, divisions also became visible among the urban elites themselves. Except for organizations like the Chulalongkorn University Network for Ethical Democracy, most civil society organizations were highly skeptical. The Campaign for Popular Democracy (CPD) and the new “September 19” anti-coup student network actively criticized military involvement, and Federation for Democracy Chairman Weng Tojirakarn derided the new Constitution as “a joke drafted by a council of puppets”.42 The Confederation of Thai Journalists and the Thai Journalists Association took issue with the limitations on media freedom in
the new Constitution, and many academics spoke out against the climate of coercion in which the drafting took place and criticized plans for an amnesty for coup leaders. Respected leading drafters of the 1997 Constitution like Uthai Pimchaichon raised concerns about the drafters’ intent to undo many of its provisions. Last-minute cancellation of public presentations of the final draft and misuse of public provincial hearings for political purposes confirmed the public perception that, as astute observer Michael Nelson put it, “You have a tiny group of elite Bangkokians writing a Constitution, who will then ask the rural majority to approve it in a referendum.”

Efforts to distribute the final draft to twenty million households and launch a public relations campaign before the referendum did little to change the overall impression of a heavily guided constitutional process reinforced by open intimidation. CDC Secretary Somkid Lertpairoon warned that those who opposed the Constitution would have to live with one drafted by the CNS — a threat that seems to have motivated many to vote for the draft. The military junta passed last-minute legislation imposing heavy fines and even prison sentences against those agitating against the draft, preventing taxi drivers from displaying anti-draft bumper stickers and encouraging police to conduct house raids against anti-Constitution activists. They also mobilized financial, organizational and ideological resources in favour of a “yes” vote (a billboard in the northeast read: “Love the King, Care about the King. Vote in a Referendum. Accept the 2007 Draft Charter”) and kept up martial law in 35 provinces, almost exclusively in the former TRT heartland of the north and northeast.

Academic and social critic Giles Ji Ungpakorn of Chulalongkorn University pointedly summed up the situation:

It is now obvious that the military junta has no intention of conducting a clean and democratic referendum on their new Constitution. While the government is shamelessly spending millions of the public’s baht on propaganda urging the population to vote “yes” and accept the Constitution, those who are opposed to it are prevented from campaigning properly by arrests, threats, and total lack of access to the media. The referendum cannot therefore be regarded as democratic, according to any international or Thai standards.

In the end the draft was approved by 57 per cent of national votes cast. However, while in procedural terms the popular referendum on the 2007 Constitution should have given it an unprecedented degree of legitimacy, voter turnout was low (57.6 per cent), 24 of
the 76 provinces (all in the north and northeast) voted against it, and there was public support for far-reaching amendments.\textsuperscript{51} It seems that the process not only failed to deliver an inclusive new social contract, it exacerbated some of the social and political fault lines in Thai society.

\textbf{From Power Fusion to Power Dispersal}

Institutional choices made in the 2007 Constitution are likely to add additional problems for Thailand’s fragile governance, mainly because they seek to disperse rather than fuse political control. Primarily designed to prevent the effects of majoritarian dynamics in the electoral process, the new arrangements weaken the executive and prevent single-party dominance. Thus it deliberately returns to past practices of weak democratic governance in the form of coalition cabinets, an appointed rather than elected legislature (the Senate) and heavy royal-bureaucratic influence.

This state of affairs is a sharp deviation from the 1997 Constitution, which combined Thailand’s previous structure of a constitutional monarchy and a bicameral Westminster-style parliamentary system with arrangements to substantially increase stability, executive effectiveness and accountability. A good example is the position of the Prime Minister, which was strengthened in 1997 against both Parliament and cabinet in order to minimize rent-seeking and the instability that traditionally arose from large coalition governments. Cabinet positions were limited to thirty-five; ministers who lost their cabinet posts could not return to Parliament; MPs had to be members of a political party for at least 90 days before registering their candidacy (effectively preventing disaffected MPs from standing for a different party if Parliament was dissolved); and the effect of destabilizing no-confidence motions was limited through higher requirements for constructive votes of no confidence. The unprecedented stability of Prime Minister Thaksin’s premiership, at least in its first few years, vividly illustrates the effects of these changes.\textsuperscript{52}

