

The Making of the 2007 Thai Constitution: Redesigning the Election System

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When Army Commander-in-Chief General Sonthi Boonyaratglin toppled the elected government headed by Thaksin Shinawatra in a coup d'état on September 19, 2006, he also abolished the 1997 Constitution. Known as the "People's Constitution," critics had come to believe that Prime Minister Thaksin, from the time he had first assumed office after the election of 2001, had systematically worked to undermine its complex construction of checks and balances. In this, it was alleged, he had been successful to the extent of having achieved the almost unchecked centralization of executive power. To capture this situation and to provide the anti-Thaksin movement with a rallying cry, critics had invented the expression "Thaksin regime."

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In short, critics claimed that the entire legal-institutional order—the constitution—had been pitted against the ambitions of a single political leader, whose rise to power had appeared unlikely only a few years earlier. In 1988, he was a debt ridden hardly-known medium-scale businessperson. Only the backlog in modern communication facilities, created during the eight years of the Prem government since 1980, combined with the corruption-prone Chartchai government elected in 1988, provided Thaksin with the huge amount of money necessary to embark on building a political empire. Thaksin's then unknown company, Advance Info Service (AIS), in March 1990, received government concessions to build and operate a quasi-monopolistic mobile phone network and a card phone service. Five years later, Thaksin had gained the funds and the public image as a visionary new-age leader that would enable him to challenge the political establishment and the constitutional order.¹ After he had unsuccessfully headed an existing political party (Palang Dharma), and briefly occupied positions in the cabinet, Thaksin founded his own electoral vehicle, the Thai Rak Thai party (TRT) in July 1998—nine months after the 1997 Constitution had come into effect.

Following their coup, one of the most urgent tasks of the so-called National Security Council and its willing assistants was the design of a new constitution that could help to prevent a person like Thaksin from having such a substantial impact on the Thai polity again. Based on the Interim Constitution,² two collective decision-making bodies were set up to draft the new document: the Constitution Drafting Assembly (CDA)³ and the Constitution Drafting Committee (CDC).⁴ Since the interim charter allowed for only 180 days to complete their work, the complicated undertaking of discussing and negotiating decisions about revisions of a legal text as complex as the 336-article strong 1997 Constitution within the CDC and the CDA had to be achieved under high time pressure. Participants thus could not build all the required expertise for more rational decisions during the process. Rather, they had to rely on their existing opinions about Thai politics and their working.

Regarding the electoral reform, given the purpose of the coup, it could have been assumed that a system would be introduced that minimized the chances of TRT (or its reincarnation as People Power party, PPP) from regaining power in the elections following the coup. Such a system was indeed proposed and discussed after the first draft of the constitution had entered the phase of public hearings. Eventually, however, it was rejected. According to Nelson, had CDA and CDC adopted this model, Thailand might not have seen a PPP-led coalition government with Samak Sundaravej as prime minister and the Democrats as the sole opposition party. Rather, there might possibly have been a Democrat-led coalition government under Abhisit Vejjajiva, with PPP relegated to the opposition benches.⁵ Consequently, the prolonged political crisis of 2008 might have been averted.⁶

The Discovery and Exploitation of the Keys to Perpetual Electoral Success

In the first contest for the House of Representatives under the 1997 Constitution, Thaksin and his TRT won the January 2001 election (see Exhibit 3) in part because they had promised to implement a raft of what critics had called “populist policies,” such as the village fund program, the 30-baht universal health care policy, and the debt moratorium. After being elected prime minister, he wasted no time in implementing these promises, bringing tangible benefits to a great number of people. In the words of one foreign observer of Thai politics, “[Thaksin] had positioned himself as a charismatic leader who could pull the people out of the doldrums, where they had been since the financial crisis of 1997 and the subsequent Democrat-led government under Chuan Leekpai.”⁷

Thaksin continued his unusually activist and leader-centered approach to government during his initial four-year term in office, the first time that an elected prime minister was able to serve his full term. Thus, in the February 2005 election, a great majority of voters demonstrated their approval of his performance in government by handing him an overwhelming victory, making Thaksin the first prime minister in

Thai political history to form a single-party government (see Exhibit 4). So impressive was TRT's dominance at the polling booth (except in the South) that, barring unforeseen events, it seemed likely that he and his party would be returned for the foreseeable future.

Accusations and Allegations of the Critics

However, from the very beginning of heading the government, Thaksin was subject to increasing and wide-ranging criticism by the Bangkok-based elite public opinion.⁸ A veritable "laundry list" of allegations streamed forth, running the gamut from the inappropriateness of his personal leadership style to corruption and self-dealing to his alleged complicity in the violation of human rights. Critics objected to his unabashedly brash, authoritarian style of leadership and took exception to his application of the CEO model of leadership to the governing of the country, arguing that his approach to governance effectively turned citizens into subordinates. Further, they argued, this approach did not tolerate criticism or areas within the polity that remained independent of Thaksin's influence or control. The print media,⁹ critical academics, and non-governmental organizations came under constant pressure to toe his line, leading to a significant restriction of independent public political space. Moreover, this approach had led to the violation of human rights, such as in the "war on drugs," in which around 2,500 people died, most of them supposedly by the police carrying out extrajudicial killings.

At the same time, a number of "independent organizations," established by the 1997 Constitution with the purpose of acting as counter-weights to the elected politicians, was subject to the exertion of political influence. This list included the Election Commission of Thailand (ECT), the National Counter Corruption Commission (NCCC), and the Constitutional Court. The Senate, first elected in the year 2000, was an important element in this neutralization of the forces that might have otherwise had the power to negatively impact on Thaksin's claim to power. Designed as a non-

partisan, and even non-political, representative chamber, the Senate was entrusted by the Constitution with the selection of members of the independent “watchdog”-type organizations. However, by pulling more and more senators into the government’s camp, its original role was subverted—and with it the balance of power, as envisaged by the drafters of the 1997 Constitution, between Executive (Thaksin) and Legislative (TRT) on the one side, and Senate and the independent organizations on the other.

All this, Thaksin’s growing legions of critics contended, was part and parcel of a scheme at the heart of which was corruption. Those of this persuasion maintained that Thaksin had consciously bought off rural voters with his “populist policies”—policies that had concretely improved their livelihoods at the local level. The *quid pro quo*, however, was that they had given him a free hand in enriching himself and his associates in national politics. However, this was not mainly done, critics claimed, through the erstwhile traditional approach of simply siphoning off public funds. Rather, Thaksin and his people had invented a more sophisticated method—labeled “policy corruption”—through which the prime minister and his ministers used the official policymaking process to reach policy decisions that benefited their varied and widespread business interests.

Ordinary members of parliament had been seen for time already as a key problem of corrupt governments more generally. Far from being democratic politicians, it was said that they were merely “electocrats,” who used their elected office to enrich themselves.¹⁰ This included the assertion that they were basically being bought by the highest bidder before elections—and TRT had had by far the biggest war chest for this kind of competition, Thaksin being the second-richest person in Thailand. Thereafter, these candidates would not fairly campaign for votes in the open electoral market. Rather, they would use their personal informal local canvassing networks to persuade voters to cast their ballots for them, often by just buying their votes. Upon making it to the House of Representatives, their primary time and energies were then directed

toward recouping their investment and making some additional profit, as opposed to serving their constituents or helping the country in solving its problems by acting as proper lawmakers.

