

THE THAI CONSTITUTION OF 1997: SOURCES AND PROCESS

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I. HISTORICAL BACKGROUND

The development of the modern Thai nation-state has its origins in the reign of King Rama IV when the Kingdom was known to the world as Siam. Siam in the mid-nineteenth century was essentially a feudal state headed by the monarch who administered the country through a hierarchy topped by minor royalty and aristocrats. They, in turn, were paid tribute by various levels of officials and at the bottom were the serfs who tilled the fields, paid a portion of their harvests to the landlords, and served in the Siamese army in times of war.¹

This all changed in 1855 when Siam signed the *Treaty of Friendship and Commerce* with Great Britain.² By signing this Treaty with the British and the other European powers, along with the Americans and the Japanese, the King reluctantly acknowledged the arrival of Europeans and radically altered the status quo. Siam was forced to open its economy to the world. In so doing, the royal monopoly of external trade was destroyed. By the time King Chulalongkorn (1868-1910) ascended the throne, the effects of this economic transformation were already affecting Siamese society.³ The young monarch began the step-by-step process to eliminate slavery and serfdom in 1874. This liberation of

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¹ Interview with Dean Borwornsak Uwanno, Dean of Chulalongkorn University, Thailand (23 September 1998) Bangkok [hereinafter *Interview 23*].

² *Treaty of Friendship and Commerce*, Siam and United Kingdom, 18 April 1855 *Index of British Treaties 1101-1968: Chronological List of Treaties 1101-1925*, vol. 2 (Surrey: Foreign & Commonwealth Office, 1970), 46 B.S.P. 138, 10 H.C.T. 557, HBCT (1924) 687, 14 A. 124, 17(t) Martens (III) 68 [hereinafter *Bowring Treaty*].

³ F. J. Horrigan, *Local Government and Administration in Thailand: A Study of Institutions and Their Cultural Setting* (Ph.D. Thesis: Political Science, Indiana University—Dept. of Government, 1959) at 17-18.

manpower resulted in further breaking down the traditional hierarchy. A professional army was created. The government took control of natural resources like teak and tin and granted trading concessions directly, taking this power out of the hands of provincial governors. Foreign traders dealt directly with local trading houses and paid a three percent export tax.⁴

In addition to its economic and social effects, the *Bowring Treaty* effected judicial and legal reform. The old judicial system was not trusted by foreigners. The Treaty imposed a system of extraterritorial laws under which foreigners would not be subject to the Thai courts. King Chulalongkorn realized that if these laws were ever to be lifted the system had to be modernized. Western foreign legal experts were hired to adapt the Thai laws to a more Western model.⁵ A codified system was adopted with the beginnings of three major codes of law: the *Penal Code*; the *Civil and Commercial Code*; and the *Civil Procedure Code and the Criminal Procedure Code*.⁶

Along with legal and judicial reform, King Chulalongkorn initiated wide ranging institutional reform of the Thai government. A Council of State system was instituted in 1894. A civil service based on merit attempted to replace the old system based on patronage. This period truly marks the emergence of most aspects of the modern Thai nation-state as we see it today.

The process of reform continued in the reigns of Rama VI and VII. Rama VI pushed forth the legal reforms his father had fostered and went further in promoting Thai nationalism and further professionalizing the Thai army. But the economy turned sour and King Rama VII, ascending to the throne in 1925, inherited economic recession from his brother and a growing restiveness among a new elite of young graduates with foreign educations who had witnessed the social and political ferment in Europe.⁷

II. THE PROBLEMS OF THE THAI CONSTITUTIONAL REGIME SINCE 1932

A. THE COUP OF 1932 AND THE CREATION OF THE CONSTITUTIONAL MONARCHY

In 1932, a group of young reformists composed mostly of lawyers and military graduates took the initiative and took over the government.

⁴ *Ibid.*

⁵ *Ibid.* at 19-20.