The legislature, consisting of the House of Representative and the Senate, had also been redesigned in 1997. The number of representatives in the Lower House was raised to 500, of which 100 were elected based on a new party list and 400 from single-member constituencies on a first-past-the-post basis, all to serve four-year terms. This was a radical departure from Thailand’s traditional multi-seat, multiple vote (MSMV) plurality electoral system, also known as bloc vote,\textsuperscript{53} which offered incentives for candidates to
pursue personal rather than party-centred strategies.\textsuperscript{54} In addition, the 1997 Constitution sought to make vote-buying more expensive by introducing compulsory and absentee voting, extending the franchise to Thai citizens residing in foreign countries and limiting MPs from interfering in the appointment of civil servants. To enhance parliamentary efficiency, legislative sessions were lengthened to 240 days, committee structures streamlined and research support institutionalized. Perhaps most importantly, for the first time Senators were elected rather than appointed; 200 Senators were elected by a single non-transferable vote system in each province for a single six-year term. The Senate became a critical veto player and gatekeeper in the legislative process and in the appointment of independent agencies — based on the perhaps naïve assumption that Senators would be non-partisan.\textsuperscript{55}

Concerns over money politics meant that oversight became central. The judicial branch was granted more independence and reinforced by the new Constitutional Court, Ombudsman Office and Administrative Court, thus creating for the first time a coherent system for judicial review of legislation and administrative action. In a bold innovation, the 1997 Constitution also established muscular quasi-judicial agencies of horizontal accountability, among them the National Counter Corruption Commission (NCCC), the Election Commission (EC), the National Human Rights Commission (NHRC) and the national Auditor General (AG).\textsuperscript{56}

The liberal core of the People's Constitution was also visible in the remarkable range of support for individual liberties in areas of political rights (freedom of speech, religion and association); social rights (health care and twelve years of free education); and group rights (conserve local customs, knowledge and resources), as well as new commitments to decentralization and greater public participation. It allowed 50,000 eligible voters to petition the president of the House of Representatives to consider bills or start impeachment procedures in Parliament. However, the elitist impetus was still visible: the controversial requirement that parliamentarians have a bachelor's degree effectively barred 95 per cent of Thais from serving. Similarly, the role and power of the monarchy remained virtually untouched, as illustrated by the “royal prerogatives” in Article 7\textsuperscript{57} — a reminder of subtle royal influence on the drafting process.\textsuperscript{58}

Many of these new rules to increase effectiveness and stability actually worked as envisioned. The single-party government in 2005 was the first in Thai history. Nor were there any large-scale cabinet failures. As the drafters predicted, the effective number of parties fell
drastically, parties became more cohesive and policy choices seemed to indicate that broad, universal interests were taking precedence over narrow, particularistic choices.\textsuperscript{59} On the other hand, many of the oversight mechanisms failed to function properly because the rules were either too idealistic (the apolitical Senate), “overengineered”\textsuperscript{60} (as in the case of control over the electoral process), or produced outright dominance by the executive (as in the TRT-dominated Parliament). Combined, these effects allowed Thaksin to exploit his powerful position to undermine the workings of the Senate, the independent constitutional bodies and the media.\textsuperscript{61}

The 2007 Constitution was drafted to prevent similar populist developments. While the 309 sections in the slightly shorter draft keep the basic structure of a constitutional monarchy with a bicameral Westminster-style parliamentary system, critical institutional arrangements are altered so as to diffuse political power and diminish the impact of the democratic electoral process in the post-2006 period (see Table 2).

A primary target of the constitutional rewrite was the executive branch, which the new Constitution deliberately undermined. For instance, it now takes only one-fifth (96) rather than two-fifths of the members of the House of Representatives to initiate a motion of no confidence against the Prime Minister, and one-sixth (80) (previously one-fifth) to do so for an individual minister. Moreover, after the executive branch has been in power for more than two years (Article 160) over half the actual number of opposition MPs can file for a debate to censure the Prime Minister. In all cases a simple majority is sufficient to approve the no confidence motion (Articles 158–59). The ability of the government to stem this process is complicated by the fact that ministers are barred from participating in the censure motion (Article 177 (2)), and MPs are constitutionally empowered to disregard party resolutions when voting (Article 162 (2)). Finally, demonstrating the technocratic influence in drafting, the Prime Minister as well as MPs are now prohibited from interfering with the regular work of the bureaucracy (Articles 257 and 259) — a somewhat contradictory rule given that the Prime Minister is also the head of government.