Essentially, then, from this point of view, elected governments had a fundamental problem of legitimacy from the very beginning, because the constituent act—elections—were corrupted, and thus illegal. Many critics therefore held that the composition of parliament could not be regarded as a legitimate expression of the voters' electoral choices, but reflected the "tyranny of the rural majority and urban uncivil society." Thailand's political system was not a democracy, but an "electocracy."¹¹

Thus, even as the prime minister was consolidating his grip on the National Assembly and the various instruments of government, opposition continued to grow. Nevertheless, it was surprising when, in September 2005, only a few months after a convincingly won election, disgruntled friend-turned-foe, Sondhi Limthongkul, started protests in Lumpini Park claiming that Thaksin had lost all legitimacy to govern the country. These protests had subsided by mid-January 2006, but reignited when Thaksin sold his telecommunications conglomerate, tax-free, to Temasek, the investment arm of the Singapore government. Not only did this action further inflame his critics to the point of enragement, it also aided the efforts of growing numbers of opponents to portray him as a person "unfit" to govern the country.

Committing of a Fateful Blunder

Finally, in April 2006, determined to demonstrate his legitimacy and that of his government, the prime minister called a snap election. This attempt failed, because the only remaining parliamentary opposition parties, the Democrat and Chart Thai parties, boycotted the contest. This action led to a protracted state crisis in that neither the House could be convened nor a government formed. The King's intervention

provided temporary relief by way of a subsequent Constitutional Court nullification of the results of the snap election and the replacement of the entire membership of the Election Commission of Thailand. These actions then set the stage for the Royal Decree announcing fresh elections set for October 15, 2006—elections in which the Democrat and Chart Thai parties agreed to participate.

If Prime Minister Thaksin surmised that the political impasse would shortly be resolved to his liking, once the October 2006 elections were behind him, allowing him to proceed with “business as usual,” he soon found himself gravely disappointed. For about a month before the announced new election date, senior officers in the military—convinced that the October election would almost certainly result in yet another Thaksin victory, a continuation of the street protests against Thaksin and his government, and therefore increased divisions with Thai society—threw their support to General Sonthi as he delivered his September 19, 2006 coup d’état, while the prime minister was away in New York to address the opening session of the United Nations. Thus ended the governing career of one of the most colorful and divisive personalities in recent Thai political history, although his informal political influence remained significant.

Thus, a long chain of events—most of which are beyond the scope of this case—created the conditions of the military coup of September 19, 2006, and made it acceptable to Bangkok’s elite public. The coup embodied some of the problematic issues outlined above and brought them to the forefront of policymaking. In this connection, the reasons for the coup, as set forth by the coup-plotters, are instructive. They asserted,

. . . that the administration of [Thaksin’s] caretaker government has led to severe disunity among the Thai people unprecedented before in Thai society, that there were signs of rampant corruption, malfeasance and nepotism, that independent organizations had

*been interfered with, crippling their ability to perform their duties properly or to effectively resolve important problems faced by the nation, which if left unaddressed, would adversely affect the nation's security and overall economy situation. In addition, some political activities undertaken verged upon lèse-majesté against His Majesty the King who is highly respected and revered by the Thai people.*¹²

Since the coup plotters did not intend to stay in power indefinitely, they then had to determine what they should endeavor to accomplish in the following year or so. In this regard, the drafting and promulgation of a replacement for the abrogated “People’s Constitution” of 1997 was a step of high priority.

Back to the Drawing Board: The Making of a “Thaksin-Proof” Constitution

The “People’s Constitution” of 1997 had been considered a landmark in a long line of constitutions stretching back to 1932 when Thailand’s first constitution was promulgated in the change from an absolute monarchy to a constitutional one. This 16th constitution was deemed by many observers and experts as the best one to have emerge to that date. Not only had it been designed to give the prime minister increased power and to improve the quality of cabinet ministers, it also contained provisions aimed at tackling the perennial problem of “money politics,” as well as other provisions aimed at protecting citizens from infringement on their rights by the state.

Additionally, the 1997 Constitution had included a redesign of the country’s representative system. First, it replaced the primarily multi-member model for the election of members of the House of Representatives, which had been a feature of preceding constitutions, with 400 single-member constituencies. Second, 100 seats in the House were distributed based on national-level party lists, with a five per cent

threshold. Finally, the 1997 Constitution also replaced the erstwhile appointment of members of the Senate with the direct election of the 200 members, who nevertheless were supposed to be non-partisan and non-political representatives.

With this putatively “best” of all the supreme laws of the land in place, many commentators at the time of its promulgation were hopeful that the country had now engineered the basis for the elimination of the assortment of defects that had allegedly plagued earlier versions of the Thai political order and its concomitant personnel. Unfortunately, such was not to be—in January 2007, a little more than three months after the September 2006 coup, Thailand found itself caught up in the business of drafting a replacement constitution.

Getting Started: Structuring the Drafting Process

The main purpose of the 10th successful coup since 1932 was to eliminate what critics had called the “Thaksin regime,” and to ensure that the state of affairs that it had exemplified could not reoccur. In this connection, a number of judicial and administrative measures and actions were initiated—including the dissolution of the TRT, the banning of its 111 executives from politics for five years, and the establishment of the Asset Examination Commission to investigate and bring to court the alleged widespread corruption by Thaksin and his associates. Given that Gen. Sonthi’s coup had necessitated the abolishment of the 1997 Constitution, that a return to political normalcy required a new document, and that the version of 1997 was thought substantially to have contributed to the rise to Thaksin and his style of governance, the writing of a new one with “better” provisions had to be high on the agenda of the National Security Council.

However, before work on the new document could begin, the coup group had to set the legal-institutional framework by issuing an interim constitution that would set forth the blueprint by which the process was to unfold. As mentioned in the description of the focal point of this case above, the interim charter, promulgated on

October 1, 2006, specified that two collective decision-making bodies were to be set up to draft the new constitution—the Constitution Drafting Assembly (CDA) and a Constitution Drafting Committee (CDC). It also specified the mandatory qualifications of those eligible to serve on these constitution-drafting bodies, thereby maximizing prospects that the new constitution would turn out in accordance with the preferences of the coup engineers and their supporters.

As further set forth in the Interim Constitution, the following processes for drafting the new constitution were prescribed:

- A National Council (*samatcha haeng chart*) consisting of not more than 2,000 people from public, private, social and academic sectors, supposedly by having consideration for the representation of Thailand's regions, would be appointed by the King (Article 20, in conjunction with article 5 III). In practice, however, applications were solicited by a national selection committee chaired by a member of the National Security Council, and provincial committees chaired by the governors. The national committee, the provincial committees, the cabinet, and the coup group then winnowed the applications to the required number. The deadline for the acceptance of applications had to be extended, because poor publicity had left many people unaware that they could be nominated for the task of drafting the new charter.¹³ Once constituted with the required 2,000 persons, the sole task of the National Council was to select from among itself the 200 members whose names would be put forth to the NSC for consideration for appointment to the CDA.

- Then, *per* Article 23 of the interim charter, the NSC had to reduce the list of 200 nominees to the 100 persons who would form the CDA. The CDA was thereafter to appoint 25 people, members of the CDA or outsiders, to form the CDC. In doing this, the CDA had to follow very strict guidelines drawn up by the Council of State, the government's unit of legal experts. However, since these guidelines were too strict to allow for a reasonable selection of members, the CDA used some discretion in drawing from persons with lower ranks than the Council had prescribed. Finally, to round out the complement of members, the NSC exercised its prerogative (under Article 25) to appoint 10 additional members, persons in whom the NSC had particular confidence.