⁶ Interview with Dean B. Uwanno (23 September 1998) Bangkok.

⁷ *Ibid.* at 21-22.

They created the first Constitution in Thailand and forced the King to agree to relinquish his absolute status and become a constitutional monarch. But the government that emerged was essentially dominated by the military and noteworthy for the non-participation of the people.⁸

Since 1932, the Thai government has been largely a cabal between the military and the technocrats making up the Thai bureaucracy. For most of the sixty years which followed, the people have had little participation.

B. THE BEGINNINGS OF THE VICIOUS CIRCLE OF THAI POLITICS

In 1947, a military coup overthrew a civilian government, and this event marked the beginning of a vicious circle in Thai political development that would repeat itself right up to the last coup which occurred in February, 1991. This circle starts with increasing public pressure on the civilian regime (normally functioning with the approval of the military) usually fomented by its social, political, and economic dysfunction. This dysfunction is typically exacerbated by media reports concerning the regime's overt corruption. This, in turn, provokes increasing political conflict between factions in the government coalition. Finally, in compliance with the bureaucracy, the military steps in to restore order and establish a functional legislature, which is able to pass the laws the bureaucracy has drafted. Usually an interim constitution is quickly implemented followed by a permanent constitution possibly with an election to create an ostensibly civilian government. Once the government is up and running, it is allowed a honeymoon period where everyone settles back to the business of state affairs. However, rumours of corruption then arise yet again. Renewed social and political turmoil causes the governmental factions again to turn on one another. And the vicious cycle begins yet again.

C. CONSTITUTIONAL COMPONENTS IN THE EQUATION

Constitutions have figured in this equation as instruments drafted by the current regime, be it military or civilian, to ensure that they retain power. The formation of an interim constitution followed by a so-called permanent constitution may seem strange to a Westerner. But there have been fifteen constitutions since 1932 and the 1997 Constitution represents the sixteenth. While some of the essential truths of the Thai reality have been repeated in every one of these constitutions, especially regarding the monarchy and religion, these previous constitutions have

⁸ Interview with Dean B. Uwanoo (28 September 1998) Bangkok.

not been written as guarantees of the fundamental freedoms and obligations of the people, as constitutions are regarded in the West. They have been guarantees that the current regime can remain in power.⁹

D. THE STUDENT UPRISINGS OF OCTOBER 1973 AND 1976

This cycle of coups, new constitutions, new civilian regimes, and coups again, began to unravel in 1973. In October, 1973, a student uprising took place protesting the egregious corruption and martial law of the Thanom regime of the time. Tens of thousands of students from Thailand's three major universities converged on Democracy Monument in Bangkok. The uprising resulted in the deaths of many students. A new government was formed but unlike previous changes in the regime, this event marked a turning point. As Wright stated: "It was the first time in modern Thai history that the masses had rallied to take up arms against the ruling elite and to demand a change in leadership."¹⁰

The period that followed was a time of euphoria and promise. The students and the media, which had witnessed this transformation, proclaimed the beginning of an era of mass politics. But their shared view proved to be too simplistic.¹¹ There was a wide divergence between the Bangkok view of the uprising and its reasons, and the views from the provinces. While there were demonstrations in towns and campuses in the provinces, agitation outside Bangkok arose for different and even more complex reasons than those of the Bangkok elite.¹²

Within a fortnight of the October 1973 incident, a committee was established to draft the latest version of Thailand's "permanent" constitution.¹³ The National Convention as it was called, dominated by a majority of conventioners drawn from the rural majority, created a Legislative Assembly of which 81 percent was made up of residents of Bangkok.¹⁴ This betrayed the traditional client-patron loyalty and deference to authority which was still strong among the rural classes and far exceeded their longing for democracy.¹⁵

Over the next few years, disillusion with the change in government began to grow among students, labour, and the newly-galvanized mid-

⁹ *Ibid.*

¹⁰ J. Wright Jr., *The Balancing Act: A History of Modern Thailand* (Oakland: Pacific Rim Press, 1991) at 211.