The weakness of the executive is reinforced by changes to the structure of Parliament and electoral rules. The number of MPs is reduced from 500 to 480, of which 400 are now elected on a constituency basis and 80 from a party list. However, each constituency will now have three or four MPs, with voters having to vote several times, once for the party list and two to three times
Table 2
Constitutional Reform Choices 1997 and 2007

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<th>1997 Constitution</th>
<th>2007 Constitution</th>
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<tr>
<td>Executive</td>
<td>Strengthened</td>
<td>Weakened</td>
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<tr>
<td></td>
<td>against cabinet and legislature by:</td>
<td>against cabinet and legislature due to:</td>
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<tr>
<td></td>
<td>• New qualifications for censure motions;</td>
<td>• Lower requirements for censure motions;</td>
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<td></td>
<td>• Limits on party switching (90-day rule);</td>
<td>• Relaxed rules on party switching;</td>
</tr>
<tr>
<td></td>
<td>• Constraints on dismissed cabinet member falling back on parliamentary seats.</td>
<td>• Prohibitions on interfering with the bureaucracy.</td>
</tr>
<tr>
<td>Legislature</td>
<td>HR: Mixed-member system:</td>
<td>HR: Mixed-member system:</td>
</tr>
<tr>
<td>(House of Representatives; Senate)</td>
<td>400 single-seat constituencies, 100 party list seats by provincial vote.</td>
<td>400 multi-seat constituencies of 2–3 MPs each, 80 party list seats elected in 8 regions (10 each).</td>
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<tr>
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<td>Senate: 200 Senators, elected using SNTV, non-partisan.</td>
<td>Senate: 150 Senators, 76 elected, 74 appointed, party membership.</td>
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<tr>
<td>Judiciary</td>
<td>Independence strengthened; New Constitutional Court</td>
<td>Arrangements maintained; judiciary given a more political role (nomination of Senators and dissolution of parties).</td>
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<tr>
<td>Agencies of Horizontal Accountability</td>
<td>Several new agencies</td>
<td>Arrangements maintained; agencies given a more political role (nomination of Senators).</td>
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<tr>
<td>Decentralization</td>
<td>Mandated</td>
<td>Mandated</td>
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for constituency MPs. In essence this is a return to the old practice of bloc voting, with its well-known effect of fragmenting votes and preventing concentration of votes for a single popular party. It also gives individual MPs solid incentives for pursuing personal rather than party-centred strategies, further undermining party cohesion in Parliament, especially considering the loosened rules on party switching and party discipline requirements for MPs (Articles 106 and 162).

The determination to prevent the emergence of a dominant popular party can also be seen in respect to the party list component. Not only is the number of party list MPs reduced from 100 to 80, but those 80 MPs are now elected from eight large regions rather than on the previous basis of one from each of the 76 provinces. Having ten seats contested in each of the new regions effectively discourages vote concentration for a single party. This will be felt particularly in the former bastion of the TRT, the populous north and northeast, which provides the most MPs (212; 260 with the party list component) but is now divided into four electoral regions and thus is far less likely to provide fertile ground for the rise of a single party.

Comprehensive changes to the Senate, which plays a critical role in nominations and impeachments, further weaken the executive. Though it retained the previous asymmetrical bicameral structure, the 2007 Constitution significantly changed the functions of the Senate. The number of Senators dropped from 200 to 150, all now limited to a single six-year term (Article 117). Only 76 Senators will be directly elected (one from each province); the other 74 are to be appointed by a seven-member Senate Selection Committee consisting of judges and heads of independent agencies.62 Thus, Senators will be appointed by the same agencies they are supposed to appoint — a clear conflict of interest. Moreover, returning to the old practice of a partially appointed Senate further undermines its democratic legitimacy now that the new rules ensure it will once more be dominated by the traditional bureaucratic urban elites.