Not entirely certain that the new constitution would turn out as it wished, despite its active behind-the-scenes involvement throughout the foregoing processes, the NSC took the additional precaution of including Prasong Sunsiri—a staunch critic of former Prime Minister Thaksin, and an early and ardent supporter of Sondhi Limthongkul's anti-Thaksin protests—among the group of 10 persons whom it appointed to the CDC. Perhaps unsurprisingly, Prasong was elected by his fellow CDC members to chair the body, albeit by a mere one-vote margin and “amid intense lobbying by people to the CNS.”¹⁴ In addition to heightening the suspicion that the constitution-drafting process might not be free from military interference, Prasong's appointment and subsequent election as chairperson of the group, was thought “to [have] set the agenda for charter writing.”¹⁵

Notwithstanding the somewhat complicated selection process, this exercise in “putting the right people in the right jobs” turned out to have what some saw as a rather predictable outcome. Specifically, almost all of the CDC members belonged to the Bangkok-based legal, bureaucratic, and academic elite. Fifteen of the 35 members

were high-level legal bureaucrats and judges, supplemented by four lecturers of law. In addition, there were four more bureaucrats and four more lecturers from a variety of fields. There was only one political scientist among these academics. The remaining members comprised one technocrat, one journalist, and one member of the private sector, one soldier, and a women 's rights activist (only three women were selected to serve on the CDC).

Some observers speculated that this particular composition of the CDC indicated that the drafting of a new constitution was seen as a mainly technical-legal enterprise. Others suggested that the coup plotters might have seen the conservative nature of most high-level legal experts as an insurance that the outcome would be as expected by them. After all, they thought, there was no reason to believe that a constitution needed most input from legal experts, all the more since the legal-technical aspects of the drafting of articles was taken care of by experts from the Council of State. Finally, they were not surprised by the absence of politicians from CDA and CDC. In continuing the approach used with the 1997 Constitution, and in the attempt to improve it, this latest version seemed to be written, "in order to control the behavior of politicians, build desired results, and eliminate undesirable elements," as it was put in the context of the "political reform" process that had culminated in the "People's Constitution."¹⁶

Rangsun Thanapornpun, a respected professor of economics from Thammasat University, who had previously written about the economics of Thai constitutions, criticized the CDA selection process by saying that it did not support the direct participation of Thai people. Rather, since the coup group had a vital role in the selection, the "preference functions of the CDA reflected the preference function of the CNS and not that of the people."¹⁷

The process of generating the new constitution consisted of five main steps (see Exhibit 5 for a depiction of the entire process). First, the CDC prepared the draft. Second, twelve national-level elite bodies commented on the draft, the CDA conducted public hearings countrywide, and the CDA members formulated motions. Third, the CDC considered the recommendations formulated in step two, and prepared the final draft. Fourth, the CDA deliberated the draft constitution in its entirety, and those provisions that were raised in the motions. Finally, the voters decided in the first national referendum in Thai political history whether they accepted or rejected the draft completed by the CDA.

The Drafting Process: Considerations and Critical Choices

In recognition of the fact that the outcome of elections depends heavily on the particular election system used, the constitution drafters necessarily had to take into consideration a number of points. Chief among these were the particular configurations of the electoral systems with respect to the selection of members of the National Assembly (House and Senate).

The House of Representatives: Considerations, Options, and the Final Choices.

The constitution of 1997 had changed the previous 156 multi-member constituencies with altogether 393 MPs (plurality system with multiple votes)¹⁸ to 400 single-member constituencies (SMC). One reason was to forge closer ties between candidates and voters so that vote buying might be reduced. Moreover, 100 national-level party-list MPs were introduced with the aim of recruiting more capable people, who would not want to run in constituency contests, into parliament and then draw the members of the cabinet from this group. The party list also—for the first time—enabled voters to express their national-level political preferences, in contrast to the previous system that had only allowed them to choose between local candidates.

The members of the CDC collectively had to decide whether they wanted to keep the system introduced by the 1997 Constitution or to change it, and if the latter, they had to decide in which way and for what reasons the system should be changed. From early on in the CDC's work, both the single-member constituency and the party list came under strong attack. For example, CDC member Krirkkiat Phipatseritham, a retired Professor of accountancy, was reported as arguing for the abolition of the party list, with no reasons being given. He also wanted to return to the multi-member constituency system (MMC), as this, he stated, would reduce vote buying. SMCs had had the opposite of the intended effect, he maintained, since they had made vote buying easier, due to the more limited area of SMC and the smaller numbers of voters to be targeted. Moreover, the SMC contradicted Thai customs, since they necessitated a clear winner/loser situation. As a result, candidates would do everything to win.¹⁹

A few days later, *The Nation* headlined an article, "Party list, single-MP electorates to be axed." No reasons were provided about why SMC would be axed. As for the axing of the party list, two reasons were reported. First, "the system allows capitalists to rise to power through money politics." Second, "it could lead to a presidential system."²⁰ Indeed, Charan Phakdithanakun, the chairperson of the CDC's sub-committee on political institutions, perceived that if the party-list votes were interpreted as having been given to a particular party leader, as in the case of TRT's Thaksin Shinawatra, then this "severely contradicts the parliamentary democratic regime of government that has the king as head of state."²¹ That is, a prime minister who could derive his legitimacy directly from a popular vote via the party list, as Thaksin had repeatedly done, was seen as endangering the position of the King as head of state. Moreover, a few days earlier, Charan had already said, with obvious reference to Thaksin, that the party list "makes some people too power crazy. They think that they had received 19 million votes and therefore cannot do any wrong. This thinking is totally wrong."²²

Initially, the return to MMC included a reduction of the number of constituency MPs to 320. This measure would have increased the constituencies and thus the MMC-induced distance between MP and voters even further. Again, it was Charan, whose main position at that time was permanent secretary at the Ministry of Justice, who gave voice to the reason for this option. Asked why the MP constituencies should be enlarged, he responded,

*From the beginning, we have had the idea that we wanted the MPs to have their main task in the House of Representatives, that is, concern themselves with matters of law and the control of the executive. They should not get involved with the wellbeing [of the people] since this is the task of local government politicians.*²³

Somsak Pritsanananthakul, the deputy chairperson of the Chart Thai party, expressed the experience-based contradicting view of the politicians when he criticized Charan's narrow legalistic approach. He warned that ideas about the role of representatives as they work in the US or Japan should not be applied to Thailand. He continued:

*Those who say that attending ordinations, funerals, and weddings does not belong to the tasks of representatives show that they do not understand ... that this is to meet the people and learn about the villagers' problems in order to solve them ... These [MPs] are what we call true representatives of the people.*²⁴

On April 26, 2007, the CDC published, as prescribed in the interim constitution, a comparison between the constitution of 1997 and its draft, including the reasons for changes made.²⁵ According to this document, the House was to have 320 MPs elected in MMC. The party-list system was not abolished altogether. Rather, there were to be 80 "proportional" MPs elected not from national party lists but from four regional lists.²⁶

Regarding the return to the MMC, three reasons were given. First, it would be easier for “good and capable people to compete with candidates who have money.”²⁷ Second, bigger constituencies would make vote buying more difficult. Third, in MMC, votes would have more meaning because, in SMC, all votes not cast for the winner would be lost.²⁸

Unfortunately, all three reasons that the CDC put forward in support of its switch from SMC to MMC seemed to be faulty. A foreign observer of the constitution drafting process made the following three points.²⁹

First, the reference to “good and capable people” was held to be merely a long-standing cliché of the elite discourse on Thai representative politics. More importantly, it was not said how such people, supposedly without the use of money, could make themselves popular with the voters, and even to a higher degree than that achieved by competitors supposedly through the use of the power of money. Finally, it was unclear whether the CDC thought that the traditional MPs were automatically worse than those potential candidates who had neither money nor popularity, but were “good and capable.”