¹¹ *Ibid.* at 213.

¹² *Ibid.* at 218.

¹³ *Ibid.* at 219.

¹⁴ D. Morrell and C. Samudavanija, *Political Conflict in Thailand, Reform, Reaction, Revolution* (Cambridge, Mass.: Oelgeschlager, Gunn & Hain, Publishers, Inc., 1982) at 102-05.

¹⁵ Wright, *supra* note 10 at 221.

dle classes which had participated in the October 1973 uprising.¹⁶ It became progressively obvious that the new so-called “liberal” regime while replacing a rigid military dictatorship was actually a perpetuation of control by the wealthy elite largely centered in Bangkok.¹⁷ Agitation for reforms again began to gain momentum in mid-1975. But the agitators were no longer buttressed by the Bangkok bourgeoisie who had watched in horror as one after another of the Indochinese governments fell victim to communist regimes.¹⁸

Two civilian governments came and went during this period: The Bangkok elite became increasingly polarized along rightist-leftist lines with extreme acts of violence rising in frequency as months of unrest spiralled toward the climax which occurred on 6 October 1976.¹⁹ Dubbed the Six October Massacre, the Thai police and a mob of rightist gangs marched on demonstrators gathered at Thammasat University campus in central Bangkok. The Thai police shot, clubbed to death—and even hanged—hundreds of students. They followed this mayhem by arresting 1,700 protesters. Many of the others who had avoided death or arrest retreated to the mountains to mount further resistance.

E. STEPS LEADING TO A NEW ORDER (1978-1992)

After the 6 October 1976 incident, the military stepped in yet again to restore order. Within days, the junta had installed a new cabinet, prime minister, and constitution. But that would last only a year.²⁰ Too much had changed in the preceding three years and constitutionalism had taken root among the people. The violence of the 1976 events shocked the nation. Although not well understood, even by the educated elites, the taste for mass participation had taken hold and a return to the former ways of rigid oppression was no longer tolerable.²¹

A new Constitution was drafted in 1978. This marked the beginning of an era of rapprochement with the students who had exiled themselves after the massacre of 1976 and had joined the Communist Party of Thailand (CPT) insurgency in the mountains. This period was an extremely important one in the constitutional transformation of Thailand. Wright stated it as follows: “It marked a significant realignment in the relations between the rulers and the ruled. Thai democracy was not

¹⁶ *Ibid.* at 229.

¹⁷ *Ibid.* at 230.

¹⁸ Morell and Samudavanija, *supra* note 14 at 275.

¹⁹ Wright, *supra* note 10 at 240-54.

²⁰ *Ibid.* at 257-58.

²¹ *Ibid.* at 259.

born on that Sunday in 1973 any more than it suffocated in its crib [with the massacre] three years later.”²² If anything, the relationship between the elite and the masses was clarified. They increasingly saw their interdependence as part of the social contract that had arisen out of the age-old Thai tradition of patronage.²³

The events which led up to the “Black May” incident sixteen years later in May, 1992, certainly had their roots in the events of the Seventies.²⁴ Under the Constitution of 1978, an era of relative moderation seemed to take hold. Although the government that brought in this latest version was militarily controlled, the military had set a timetable for the eventual devolution of its control to a truly civilian government. Nevertheless, in 1980 the elected Parliament chose as the successor to General Kriangsak, General Prem Tinsulanonda, who was the Commander-in-Chief of the Royal Thai Army.²⁵ His ascendancy came about while the military and civilian elites grappled with reaching compromise on constitutionalism in Thailand.