The trend to empower unelected agencies and actors as a counterweight to the executive and Parliament is a major legacy maintained in the new Constitution. However, though the core arrangements from the 1997 Constitution were retained, subtle changes were introduced, often with dramatic effect. For instance, Article 237 (2) allows the Constitutional Court not only to ban individual MPs but also to dissolve a whole political party if one of its members is found guilty (as suspected by the Election Commission) of having violated the election law with the knowledge or complicity
of anyone who is an executive of the party. This gives judges far reaching powers in the political process. Also, while retaining the independent agencies established earlier, the new Constitution has made subtle changes to their membership. For instance, the Constitutional Court was reduced from fifteen judges to just nine, enhancing the power of each judicial appointee.\(^6\) The situation is exacerbated by the fact that academic institutions now have no role in the judicial nomination process (Article 206). Similarly, the NHRC and the State Audit Commission both have been reduced to just six members. These changes have given judicial and technocratic actors much more political influence, thereby not only reinforcing the trend of greater judicialization but also heightening the influence of the palace networks, to which both groups are closely aligned.

The section on rights and liberties remains largely unchanged from the 1997 Constitution. Essentially, there is a liberal core that emphasizes individual rights and liberties, some social rights in the areas of health and education (most defined negatively), extended rights in the judicial process and commitment to a liberal market order (with some new limits). Public participation is encouraged by lowering the threshold for a public petition to table legislation to 10,000 signatures and for starting impeachment procedures against officeholders to 20,000 signatures (both were previously 50,000). How meaningful these provisions are is open to debate. For instance, it still takes one-third of sitting MPs to sponsor a bill and three-fifths of the Senate to start procedures to remove someone from office (Articles 163 (4); 274). And while the controversial undergraduate degree requirement for MPs has been dropped, Senators and ministers are still required to be graduates (Articles 114 (2); 174 (3)).

Finally, constitutional additions often reflect direct responses to the Thaksin era: for example, in response to earlier policy abuse, the 2007 Constitution now calls for greater transparency in public finances (Articles 166–71) and public disclosure of international treaties before the cabinet takes a decision on them (Article 190). It also prohibits parties from undermining the monarchy or gaining power by undemocratic means (Article 68). Along with clauses on maintaining modern equipment for the military (Article 77), a controversial amnesty clause for the coup leaders (Article 309) and the economic self-sufficiency philosophy championed by the monarchy (Article 86), these new provisions clearly reflect a drafting impulse that was a reaction to the Thaksin period and which sought to protect the interests of the military-bureaucratic elites and their urban supporters.
In sum, while on the surface holding to the 1997 liberal constitutional content, its democratic core has been eroded. Seen primarily as a tool by Thai elites to reorganize power relations in the post-2006 environment, the new Constitution has further judicialized politics and reinforced institutional diffusion of power so as to contain the influence of the urban and rural poor who constitute the majority of the electorate in Thailand. In doing so it has created new governance issues related to stability, effectiveness and democratic accountability, and has also created a dilemma for many urban middle-class constituencies, who may have been supportive of the anti-Thaksin struggle but nevertheless may not be willing to return to the cabinet instability and bureaucratic politics of the past. Thus not only did the drafting process fail to generate mass support, but the new institutional arrangements seem ill-fitted to resolving the problems associated with Thailand’s increasingly complex democratic governance.

Towards a Constitutional Equilibrium?

The continuous political volatility Thailand experienced since the new Constitution was promulgated in August 2007 clearly demonstrates that it is unlikely to produce stable governance equilibrium. In fact, as illustrated by the rise and fall of three Prime Ministers within a year and mounting extra-parliamentary challenges, some of the new institutional choices may have actually exacerbated political crisis by amplifying existing structural tensions.

In many respects the starting point for Thailand’s continuous instability was the parliamentary elections of December 2007, which returned the TRT party to power as the new People’s Power Party (PPP). Backed explicitly by Thaksin and the top echelon of the former TRT party, the rise of the PPP (which has since transformed once more into Puea Thai; see below) was a surprise for many observers who had expected to see the faction-ridden TRT party fall apart once Thaksin was ousted and 111 senior members banned from politics for five years. Instead TRT MPs migrated en masse to the PPP, which was able to keep its grip on the north and northeast and emerge as the largest party in Parliament. Then-PPP leader Samak Sundaravej formed a six-party coalition in February 2008 that not only overcame the party fragmentation the new Constitution induced but also left the Democrat Party, widely expected to win the elections, as the sole opposition party in Parliament.
The premierships of Samak Sundaravej, and his successor Somchai Wongsawat, were, however, fragile from the start — together their tenures lasted only ten months — for four reasons directly linked to the new constitutional dynamics.