Second, concerning the intended target group of moneyed candidates, it was argued that vote buying would hardly become more difficult in bigger constituencies. Such candidates merely had to spend more of their money for that purpose. According to the underlying logic, this would become even more necessary, since candidates had to try to gain sufficient votes for being elected. Indeed, the return to MMC could not help but actually encourage vote buying—quite contrary to its intended purpose. After all, SMC had been introduced partly to overcome the vote buying that was said to be a widespread problem in pre-2001 MMC-based elections.

Third, votes are lost in both the SMC and the MMC systems. For example, turning two SMC with four candidates each into one MMC with eight candidates would still leave us with six losers whose votes are “lost.” For the same reason, Krirkiat’s earlier claim that winner/loser situations contradict Thai custom could not be avoided by introducing MMCs. Candidates would still have to try everything to beat their competitors by coming in at least second or third, depending on whether a constituency had two or three MPs.

The Final Decision Concerning the Electoral System for the House.

The final draft constitution presented to the people for a referendum provided for 400 MPs elected in MMC, and 80 MPs proportionally elected from eight regional party lists.

A Radical Proposal that Came to Naught: Regarding the party-list element of the election system, a radically new option was put forth for the CDC’s consideration by a number of CDC members, among them Krirkiat Phipatseritham, Chuchai Supawong, Thitipan Chuabunchai, and Komsan Phokong. Based on the German system of proportional representation, this proposal entailed replacing the time-honored Thai plurality system, with its multiple votes and the experiment with a first-past-the-post system (2001 and 2005), with a proportional one.³⁰

More specifically, the proposal called for a system in which 200 MPs would be elected from SMCs and 200 from party lists, while the overall composition of parliament would be solely determined by the number of votes political parties received for their party lists. These lists were envisaged to be sub-divided into a number of regional lists, rather than each party having merely one national list. At its core, the proposal implied a greatly reduced importance of localized constituency candidates and a simultaneous increase in the importance of political parties, even though this might have been somewhat weakened by the regional character of the party lists. As argued by Komsan, one of the CDC members who championed the proposal, the plurality system did not reflect the intention of the voters.³¹ In support of

his contention was the manner in which seats in the House had been allocated in the two previous systems. To wit, seats in parliament were not allocated based on the national vote total of political parties, but on who of their localized candidates won in the constituencies. Thus, in the 2005 election Thaksin's Thai Rak Thai had received 377 seats in parliament, or 75 per cent of the total, although the party had received only 61 percent on the party-list ballot (Democrats: 23 percent). Under a proportional representation system, the TRT would have received only about 306 seats.³²

After the fact, some commentators on the Thai political scene pointed out that had the CDC adopted this system, the main purpose of the coup—keeping Thaksin-related politicians out of power and have the Democrat party form the core of a coalition government—could well have succeeded. This would have been possible because in the election of 2007, the Democrat party received almost as big a share on the party lists (40.4 percent) as did TRT's successor, the People Power party (41.1 percent). Consequently, the distribution of seats in the House would have been as follows: People Power party: 205; Democrats 202; Phuea Phaendin 27; Chart Thai 33; Ruam Jai Thai Chart Pattana 12; Matchimathipattai 7; and Pracharaj 7 (see Exhibit 6 and 7).³³ Therefore, the Democrats could have joined its allies Chart Thai and Phuea Phaendin in forming a coalition government under Abhisit Vejjajiva as prime minister with a majority of 262 seats.

Again, well after the fact, commentators were left to speculate about the reasons why the CDC did not adopt the proportional election system, an act that would have represented a true initiative of "political reform." Certainly, it would have greatly deviated from the previous systems, thus have represented perhaps too big a leap into uncharted territory—with an uncertain public response that might not have been easy to counter with good enough reasons. In addition, the CDC and CDA members' technical knowledge about various elections systems and their different effects on election results might have been rather limited. Since this constitution

drafting took place under strict time pressure, there was little time to discuss such things in detail. After all, the constitution contained a great number of other issues that competed for the members' attention.

Further, speculated others, the much more limited party-list system of the 1997 Constitution had already come under attack for allowing a political leader to claim a degree of personal legitimacy that was seen in negative light. Opponents of the proportional representation system might have perceived it as potentially prolonging this "problem." Finally, a statement by Chuchai Supawong, one promoter of the proportional system, indicated that the CDC might well have misread the political mood of the country as the constitution drafting proceeded. The CDC, he said, had not given much thought to the possibility that the PPP would lead the newly elected government. Instead, it had been assumed that the Democrat party would form the core of a coalition government.³⁴

The Senate: Considerations, Options, and the Final Choices.

Since the constitution of 1946, Thailand's parliamentary system included (with some interruptions) an upper house, the Senate.³⁵ Characteristically, its first name was *phruetisapha* (House of Elders). Contrary to the lower-level MPs, the "elders" were "intended to be of old age and possess high qualifications so as to be capable of inspecting the performance of the legislative function of the House of Representatives and inspecting the discharge of duties of the Cabinet."³⁶ Whereas the 1946 Constitution stipulated indirect elections, the constitution of 1949 changed this to appointed members of a body that was now called *wuthisapha* (Senate). Formally, the King appointed the Senators. In practice, however, the selection was solely in the hands of the respective prime minister.

In the democratic climate in which the 1997 Constitution was drafted, and given that 76 of the 99 members of the CDA were provincial representatives, the appointment system came under strong pressure. There were three main competing proposals. First, the Senate should be completely elected. Second, a committee should be established that would select senators from three groups of experts.³⁷ Third, a mixed Senate with appointed and elected members was suggested as a compromise option. After prolonged political wrangling in the CDA of that time, the option of a fully elected Senate finally won approval, due to the majority of provincial delegates and some academic members of the CDA. This decision came despite warnings by opponents within and outside the CDA that an elected Senate “[would] allow political parties to gain control of the Upper House.”³⁸ As one appointed senator put it, “The Senate does not only need to function as a legislation-screening body, it also has to be a balancing force to prevent politicians from having too much power.”³⁹

In fact, this debate had been going on for some time already. Six years earlier, when the post-coup constitution of 1991 was being drafted, the then-chairperson of the drafting committee, one of Thailand’s foremost conservative public law experts and then-Deputy Prime Minister Meechai Ruchuphan, rejected the idea of an elected Senate with the words,

*I don’t think that will be useful. Senators and MPs will then come from the same pool of politicians. In that case, why have a bicameral legislature? Why not make it a single elected House of Representatives? The logic in drawing law makers from different sources is to ensure a diversity of ideas in Parliament.*⁴⁰