In spite of General Prem’s military connections, this still did not protect his regime from several coup attempts. From the end of absolute monarchy in 1932 up until a coup attempt in 1981, there had been fifteen coups, with nine of them overthrowing the regime of the time. This hearkens back to the vicious circle mentioned at the outset. And the question which most legal observers continued to ask was: How would Thailand break out of this syndrome once and for all?²⁶

General Prem survived many challenges during his term as Prime Minister. After several years in office, General Prem became the first military prime minister to resign his commission and still keep his premiership. He also became the first such prime minister to hand over his office voluntarily to an elected civilian Prime Minister, albeit also a former general.²⁷

The Prime Minister who formed the newly-elected government, Prime Minister Chatichai Choonhavan would be the last Prime Minister to be overthrown by a military coup. After barely three years in office, the Prime Minister began a heated feud with the two Army leaders, Generals Suchinda and Sunthorn, over the armed forces displeasure

²² *Ibid.* at 260.

²³ *Ibid.*

²⁴ *Interview 23, supra* note 1.

²⁵ Wright, *supra* note 10 at 262.

²⁶ See C. Samudavanija, *The Thai Young Turks* (Singapore: The Institute of Southeast Asian Studies, 1982) at 2.

²⁷ Wright, *supra* note 10 at 262.

with the departure of General Chavalit Yongchaiyudh from the cabinet as defence minister. This dispute reached a head on 23 February 1991, just as the prime minister was taxiing for take-off to fly to Chiang Mai to present the credentials of his new deputy defence minister to the King. Arrested and put under house arrest, the prime minister was forced to step down and the new military government abolished the 1978 Constitution. An interim constitution, to be replaced with the Constitution of 1992, was followed by assurances by the new regime that they would return powers to a civilian government, once order was restored.²⁸

General Suchinda, who led the coup, promised late in 1991 that he would never seek to put himself in the premiership. But in May 1992 he did just that. This resulted in demonstrations in around Democracy Monument, the scene of many of the demonstrations in both 1973 and 1976. But this time around the demonstrators were dominated by members of the Bangkok middle classes—so much so that the popular media dubbed it the “hand held” revolution in Thai, referring to the prevalence of hand held mobile phones among the crowds.²⁹ The incident became known as “Black May” and the army was brought in to crush the uprising in the heart of the city. Only after the King intervened and called General Suchinda to an audience, together with General Chamlong, who was seen as a key leader of the opposition, did the situation calm down. But the main result of this incident and its aftermath was the beginning of demand for profound political and social reform. When calm was restored, quiet pressure began to mount to once and for all rid the nation of the destructive cycle of coup after coup that had characterized Thailand’s history since 1947.³⁰

III. THE MOVEMENT FOR POLITICAL REFORM

A. BEGINNING STEPS

The movement for reform started in earnest in 1992 with four amendments being passed by the Parliament after the bloodshed in May. Two of these amendments were aimed squarely at ensuring that what had led to the 1992 demonstrations would not be repeated. The first required that only an elected Member of Parliament could become Prime Minister. The second attempted to deal with the problem of a Senate which was both unelected and dominated by the military clique. It required that the Speaker of joint sessions of Parliament no longer be the Speaker

²⁸ *Ibid.* at 323.

²⁹ Interview with Dean B. Uwanoo (25 September 1998) Bangkok [hereinafter *Interview 25*].

³⁰ *Ibid.*

of the Senate, but rather the elected Speaker of the House of Representatives.³¹ This momentum for reform continued through 1992.

In 1993, responding to rising public support for the political reform movement, an *ad hoc* committee for constitutional reform was formed by the House of Representatives. The committee was empowered to deal with setting up the main issues to be addressed in any reform of the system and came up with 45 proposed issues to be addressed in the form of amendments to the recently created 1992 Constitution.

B. UNDERLYING PROBLEMS TO BE ADDRESSED BY REFORM

I. INTRODUCTION

The initial steps toward reform were taken alongside a debate among Thai academics, lawyers, and politicians, largely centered in Bangkok to pinpoint the problems inherent in the Thai political culture which had to be addressed if the reform initiative was to mean real change.³² The first problem has already been discussed in the first section of this article: the vicious cycle of civilian governments replaced by coups and the resulting lack of genuine constitutionalism. But as the debate grew, deeper problems that needed to be confronted were singled out.