First, despite its sound electoral victory, the Samak-led government from the beginning lacked legitimacy because friends and foes alike saw Samak as Thaksin’s proxy. This impression was nurtured by Samak himself, who during his campaign promised to overturn the political ban on the former Prime Minister and the TRT senior leadership — a position that made him highly vulnerable once Thaksin returned to Thailand. Moreover, the constitutionally induced return to the old practices of coalition politics, together with the earlier imposed ban on leading TRT figures, left the public underwhelmed by the quality of the cabinet, which Samak himself described as “not pretty ... even a bit ugly”. Preoccupied with holding his coalition together, he had little time to execute a policy agenda that would have generated public support.

Second, relations with anti-government forces turned increasingly unmanageable and contentious. Thaksin’s emotional return to Thailand in February 2008 to clear his name in the courts not only captivated his own supporters but also helped revive the People’s Alliance for Democracy (PAD), the coalition of urban anti-government civic forces that had helped bring him down through mass protests in 2006. Led by Sondhi Limthongkul, a business leader who had fallen out with Thaksin in the past, and Chamlong Srimuang, a retired army general and former Deputy Prime Minister, the PAD called on its urban supporters to defend the new Constitution and bring down the government, which it accused of being a proxy for Thaksin and his allies. Counting on the implicit blessing of Thailand’s monarchy, PAD supporters soon laid siege to Government House, where Samak had his office, triggering violent clashes between government and PAD supporters that left one person dead and more than forty injured.

The unwillingness of the army to step in even after a state of emergency was imposed in the capital in early September showed that the PPP-led government never fully controlled the armed forces. In fact, despite returning to the barracks and publicly vowing to stay out of politics, the military had made life difficult for the PPP government from the start, repeatedly rejecting PPP nominees for the post of Defence Minister until Prime Minister Samak had no choice but to become acting Defence Minister himself. Also, despite improvements in relations once General Anupong Paochinda, a power within the military junta, was nominated as army commander in
chief, government control was imperiled by the new Internal Security Act, which strengthened the powers of regional army commanders and leaves control of military reshuffles exclusively to a new seven-member military committee (which, Samak said, “slammed the door shut in my face”\textsuperscript{67}). Not surprisingly, from the time the PPP government assumed power, there was public speculation about another military coup.\textsuperscript{68}

Third, most destabilizing, however, has been the growing judicial influence over politics. Equipped with constitutional powers expanded beyond those given in the 1997 Constitution and emboldened by speeches by the King urging greater judicial activism, courts and quasi-judicial oversight agencies led the challenge to the PPP-led government and its senior personalities. Thaksin Shinawatra and his wife, Potjaman, for instance, were ordered to stand trial on charges of corruption, tax evasion and concealment of ownership. Guilty verdicts against both (Thaksin in absentia) prompted the couple to seek renewed exile in the United Kingdom. Similarly, during his brief premiership, Samak Sundaravej was charged three times — with corruption, defamation and conflict of interest. He reluctantly resigned when the Constitutional Court held that hosting his popular television cooking show would constitute a conflict of interest in breach of the Constitution (Article 267). The court subsequently ruled that the government as a whole had violated the Constitution (Article 90) by not submitting to Parliament a diplomatic communiqué reached between Cambodia and Thailand over the disputed Preah Vihear temple,\textsuperscript{69} thus paving the way for Senate proceedings to impeach the whole cabinet.

Fourth, the politicization of judicial intervention has been particularly evident in the investigations into election fraud of MPs belonging to Chart Thai and Matchima Thippatahai as well as the PPP. Under the new Constitution any charges would also carry the threat of eventual dissolution of their parties (Article 237(2)). This investigation provided a major catalyst for the crisis, triggering action by a variety of groups. The government, feeling the walls closing in, engaged in a concerted effort to amend the Constitution, targeting not only Article 237 but also articles dealing with asset declaration (261), interference with the bureaucracy (266), amnesty for coup makers (309) and the workings of independent agencies (Chapter XI). If the government was able to amend the Constitution, the amendments would apply retroactively, effectively relieving the courts and oversight agencies of their power to decide the cases. In response the PAD, which had vowed to mobilize against
any efforts to change the 2007 Constitution, intensified its anti-government campaign. Well aware that only a simple majority in both houses — 316 votes — was needed to approve constitutional amendments and the government coalition commanded the support of 314 MPs and perhaps some opposition MPs, the PAD employed mass mobilization to deflect the government's agenda. This strategy culminated in the month-long occupation of Suvarnabhumi International Airport in Bangkok that left tens of thousands of tourists stranded, and the government, by that time led by Prime Minister Somchai Wongsawat (Thaksin’s brother-in-law), in a state of paralysis. By year-end Thailand was deadlocked and on the brink of anarchy.