The prospect of a politicized Senate led to fundamental concern, because the upper chamber of the National Assembly was specifically intended to be a politically neutral body. As such, it was entrusted with selecting the members of independent organizations (*ongkon itsara*) designed to control the elected politicians.⁴¹

However, with an elected Senate, critics feared that the electoral realities in the provinces would easily undermine the Senate's political neutrality. Indeed, as the Constitution Drafting Assembly of 1997 narrowly approved the proposal for a 200-member, elected Senate representing provincial constituencies, then-speaker of the appointed Senate, Meechai Ruchuphan, prophetically warned, "The CDA empowers the Senate to appoint key monitoring agencies, but if we don't get neutral senators, the whole system may collapse."⁴²

Regrettably, according to critical observers, the former speaker's dire warning materialized during the administration of Prime Minister Thaksin. Specifically, in March 2003, the now-elected members of the Senate elected a deputy speaker who openly demonstrated his ties to a certain faction of the governing TRT party, "reinforcing a widely held belief that most senators side with the government."⁴³ By late 2005, some commentators were referring to the upper chamber as the "'Yes, master' Senate"—the "master" being Prime Minister Thaksin.⁴⁴ Further, regarding the Senate election in April 2006, a prominent Bangkok senator anticipated that about 70 percent of the new senators would have close connections with party politicians.⁴⁵ Indeed, shortly after the 2006 election, the newly elected Senate became labeled by critics as the "*sapha phua mia*" ("chamber of husbands and wives"), indicating that MPs in the House had nominated their husbands, wives, and other relatives and friends to run for the Senate.⁴⁶ With political control of the Senate a virtual *fait accompli*, the neutral, non-political role—and thus the functioning—of the upper house had been fundamentally compromised.

Against this background of institutional development and practical experience, the CDA and CDC of 2007 had four main options to decide about: abolishment of the Senate; return to a fully appointed Senate (but without the prime minister being the sole selector); keeping of the elected Senate; introducing a Senate with both elected and appointed members.

When the first draft of the constitution was published, it contained an entirely appointed Senate of 160 members. The draft provided for a selection committee comprising seven members, namely the chairpersons of the Constitutional Court, the Election Commission, the Ombudsmen, the National Counter Corruption Commission, the State Audit Commission, and one judge each from the Supreme Court and the Supreme Administrative Court. The CDC argued that this selection mode would lead to “appropriate” (*mosom*) senators. After all, the previous election mode had led candidates to the Senate to depend on the voter bases (*than siang*) of MPs and thus resulted in members of the House and the Senate being recruited from the same groups of people. Consequently, the Senate’s work had lacked transparency or fell under the control by a political party (a reference to Thaksin and his TRT). However, senators were supposed to be politically neutral and free in their decision-making since they were tasked with screening laws, controlling the behavior of politicians, and selecting members of the independent organizations. For the same reason, prospective senators had to possess sufficient knowledge and expertise to work efficiently.⁴⁷ In addition, they had to come from a variety of professions so that the work of the Senate would be comprehensive.⁴⁸

A prominent member of the CDC, Wicha Mahakhun, a former judge whom the coup plotters later appointed to their National Counter Corruption Commission, was emphatic in his defense of the proposal for an appointed Senate, saying

*We already know that the election is evil. Why do the public want to see history repeat itself? Citizens, especially academics, who wish to see the new constitution that brings real democracy are all dreaming. The election of senators was problematic. And why don’t people want a group of judges to help selecting senators for them?*⁴⁹

However, heart-felt though his strong remarks were, they were not enough to prevent a wave of criticism. For example, fellow CDA member Chirmsak Pinthong—who had belonged to a group of independent-minded elected senators opposed to the TRT-inclinations of the majority of their colleagues—argued that neither the appointed nor the elected Senate had been of much use. In his view, since the House had committees and the Council of State was checking legal issues anyway, the Senate was unnecessary.⁵⁰ Suriyasai Katasila, secretary general of the People's Alliance for Democracy, accepted the drafters' rationale that an appointed Senate could contribute to preventing a return of the "Thaksin system." Yet, in his opinion, one of the shortcomings of the CDC's proposal was that it would create a "new magic power" in the form of the seven members of the senator selection committee. Suriyasai argued that because such a committee was not connected to the people, its seven members would make absolute decisions without being responsible to anybody.⁵¹

Other critics came forth with additional points of view. For example, Borwornsak Uwanno, the secretary of the 1997 CDC (and one of the opponents of the introduction of an elected Senate), commented that the Senate should reflect the interests of different social groups, such as the middle class, military personnel, ordinary citizens, and interest groups. If the Senate only came from elections, he stated, it would be the same as having more members of the House of Representatives. In Borwornsak's opinion, therefore, it was preferable to have a mixed system with both elected and selected senators.⁵² Other informed voices, however, argued against a mixed electoral system. Meechai Ruchuphan, the chair of the National Legislative Assembly or NLA (the coup plotters' "parliament"), of which Borwornsak was also a member, had earlier warned that a mixed Senate would only see the two types of senators quarrel amongst themselves.⁵³

The Final Decision Concerning the Senate: On June 22, 2007, the CDA, by a vote of 37 to 35,⁵⁴ deviated from the CDC's draft and adopted a mixed electoral system for the Senate. The narrowness of the approval margin demonstrated the degree of disunity on this point amongst the constitution drafters. In any case, the 2007 Constitution thus introduced a Senate with 76 members elected in each of the country's 76 provinces, and 74 senators appointed by the selection committee as described above.

Completing the Circle: Déjà vu — “All Over Again?”

After the CDA had completed its task, the people were asked to approve or reject it in a referendum—the first time in Thai political history that a constitution had been put before the people for ratification. As shown in Exhibit 8, the constitution was approved with a majority of 58.8 percent to 42.2 percent—much narrower than the coup forces had hoped for. Indeed, the Northeast, the most important region in electoral terms, even rejected the draft outright.

Following this disappointingly narrow approval, the constitution was implemented, starting with the general election of December 2007, and the formation of the Senate shortly afterwards. It is certainly too early for a comprehensive evaluation of the new document. However, concerning the House, some political analysts have noted that the change of the election system for MPs to MMC and regional party-lists does not seem to have led to any notable changes over the previous SMC with national party lists.⁵⁵ Regarding the Senate, Meechai Ruchuphan's earlier warning about the risk entailed in a mixed electoral system seemed prophetic, as quarrels between selected and elected senators were already becoming obvious.

As for the PPP-led coalition government under then-Prime Minister Samak Sundaravej, in their attempt yet again to amend the Constitution, they sparked a major conflict with the same core forces that had campaigned incessantly in the streets against the erstwhile Thaksin's government. Both the House and the Senate had established committees to study the pros and cons of the new document. As of the end of September 2008, the political problems had intensified to the point of a deadlock. The People's Alliance for Democracy (PAD) had tried to overthrow the Samak government by storming and occupying the compound of Government House. The Constitutional Court had disqualified Samak from being prime minister. His successor, Thaksin's brother-in-law, Somchai Wongsawat, was forming his new cabinet, but had little hope of working at Government House anytime soon. The PAD insisted on the introduction of "new politics," at the core of which was a fundamental reform of Thailand's representative system.