2. LACK OF TRANSPARENCY IN GOVERNMENT: THE PROBLEM OF CORRUPTION

The first major problem which analysts agreed would require reform was the lack of transparency in government and the corruption that this fostered. The forms of corruption which the reformers focused on were: vote-buying and electoral fraud, the lack of legal measures to prevent corruption, and the inefficiency of the political and legal process in punishing corrupt politicians.

a. Vote-Buying and Electoral Fraud

One of the primary manifestations of corruption which went to the very heart of the political process was vote-buying and electoral fraud.³³ During elections, politicians have traditionally sent their cronies out to the rural areas with "bucketsful of cash." This has demonstrated very starkly the electoral profile of the Thai voting public. Bangkok is important as the nation's political capital and business center and,

³¹ Interview with Dean B. Uwanno (24 Sept 1998) [hereinafter *Interview 24*].

³² *Ibid.*

³³ *Ibid.*

therefore, exerts enormous influence over national policy makers, if for no other reason than their proximity to the scrutiny of the nation's national media concentrated in the city.³⁴ The towns are important only because they spawn provincial leaders. Their weight during elections is minimal.³⁵ Not so the countryside where the vast majority of Thais live.

The view from Bangkok of electioneering in the countryside is skewed by the bias against what the urbanites see as their country bumpkins, the lower-educated rural voters who persist in sending corrupt politicians to the capital and in so doing, help to perpetuate a system of patronage and corruption. This view was presented by Christensen and Siamwalla in the following analysis:

Rural voters are poor and susceptible to bribery by candidates: *therefore* candidates bribe voters and spend enormous sums of money to get elected and spending more money means a better chance of winning; *therefore* having lots of money, winning candidates try to recoup the cost of electioneering; *therefore* they engage in corrupt activities when they come to Bangkok, and widespread corruption is thus explained.

While there is some truth to this portrayal, it also illustrates the differences which divide the rural populace from their urban cousins. First of all, Bangkok has persistently lower voter turnout percentages than the rural areas. Citizens of Bangkok are richer and better-educated. Criticism of politicians, especially when they are accused of corruption, is much louder in Bangkok than the rural areas. Although the majority of Members of Parliament come from the rural areas, they must face a barrage of media attention, especially if they are accused of corruption. In trying to appease the urban media, Members of Parliament often seem to forget the rural voters' needs which can have adverse effects on the age-old system of patronage which they were elected to maintain.³⁶

The patron-client relationship has been a facet of Thai law since the Three Seals Law of the last century. And this relationship lies at the heart of politicians relationships with their rural constituents. It is an exchange. There is an exchange. The voters sell their votes to their candidate. By getting elected, the candidate promises to repay the constituents loyalty with protection. While one patron may have many clients, this does not lessen the importance of the relationship with one client. The patron is more powerful than the client. The relationship can persist through many transactions or in the electoral sense,

³⁴ *Ibid.*

³⁵ S. R. Christensen and A. Siamwalla, "Beyond Patronage: Task for the Thai State" (Paper prepared for the Thailand Development Research Institute, December 1993) at 32.

³⁶ *Interview 24, supra* note 31.

many elections. And it is relationship with many facets. It is seldom specialized.³⁷

b. The Lack of Legal Measures to Prevent Corruption

While the patron-client relationship between Members of Parliament and rural voters lies at the heart of the flawed political system, the lack of legal measures within the system to prevent corruption guarantees that system's continuity.³⁸ For example, the media often headline yet another lavish gift given by a prominent business personality to a Minister who holds a Cabinet post key to the interests of that businessman. Or commercial interests are famous for offering foreign study tours abroad to a selected group of officials in a key ministry as a way for the commercial interest to buy their way into being chosen to complete lucrative government contracts.³⁹ Another example is the lack of any law against government officials holding passive directorships in private companies which are under their control. In 65 years of government preceding passage of the 1997 Constitution, only once has there been a Minister tried and convicted of corruption, and then, only because the man who paid the bribe came forward after the Minister reneged on what he had promised.