Soft spoken and relatively inexperienced in politics, Prime Minister Somchai, proved incapable of solving the crisis, especially since the army showed little inclination to restore law and order. Instead, the judiciary intervened again. In an unexpectedly swift verdict on 2 December 2008, the court handed the PAD a face-saving way of ending the much criticized airport occupation ahead of the King’s 81st birthday. Three parties (PPP, Matchima Thippathai and Chart Thai) were disbanded and their party executives (including the Prime Minister) were banned from politics for five years.

Although all three parties were quick to reconstitute under different party labels and together with the minority parties pledged to stand united around the new pro-Thaksin Puea Pandin party, the election of a new Prime Minister in Parliament on 15 December brought about an unexpected shift in power. Prodded apparently by the behind-the-scenes maneuvering of General Anupong, several smaller coalition partners changed camps, including a large faction led by long-time Thaksin ally and provincial power broker Newin Chidchob. Providing the votes needed, it allowed Democrat Party (DP) leader Abhisit Vejjajiva to become Thailand’s youngest Prime Minister at the age of forty-four, thus bringing to at least a temporary end to the almost ten-year spell of Thaksin Shinawatra on Thai politics.

Whether the election of Prime Minister Abhisit can end Thailand’s contemporary crisis is questionable. Certainly several factors work to his advantage. For instance, unlike his predecessors, he can count on the blessing of Thailand’s traditional elites in the army and bureaucracy. His clean reputation might also cause less problems with the judiciary and oversight agencies. The unexpectedly strong
showing of the DP in the January 2009 by-election, where it captured 20 of 29 seats (including the highly contested Bangkok governor position) also indicates that a public tired of instability is willing to give him a chance and bring the DP back from the political wilderness. The business community has also warmly welcomed his election, and his economic team.

However, significant obstacles remain. Not only does Prime Minister Abhisit's position remain weak vis-à-vis senior figures within his own party, he is now increasingly beholden to his new coalition partners for parliamentary support. Key ministries, particularly those with patronage and rent-seeking opportunities, have been distributed to the smaller parties and former Thaksin allies — a discouraging return to past practices of ministerial pork barrel politics that are at odds with his aim of clean government. His earlier promises to moderately amend the Constitution (in particular Article 237) has also left him between a rock and a hard place in respect to the PAD, to which he owes much of his premiership, but which has remained adamant about the defence of the 2007 Constitution, while their neo-authoritarian “new politics” paradigm has become an increasing liability.

His situation is not made easier by the efforts of the opposition in Parliament to push for the prosecution of the PAD leadership for their occupation of the airport while also launching legal challenges against several cabinet ministers. Pressure has also emerged from outside Parliament: Thaksin supporters have regrouped as the United Front of Democracy Against Dictatorship (UDD) and are replicating the disruptive civil disobedience strategies of the PAD against what they consider an illegitimate government that came to power through a judicial coup. The continuing mass action by the red-shirted protesters not only twice forced Abhisit to postpone his maiden address to Parliament, but also caused much international embarrassment when an ASEAN summit in Pattaya in April had to be cancelled after protesters stormed the summit venue. Soon after, Prime Minister Abhisit survived an even greater challenge only thanks to the intervention of the army when on the eve of the Songkran (Thai New Year), over 100,000 anti-government protesters took their anger to the streets of the capital, prompting street battles with the security forces, in which at least two people were killed and over 100 injured. Continuing skirmishes suggest that Thailand’s political instability is unlikely to abate without a new social contract and legitimate, inclusive institutions.
Conclusion

Institutional design choices and leadership failures were not the sole cause of the decline of the 1997 People’s Constitution and the continuing instability since 2007. As the institutional analysis employed in this paper suggests, an equally important explanation is rooted in changes in Thailand’s political economy, which forced political elites to restructure state institutions in response to demands from new social actors, which brought similar reactions from the previous ones. Constitutional reform has become the focal point for intra-elite contestation about how state-society relations should be managed. Locating recent events in the context of social power struggles played out in the institutional realm makes it easier to understand the continuing constitutional instability.