Abbreviations

CDA	Constitution Drafting Assembly
CDC	Constitution Drafting Committee
ECT	Election Commission of Thailand
MMC	Multi-Member Constituency
NCCC	National Counter Corruption Commission
NLA	National Legislative Assembly
NSC	National Security Council
PAD	People Alliance for Democracy
PPP	People Power Party
SMC	Single-Member Constituency
TRT	Thai Rak Thai Party

Exhibit 1: The Policy Process

● <i>Problem identification</i>	The identification of policy problem through demand from individuals and groups for government action
● <i>Agenda setting</i>	Focusing the attention of the mass media and public officials on specific public problems to decide what will be decided
● <i>Policy formulation</i>	The development of policy proposals by interest groups, White House staff, congressional committees, and think tanks
● <i>Policy legitimation</i>	The selection and enactment of policies through Congress, the president, and the courts
● <i>Policy implementation</i>	The implementation of policies through government bureaucracies, public expenditures, regulations, and other activities of executive agencies
● <i>Policy evaluation</i>	The evaluation of policies by government agencies themselves, outside consultants, the media and the general public

Source: Thomas R. Dye (2008) *Understanding Public Policy*. Twelfth Edition. Upper Saddle River, New Jersey: Pearson Prentice Hall (page 14).

Exhibit 2: Policymaking as a Process

Policymaking can be seen as a process—how policies are made—in a step-by-step sequence. In reality, however, these processes overlap and intertwine.

Process	Activity	Participants
Problem identification	Publicizing social problems Expressing demands for government action	Mass media Interest groups Citizen initiatives Public opinion
↓	↓	↓
Agenda setting	Deciding what issues will be decided, what problems will be addressed by government	Elites, including president, Congress Candidates for elective office Mass media
↓	↓	↓
Policy formulation	Developing policy proposals to resolve issues and ameliorate problems	Think tanks President and executive office Congressional committees Interest groups
↓	↓	↓
Policy legitimation	Selecting a proposal Developing political support for it Enacting into law Deciding on its constitutionality	Interest groups President Congress Courts
↓	↓	↓

Process	Activity	Participants
Policy implementation	Organizing departments and agencies Providing payments or services Levying taxes	President and White House staff Executive departments and agencies
↓	↓	↓
Policy evaluation	Reporting outputs of government programs Evaluating impacts o policies on target and non-target groups Proposing changes and “reforms”	Executive departments and agencies Congressional oversight committees Mass media Think tanks

Source: Thomas R. Dye (2008) *Understanding Public Policy*. Twelfth Edition. Upper Saddle River, New Jersey: Pearson Prentice Hall (page 32).

Exhibit 3: Election Results of 2001

	BKK	Central	North	North East	South	Regions Total	Party List	MP Total
TRT	29	47	54	69	1	200	48	248
DEM	8	19	16	6	48	97	31	128
CTP	0	21	3	11	0	35	6	41
NAP	0	3	1	19	5	28	8	36
CPP	0	4	2	16	0	22	7	29
Serith.	0	0	0	14	0	14	0	14
Rassad.	0	1	0	1	0	2	0	2
TTP	0	0	0	1	0	1	0	1
SAP	0	0	0	1	0	1	0	1
TOTAL	37	95	76	138	54	400	100	500

Source: Michael H. Nelson (2002) "Thailand's House Elections of 6 January 2001: Thaksin's Landslide Victory and Subsequent Narrow Escape" In *Thailand's New Politics: KPI Yearbook 2001*, ed. Michael H. Nelson. Nonthaburi and Bangkok: King Prajadhipok's Institute and White Lotus Press, p. 396.

Exhibit 4: Election Results of 2005

	BKK	Central	North	North East	South	Regions Total	Party List	MP Total
Thai Rak Thai	32	80	71	126	1	310	67	377
Democrat	4	7	5	2	52	70	26	96
Chart Thai	1	10	--	6	1	18	7	25
Mahachon	--	--	--	2	--	2	--	2
TOTAL	37	97	76	136	54	400	100	500

Source: Nelson (2007, p. 19).

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graph TD
    A[Constitution Drafting Assembly (CDA)  
CDA shall complete the draft and consideration within 180 days as from the date of its first meeting] --> B[CDA appoint Constitution Drafting Committees (CDC) of consists of:  
1. 25 qualified members who are not members of the CDA elected by a resolution of the Assembly  
2. 10 qualified members who are not members of the CDA as recommended by the President of the NSC  
The prime minister and ministers shall not be in the committees are the same time]
    B --> C[The CDC preparing the Constitution Draft and informing document]
    C --> D[The CDC]
    C --> E[Disseminate Constitution Draft to the public and public hearing]
    C --> F[General dissemination]
    D --> G[Additional motions]
    G --> H[The CDC considers recommendations and motions received]
    E --> I[The CDC propose the Constitution Draft to the CDA for the purpose of approving or disapproving the entire draft and the specific provisions stipulated in the motions introduced by the member section 27 or proposed by the CDC. No member of the CDA shall introduce a motion to make an amendment other than motions specified in section 27 unless the CDC or not less than three-fifths of members of the CDA approves such amendment]
    F --> I
    I --> J[The CDC prepares and disseminates the report of Constitution Draft amendment or non-amendment together with reasons to the public]
    J --> K[1]
  
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The CDC preparing the Constitution Draft and informing document