c. Inefficiency of the Political and Legal Process in Punishing Corrupt Politicians

In addition to the systematic abuse this pattern of corruption has had on the administration of government, it has also worked its way into the very fabric of politics. When corruption rumours reach a crescendo, which the government can no longer ignore, a vote of no confidence is usually brought against the ruling coalition. But when the vote is called, habitually the majority prevails and in spite of a new coalition being established, nothing really changes. It merely gives members of the coalition an excuse to pull out of the coalition and manoeuvre to secure a more advantageous position in the formation of the coalition which replaces the one previous to it.⁴⁰

In addition to inadequate legal mechanisms to deal effectively with corruption in the past, the general inefficiency of the political and legal process to cope effectively with corrupt politicians has also been a

³⁷ Christensen and Siamwalla, *supra* note 35 at 33.

³⁸ Interview 24, *supra* note 31.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

persistent feature of the old order. This was pinpointed by the reformers as requiring a thorough overhaul.⁴¹ It is the supreme irony that some of the most corrupt politicians in Thailand are also its most popular.⁴² It would be foolish to blame this on the gullibility of rural voters. A sounder explanation is rooted in the continued viability of the patron-client relationship, especially as it exists between the rural electorate and its elected representatives. If a representative continues to bring back resources from rich Bangkok to the provinces, it does not matter to the rural electorate if the candidate creams off a little for himself. That is just a fact of political life.⁴³

The lack of political will to deal effectively with this problem was rooted in the very nature of the political process that preceded the recent impetus for reform. Until 1973, most governments were unelected, usually surviving under the wing of a strong military clique. While unelected governments have passed more laws than their civilian counterparts, these governments are characterized by a dearth of political debate. Most of their members come from the bureaucracy after appointment to the government by the military. Parliamentary debates over laws in unelected legislatures were suitably short because unelected MPs did not have to grandstand for the media. Their popularity was not contingent on the whim of a distant rural constituency.⁴⁴

3. INSTABILITY OF CIVILIAN GOVERNMENT AND THE INEFFICIENCY OF POLITICAL INSTITUTIONS: THE CAUSES

a. Coalition Governments Guarantee Chronic Instability

One of the prime culprits militating against establishing effective measures to deal with corruption has been the instability of civilian government and the resultant inefficiency of political institutions. A pattern can be seen by surveying the list of prime ministers and the various governments they led. Junta governments have been extremely stable. Dominated by dictators enjoying the support of the military and the bureaucracy, they have also been buttressed by the support of relatively compliant unelected parliaments. Civilian governments, by contrast, have been very unstable. Usually their tenure is marked by strife and factionalism, reducing their effectiveness and ensuring a frequent turn-

⁴¹ *Ibid.*

⁴² Christiensen and Siamwalla, *supra* note 35 at 36.

⁴³ *Ibid.*

⁴⁴ *Interview 24, supra* note 31.

over. For example, during the last four years, there have been four prime ministers and seven ministers of finance.

Civilian governments have survived only as long as the coalition dominating the House can survive. Prior to the current government, the government of Prime Minister Chavalit had to constantly balance the interests of six coalition partners with many internal conflicts of interest. Each party in the coalition wanted a piece of the action, *i.e.* a key ministry portfolio out of which would flow lucrative mega-projects through which the minister's clients would receive contracts. The conflicts this division of the spoils generated reduced the shelf life of civilian governments and perpetuated the destructive cycle of corruption and patronage. It meant that the "super-ministries," those with the biggest slices of the state fiscal pie, were the ones most sought after by any party participating in the coalition, ministries such as Agriculture or Telecommunications. When these machinations are too egregious for the public to stomach, a vote of no confidence is the usual tool used by coalition parties to extricate themselves from a tainted coalition. Only in the last government of Prime Minister Chavalit has this pattern been altered. The new Constitution of 1997 expressly prevented any dissolution and new elections until the organic laws enabling it had been passed.⁴⁵