The 1997 Constitution was the culmination of an ambitious reform project by progressive urban liberal elites to radically alter governance in Thailand; it was a reaction to poor governance as exemplified by electoral distortions, corruption and shaky institutions linked to the rise of money politics and the growing influence of provincial businessmen turned national politicians. Yet liberal elite support for the much acclaimed People’s Constitution quickly faded when representatives of a modern bourgeoisie with no connection to Thailand’s traditional elites took advantage of the new institutional environment: they built populist centres of political power among the urban and rural poor and the provincial middle class and redirected resources to them in exchange for votes. As their power unexpectedly eroded, the urban middle classes were quick to join Thailand’s traditional though illiberal elites in support of a military coup and a new Constitution, even though the new Constitution reduces the democratic content of Thai politics and gives increased power to unaccountable judicial and bureaucratic actors.

Thailand’s traditional elites and even large segments of the urban middle class obviously have little interest in expanding democratic governance beyond their own narrow circles. In fact, confronted with demands from an increasingly mobilized polity, many in the urban middle class have put their hopes once more in the traditional military and royal networks rather than democratic institutions to counter structural developments that seem to endanger their own interests. However, as recent events illustrate, until the institutional environment is altered to incorporate and accommodate the new social power relations, Thailand’s quest for constitutional stability is likely to remain elusive (and perhaps illusive).
Clearly one of the factors that deserves further study is the role of the monarchy in Thailand’s constitutional history. While that institution functions as a guarantor for the social order in Thailand and an arbiter among competing elites, it may also have prevented the institutionalization of constitutional practice in Thailand — particularly in the many instances where the monarchy and its networks have been active players in current political struggles. Yet the inability to resolve the current political stalemate may also signal that the influence of the royal circles is declining, or that the acceptance of the royal ideology that has underpinned modern Thai politics is waning. Given the King’s age, a looming succession crisis lends urgency to the need for Thailand to find a lasting rule-based system. The empowerment of non-accountable actors in the 2007 Constitution might be seen as a first step in planning for what is for many unthinkable — the time after the revered King Bhumipol Adulyadej (Rama IX) is gone. But the success of such efforts will ultimately depend on the willingness of elites to abide by their own rules and provide legitimate and inclusive governance institutions that reflect all of Thai society. The fact that constitutional reform is still the focal point of social struggles in Thailand might give reason for cautious optimism. Yet the process will not be easy or linear. Thailand is in for a bumpy ride.

NOTES

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1 Constitution of the Kingdom of Thailand (B.E. 2540), as published in the Government Gazette, Vol. 114, Part 55a, dated 11 October 1997 (B.E. 2540); here accessed through the official translation of the Council of State. The possible loss of legal nuances in the translation is acknowledged.

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Constitution of the Kingdom of Thailand (B.E. 2550), published in the Government Gazette, Vol. 124, Part 27, dated 24 August 2007 (B.E. 2550); here accessed through the official translation by the National Assembly.


In fact with rural-urban linkages growing and Bangkok’s relative economic share declining, the new political constituencies emerging from the provincial lower middle class and rural poor not only share the aspirations of their urban counterparts at the centre but also recognized that their economic well-being depends heavily on government policies emanating from the capital.

A good indication here is the share of the gross provincial product (at current market prices). Bangkok’s relative share fell from 39 to 19 per cent over the period 1996–2006, whereas the central region increased its share from 4.6 to 7.1 per cent and the eastern region from 10.1 to 16.6 per cent. The north and northeast, by contrast saw their share decrease from 9.2 per cent and 11.8 per cent respectively to 8.8 per cent and 10.3 per cent over the same period; see NESDB at <http://www.nesdb.go.th/Default.aspx?tabid=96>.


One has to be careful with the term legitimacy; ideally one needs to differentiate between mass and elite legitimacy; for the role of the drafting process in generating legitimacy see Yash Ghai, “The Constitution Reform Process: Comparative Perspectives”, paper presented at the conference “Toward Inclusive and Participatory Constitution Making”, Kathmandu, 3–5 August 2004.


22 In a media reported incidence a soldier guarding the entrance to parliament stopped a women carrying 400,000 baht on the day of the voting; she refused to answer why she was carrying so much money; see Mongkol Bangprapa and Manop Thip-Osod, “200 shortlisted to draft new charter, but accusations made of improper NPA vote”, Bangkok Post, 20 December 2006.