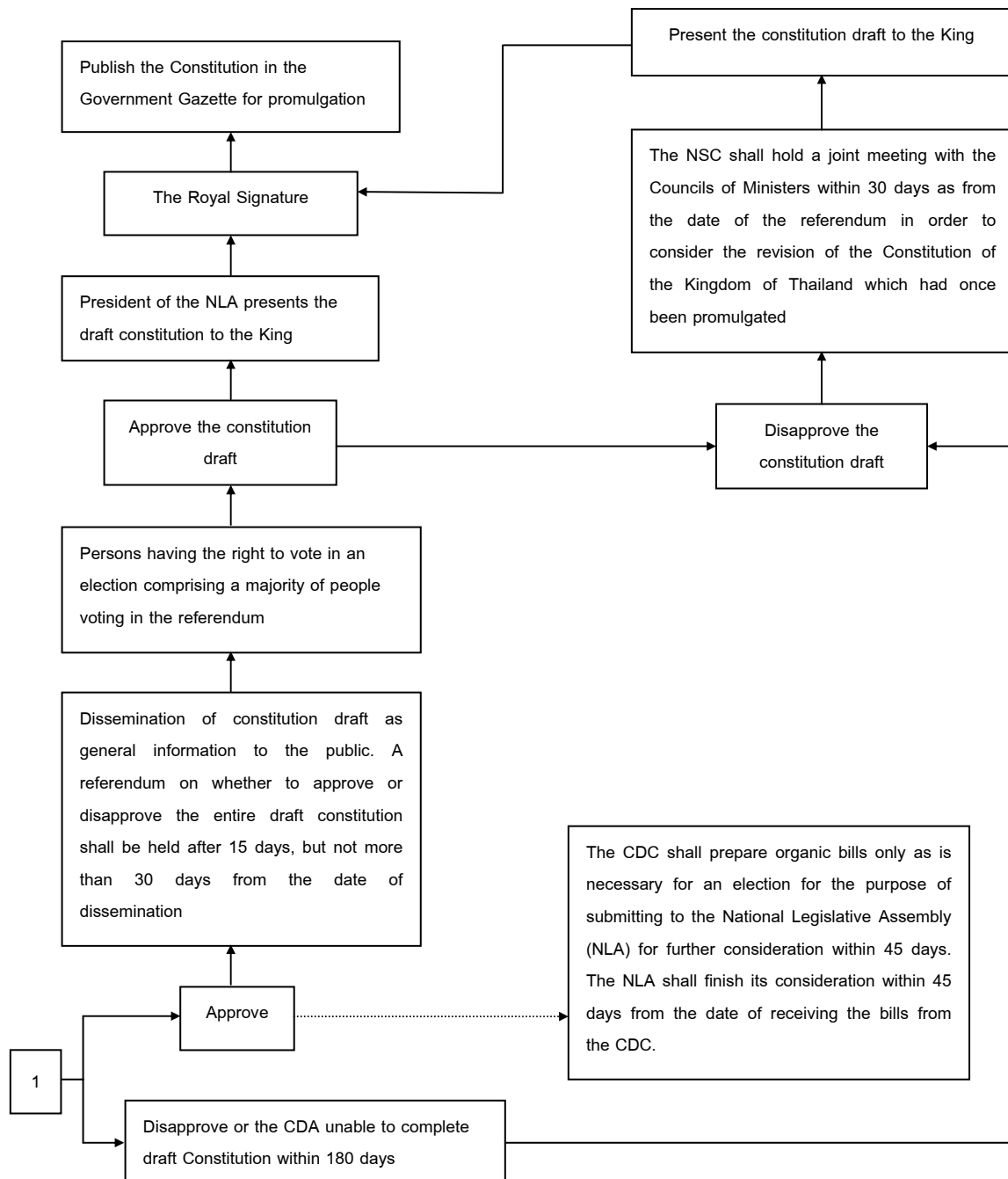
The CDC

Disseminate Constitution Draft to the public and public hearing

General dissemination

The CDC propose the Constitution Draft to the CDA for the purpose of approving or disapproving the entire draft and the specific provisions stipulated in the motions introduced by the member section 27 or proposed by the CDC. No member of the CDA shall introduce a motion to make an amendment other than motions specified in section 27 unless the CDC or not less than three-fifths of members of the CDA approves such amendment

1

Exhibit 5: Chart of the Constitution Drafting Process According to the 2006**Interim Constitution (part 2)**

Source: website of the CDA (this is a translation of a Thai-language document)

Exhibit 6: Initial Results of the 2007 Election

	BKK	Central	North	NE	South	Regions Total	Party Lists	MPs Total
People Power	9	39	47	102	2	199	34	233
Democrat	27	35	16	5	49	132	33	165
Chart Thai	--	18	6	7	2	33	4	37
Phuea Phaendin	--	1	1	12	3	17	7	24
Ruam Jai Chart Pattana	--	--	2	6	--	8	1	9
Matchima- thipattai	--	2	2	3	--	7	--	7
Phracharaj	--	3	1	--	--	4	1	5
TOTAL	36	98	75	135	56	400	80	480

Source: Nelson (Forthcoming, p. 19).

Exhibit 7: Calculation of the Proportional Result for the 2007 Election**(1) Nation-wide party list votes in the 2007 election**

Party	Votes	Percent	Const. MP
People Power	12,331,381	41.08	199
Democrat	12,138,960	40.44	132
Phuea Paendin	1,599,077	5.33	7
Chart Thai	1,213,093	4.04	33
Ruam Jai Thai	740,510	2.47	8
Matchimathipattai	449,985	1.50	7
Pracharat	408,797	1.36	4
TOTAL	28,881,803	96.22	
Remaining 24 parties	1,235,788	3.78	
TOTAL	30,017,591	100.00	

Source: Summary of an untitled ECT document

(2) Conditions for the recalculation of MP shares

- 480 House seats and national-level party (proportional) lists
- 5% (share of the total party list votes) and three-seat (number of constituency MPs won) thresholds
- Formula: Hare quota and the largest remainder (total number of House seats multiplied with the party-list result for the party divided by the total number of party-list votes after the deduction of invalid ballots, no-vote ballots, and parties below the threshold)

(3) Calculation of the Proportional Result

	Full seats with remainder (476 seats)	4 seats	Total PR seats claim	Const. seats won	Fill-up from PL	House MPs	Gain/ Loss 2007
People Power	204.94091	+1	205	199	+ 6	205	- 28
Democrat	201.74297	+1	202	132	+ 70	202	+ 37
Phuea Paendin	26.57580	+1	27	17	+ 10	27	+ 3
Chart Thai	20.16095		20	33	0	33	- 4
Ruam Jai Thai	12.30688		12	8	+ 4	12	+3
Matchimathipattai	7.47851		7	7	0	7	0
Pracharaj	6.79399	+1	7	4	+ 3	7	+ 2
	Total number of MPs (13 surplus seats CTP)					493	

Source: Personal communication with Nelson

Exhibit 8: Countrywide Result of the Referendum (by Region)

Region	Registered voters	Ballots cast	Invalid votes ^a	Valid votes	Yes	No
Central	15,144,307	8,741,488 (57.72%)	151,841 (1.74%)	8,589,647	5,714,973 (66.53%)	2,874,674 (33.47%)
South	6,268,074	3,717,664 (59.31%)	77,275 (2.08%)	3,640,389	3,214,506 (88.30%)	425,883 (11.70%)
Northeast	15,351,973	8,350,677 (54.39%)	150,538 (1.80%)	8,200,139	3,050,182 (37.20%)	6,149,957 (62.80%)
North	8,328,601	5,169,125 (62.06%)	124,553 (2.41%)	5,044,572	2,747,645 (54.47%)	2,296,927 (45.53%)
TOTAL	45,092,955	25,978,954 (57.61%)	504,207 (1.94%)	25,474,747	14,727,306 (57.81%)	10,747,441 (42.19%)

Source: Nelson (Forthcoming, p. 9).

Endnotes

- ¹ For the data presented here, see Pasuk Phongpaichit and Chris Baker (2004) *Thaksin: The Business of Politics in Thailand*. Chiang Mai: Silkworm, pp. 42ff. See also Michael H. Nelson, (2008) "Thaksin's 2005 Electoral Triumph: Looking Back from the Election in 2007." Hong Kong: Southeast Asia Research Centre, City University of Hong Kong (Working Paper Series No. 98), pp. 7ff.
- ² "Constitution of the Kingdom of Thailand (Interim). Buddhist Era 2549 (2006)." Bangkok: Office of the Council of State's Welfare Fund.
- ³ สภาร่างรัฐธรรมนูญ (*sapha rang ratthathammanun*).
- ⁴ คณะกรรมาธิการยกร่างรัฐธรรมนูญ (*khanakammathikarn yok rang ratthathammanun*).
- ⁵ Michael H. Nelson (Forthcoming) "Democracy Restored? Thailand's Constitutional Referendum and Election of 2007," manuscript, p. 13.
- ⁶ It is necessary to formulate these possibilities in a cautious way, because we cannot be sure how political parties and voters would have adapted their actions in response to a known alternative election system.
- ⁷ Nelson (Forthcoming, p. 1).
- ⁸ Two book-length critiques were published in English after Thaksin had been in power for three years, namely Pasuk Phongpaichit and Chris Baker (2004), and Duncan McCargo and Ukrist Pathmanand (2005) *The Thaksinization of Thailand*. Copenhagen: NIAS Press.
- ⁹ The government controlled almost all electronic mass media.
- ¹⁰ For an exemplary description by a key proponent of this label, see Kasian Tejapira (2005) "Reform and Counter-Reform: Democratization and its Discontents in Post-May 1992 Thai Politics." In *Towards Good Society: Civil Society Actors, the State, and the Business Class in Southeast Asia – Facilitators of or Impediments to a Strong, Democratic, and Fair Society?* Berlin: Heinrich Böll Foundation, pp. 125-146, and Kasian Tejapira (2006) "Toppling Thaksin." *New Left Review* 39 (May/June): 5-37.
- ¹¹ Both quotes in Kasian (2005, p. 128).
- ¹² "Statement by the Council for Democratic Reform by General Sonthi Boonyaratglin" (unofficial translation; September 20, 2006).
- ¹³ *The Nation* (November 2, 2006).
- ¹⁴ *Bangkok Post* (February 4, 2007).