b. Unproductiveness of the Legislative Process

Elected MPs in contrast to unelected or appointed legislatures had little incentive to grapple with new legislation. It is an arduous task passing laws and elected MPs have historically betrayed a singular distaste for the law-making process. This can be seen dramatically by comparing the volume of laws passed by elected versus unelected governments since 1958.⁴⁶ The frequent turnover of governments in the constitutional history of Thailand since 1932 has with each change of regime seen the drafting of a new Constitution as well as new laws. The process of drafting 15 Constitutions up to 1992, has certainly represented a time-consuming distraction to the normal legislative drafting function of the Thai parliament. Indeed, even that process has been persistently inefficient, with parliament burdened by an article-by-article approach to the re-drafting of the Constitution.⁴⁷

⁴⁵ *Ibid.*

⁴⁶ Christensen and Siamwalla, *supra* note 35 at 56.

⁴⁷ *Interview 24, supra* note 31.

III. DEMANDS FOR REFORM TAKE SHAPE

A. THE VARIOUS FORCES DEMANDING CHANGE

The background to the current efforts to turn around the tide of Thai political and legal history rises out of this vicious cycle—a cycle which is now seen as self-perpetuating only so long as no substantial reform of the system underlying it is left untouched. The Black May incident of the 16-20 May 1992 provided only a glimpse of what had to be done. The demonstrators had no agenda for change and though the need for a radical overhaul of the status quo was recognized, the movement lacked any depth of analysis of the root causes of the current imbroglio.⁴⁸

With a second new parliament in place in 1992, the reform movement began to gather momentum. In 1993, the House of Representatives nominated an *ad hoc* committee, the Constitutional Reform Committee, specifically mandated to analyze the needed steps for fundamental reform. While many forces were working behind the scenes to derail this process, too much had happened to forsake real change and revert back to the cycle of the past. In 1995, the Constitutional Reform committee tabled a report just as the ruling coalition of Prime Minister Chuan Leekpai began to unravel.

B. THE COMMITTEE FOR DEVELOPING DEMOCRACY (CDD)

The elections that followed placed Prime Minister Banharn Silpa-archa at the helm of the new government and rumours were rife that the new regime would try and derail the reform process. One of the major factors ensuring that a reversion to the past would no longer be tolerated was the emergence of powerful interest groups largely drawn from the academic and political community in Bangkok. Led by such luminaries as Prawase Wasi, a well-known social activist with a nation-wide reputation for forthrightness and honesty, the Committee for Developing Democracy followed the tabling of the Constitutional Reform Committee's report to Parliament by staging a nation-wide series of public hearings to bring the people into the process. This was a first. The hearings guaranteed that the debate was not limited to the Bangkok cognoscenti alone. And the process de-personalized the debate. It concentrated on issues rather than factions or individuals. It did not limit its focus only to the contents for reform but instead dealt with the strategies for reform.⁴⁹

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

C. CONSTITUTIONAL AMENDMENT AND FORMATION OF THE CONSTITUTIONAL DRAFTING ASSEMBLY

The most contentious issue that arose and provoked debate in Parliament was the vehicle for accomplishing reform. Who would be involved in drafting an amended Constitution? And how would that drafting institution be created? The debate dominated Parliament during 1995 and 1996. Accusations flew from side to side that the other was trying to sabotage the entire reform process. But in September 1996, the activists prevailed with an amending process approved by Parliament and a Constitutional Drafting Assembly receiving approval as the way to accomplish the task. The success of the Drafting Assembly can be credited to a strong triumvirate of reform advocates, Prawase Wasi leader of the CDD, Uthai Pimchaichon, an ex-MP with a reputation for honesty and a base in the provinces, and Anand Panycharayun, an ex-prime minister well-respected in Bangkok.