24 The majority of the 200 nominees came from the public sector (73), followed by the private sector (54), social sector (38) and academia (34).


26 Issued in December 2006, these guidelines included: restricting the Prime Minister to a maximum of two terms; preventing government from assuming a caretaker role if parliament is dissolved; and making it easier to induce motions of no confidence under the new constitution.

27 For instance, the meeting of concerned judges under the leadership of Supreme Court Judge Wattanachai Chotechootrakul, chairman of the courts committee reviewing the constitution draft, concluded that: “It is inappropriate to make judges become involved (in politics) because it will lead to loss of independence


36 See Nophakhun Limsamarnphun, “New style of politics might be in the offering after CNS steps down”, *The Nation*, 3 December 2006.

37 See Nattaya Chetchotiros and Mongkol Bangprapa, “Political leaders set out their charter goals”, *Bangkok Post*, 13 November 2006.

38 See Pravit Rojanaphruk, “Thai style democracy advocated”, *The Nation*, 1 December 2006.

39 Ibid.


43 Commenting on the process, Banjerd Singkhaneti, Director of the Thammasat University Law Center, noted: “I think it will be a mess and the next constitution will be just that”; while Charoen Khumpeeraparp of Silpakorn University criticized the amnesty clause; see Pradit Ruangdit, “Draft charter loopholes can ‘resurrect Thaksin regime’”, *Bangkok Post*, 28 September 2006.


48 For instance, police raided the house of the Duang Prateep Foundation of former Senator Prateep Ungsongtham Hata, confiscating anti-charter material without filing charges; other politicians were affected as well. “Robbed by army captain”, *The Nation*, 31 July 2007 at <http://www.nationmultimedia.com/search/read.php?newsid=30043048&keyword=Ungsongtham+Hata>.

49 The CNS mobilized the Internal Security Operations Command’s (ISOC) 700,000 nationwide staff to promote “a proper understanding of the constitution” in rural areas; see Wassana Nanuam and Subin Khunkaew, “CNS push for charter ‘yes’ vote”, *Bangkok Post*, 31 July 2007.

An Abac poll conducted between 25 July and 2 August 2008 found that 53.3 per cent of respondents supported the government’s plan for charter amendments. See “Poll: Thais nationwide favour constitutional change”, Bangkok Post, 6 August 2008.


Bloc Vote can be defined as a plurality-majority system used in multi-member districts in which electors have as many votes as there are candidates.


Under the 1997 Constitution, Senators were prohibited from belonging to a party or from campaigning for office. See Articles 121–34.


Article 7 of the 1997 Constitution reads: “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 State.”

The effective number of parties dropped from 7.2 between 1986–96 to 3.1 between 2001–05; see Hicken, “Party Fabrication”, op. cit., pp. 381–407.


According to Article 113 the SSC consists of the Presidents of the Election Commission, Ombudsman Office, National Counter Corruption Commission, State Audit Commission, as well as one judge of the Supreme and the Administrative Court each.

Under the new rules, five judges will come from the Supreme and Administrative Court, with two additional members each representing legal and political/social science experts (previously eight).

Official election results, 23 December 2007 (including subsequent re-runs in January 2008): People’s Power Party (233); Democrat Party (164); Chart Thai
(34); Puea Pandin (24); Ruam Jai Thai Chart Pattana (9); Matchima Thippathai (11); Pracharaj (5).

65 In one interview Samak even described himself as a Thaksin “nominee”, a statement he later retracted. See Weerayut Chokchaimadon, “PPP is now clearly the new Thai Rak Thai”, *The Nation*, 27 August 2007.

66 For details see Sopon Onkgara, “Govt reaching first 100 days with poor showing”, *The Nation*, 29 April 2008.


68 In March 2008 Prime Minister Samak claimed to have received an anonymous letter stating that certain groups were plotting a coup against the PPP government, a claim further fuelled by comments of well-known fortune teller Hon Warin.

69 The longstanding ownership dispute between Thailand and Cambodia over the Preah Vihear temple site reappeared after Cambodia submitted an application in 2008 to UNESCO requesting that it be designated as a World Heritage site. The agreement between both governments about the disputed land area became a cause célèbre for PAD in its fight against the PPP, leading to the Constitutional Court decision against the PPP-led government.