- ¹⁵ *Bangkok Post* (January 29, 2007).
- ¹⁶ This paragraph summarizes a personal communication with Michael H. Nelson. The quote comes from คณะกรรมการการพัฒนาระชาธิปไตย (คพป.) (2538 [1995]) ข้อเสนอ กรอบความคิดในการปฏิรูปการเมืองไทย. กรุงเทพฯ: โรงพิมพ์เรือนแก้วการพิมพ์, p. 50.
- ¹⁷ Rangsun Thanapornpun, "Analysis of new constitution drafting process," (in Thai). http://www.prachathai.com/05web/th/home/psge2.php?mod=mod_ptcms&ContentID=5392&SystemModuleKey+HilightNews&SystemLanguage=Thai; retrieved on June 10, 2008.
- ¹⁸ To be precise, there were seven single-member, 61 two-member, and 88 three-member constituencies.
- ¹⁹ *Matichon* (February 3, 2007).
- ²⁰ *The Nation* (February 9, 2007).
- ²¹ *Matichon* (February 5, 2007).
- ²² *Matichon* (January 31, 2007; web site version).
- ²³ *Matichon* (May 1, 2007).
- ²⁴ *Krungthep Thurakit* (May 4, 2007). These two paragraphs draw on Michael H. Nelson (2007) "A Proportional Election System for Thailand?" *KPI Thai Politics Up-date* No. 2 (June 6, 2007), p. 19 f., fn. 22. Printed (slightly corrected) in 2008 in *การเมืองการปกครองไทย 2550: Thai Politics Forum 2007*, pp. 21-43. นนทบุรี: สถาบันพระปกเกล้า.
- ²⁵ คณะกรรมาธิการยกร่างรัฐธรรมนูญ สภาร่างรัฐธรรมนูญ สำนักกรรมาธิการ ๓ สำนักงานเลขาธิการสภาผู้แทนราษฎร. *สาระสำคัญของร่างรัฐธรรมนูญฉบับใหม่ พร้อมตารางเปรียบเทียบกับรัฐธรรมนูญฯ พุทธศักราช ๒๕๕๐ ฉบับปรับปรุงความคิดเห็น*, April 26, 2007.
- ²⁶ *Ibid.* (p. 58).
- ²⁷ Quoted from the CDC's document selling their first draft as published in *Post Today* (April 18, 2007), and *Matichon* (April 19, 2007).
- ²⁸ คณะกรรมาธิการยกร่างรัฐธรรมนูญ (2007, p. 59).
- ²⁹ See Nelson (forthcoming, p. 11f.).
- ³⁰ The proposal was promoted in a number of articles; see *The Nation* (April 30, 2007), *Krungthep Thurakit* (May 2, 2007), *Matichon* (May 6, 2007; June 5, 2007), and ปริญญา เทวานฤมิตรกุล. "การนำระบบเลือกตั้งแบบสัดส่วนมาใช้ในประเทศไทย" (published on the *Prachatai* web site on May 5, 2007). See also Nelson (2007).

³¹ *The Nation* (April 30, 2007).

³² For more accurate calculations, see Nelson (2007, tables 2 to 6).

³³ Since there would have been 13 surplus seats, the House would have had 493 MPs. This would have resulted from the fact that Chart Thai party's share of proportional seats (20) was lower than the number of constituency seats the party had won (33). On these calculations, see Nelson (forthcoming, p. 13).

³⁴ *Krungthep Thurakit* (July 22, 2008).

³⁵ For an overview of constitutional arrangements until 1979, see Pinai Nanakorn (1997) "History and Evolution of Constitutions in Thailand: From the Abrogation of the Absolute Monarchy to the 'Political Reform'." *Administrative Law Journal*, special issue, vol. 16, pp. 253-290. The Thai-language version appeared in the same years as "ประวัติและวิวัฒนาการของรัฐธรรมนูญในประเทศไทย: จากสมัยการเปลี่ยนแปลงระบอบการปกครองมาสู่ สมัยปฏิรูปการเมือง." *วารสารกฎหมายปกครอง ฉบับพิเศษ เล่ม 16 พ.ศ. 2540*, pp. 212-252. For an overview of all 18 constitutions, see คณิน บุญสุวรรณ. 2551. *รัฐธรรมนูญไทย*. กรุงเทพฯ: สุขภาพใจ.

³⁶ *Ibid.* (p. 262). Senators had to be at least 40 years old and possess a BA degree, while MPs could be as young as 23 years with only a primary education (*ibid.*).

³⁷ This might have meant a small committee, a large committee, or a *samatcha*-style large body of people from all major occupational groups, who would then determine amongst themselves who would become senators. This latter method is the same as that used for the selection of the 2007 CDA (National Council or *samatcha haeng chart*).

³⁸ *Thai Rath*, as excerpted in *Bangkok Post* (March 15, 1997).

³⁹ *The Nation* (April 11, 1997).

⁴⁰ *The Nation* (April 16, 1991).

⁴¹ Such agencies included the Constitutional Court, the Election Commission, the National Counter Corruption Commission, the National Human Rights Commission, the Ombudsmen, and the State Audit Commission. These bodies were to be appointed by the King, on the "advice of the Senate."

⁴² *The Nation* (July 30, 1997).

⁴³ *The Nation* (March 7, 2003).

⁴⁴ *Post Today* (November 8, 2005).

⁴⁵ *Matichon* (November 9, 2005).

⁴⁶ The headline of *Thai Post* (April 20, 2006) screamed, “Opening the curtain of the ‘*sapha phua-mia*’.”

⁴⁷ When Thai officials want to say that work should be done well, they mostly use the word “efficiency” (*prasitthiphap*). The word “effectiveness” (*prasitthiphon*) is by far less popular. Rarely does a speaker know the meaning and difference of these concepts.

⁴⁸ For this paragraph, see คณะกรรมการการร่างรัฐธรรมนูญ (2007, pp. 71f.).

⁴⁹ *The Nation* (April 27, 2007).

⁵⁰ *The Nation* (June 22, 2007).

⁵¹ *Krungthep Thurakit* (April 23, 2007).

⁵² *Post Today* (February 28, 2007).

⁵³ *Matichon* (February 4, 2007).

⁵⁴ *The Nation* (June 23, 2007). The vote was 28 members short of the total CDA membership of 100.

⁵⁵ For a summary, see Nelson (Forthcoming, p. 18ff.).