D. THE DRAFTING PROCESS AND MASS PARTICIPATION IN THE PROCESS

Behind these figures stood the restive public which was unwavering in its support of reform. Their pressure took the form of focusing on specific areas needing reform. An Assembly of the Poor had farmers march on Bangkok during the debate. Groups demanding justice for loss of land because of dam construction added their voices. Three projects were scrapped as a result of this grass roots pressure.⁵⁰

Responding to this pressure and the groundswell of support for reform, the Parliament passed a Constitution Amendment Bill in May 1996. It provided for the formation of a Constitutional Drafting Assembly (CDA) made up of ninety-nine members. Seventy-six members were drawn from the provinces, one from each. The others were experts in public law, political science, and public administration short-listed by universities, to be chosen by Parliament.⁵¹ This formula seemed to satisfy all sides. The CDA was to conduct a survey of public opinion through hearings and was to finalize a draft for presentation to Parliament in 240 days. If Parliament voted short of a majority, a public referendum would be held. A simple majority of eligible voters would be sufficient to approve it. The people had finally gained a real place in the process.⁵²

⁵⁰ P. Jumbala, "Thailand: Constitutional Reform Amidst Economic Crisis" (1998) *Southeast Asian Affairs* at 269.

⁵¹ *Ibid.* at 271.

⁵² *Ibid.*

IV. THE NEW CONSTITUTION AND ITS MAIN FEATURES

A. INTRODUCTION

The task was, as the Secretary of the CDA, Borwornsak Uwanno put it, "all about decoding what the people are saying and producing a legal document." Working at sifting the results of going through documents submitted by various pressure groups and NGOs, was the work of the CDAs Public Opinion and Academic Committees. But the Constitutional Drafting Committee (CDC) was able to complete a draft by May 1997. There followed a series of "public hearings" organized by the provincial members of the CDA. Members of the CDC travelled up and down the length of the nation to listen to opinions on the first draft. The two stages of public opinion gathering provided an unprecedented exposure of constitutional issues to the public and assisted enormously in bringing the process to the attention of a wide spectrum of the Thai population.⁵³

B. TURNING GOVERNMENT BY POLITICIANS TO GOVERNMENT BY THE PEOPLE

After the public hearing process was completed, the CDA members submitted their own recommendations for amending the draft Constitution. The final draft was approved by the deadline on 15 August 1997.

The draft Constitution was clearly aiming at fundamental reform. It recognized more rights and freedoms than any other previous Constitution. It also was clear in its commitment to make elected politicians and public officials accountable. This was designed to create greater transparency while making the Thai political process open to more public participation.⁵⁴ Civil liberties were for the first time linked to the idea of "human dignity." Slavery and torture were prohibited. Arrested persons had to be brought to court within forty-eight hours after arrest. The state's duty to nurture the family was affirmed, as was an individual's right to privacy.

With the addition of many more civil liberties were added practical guarantees to ensure that the public would have access to the means to air their views. Access to media is guaranteed through a number of measures including efforts to end state and private monopolies of radio, television, and telecommunications. The state is required to provide twelve years of free education. Other social rights included health care

⁵³ *Ibid.* at 273.

⁵⁴ *Ibid.* at 274.

for the poor, pensions for the elderly without means of support, and guarantees for accessible facilities for the handicapped.⁵⁵

Direct citizen participation in the political process is provided for in a number of provisions. Fifty thousand electors can now submit a piece of legislation to Parliament, or can ask the Senate to remove high officials in three levels of government if they should appear "unusually wealthy," or in instances where such individuals exercise their powers unconstitutionally.⁵⁶

C. MAKING GOVERNMENT MORE TRANSPARENT THROUGH ANTI-CORRUPTION PROVISIONS

I. ANTI-VOTE-BUYING MEASURES

Compulsory voting was introduced for the first time in Thailand. This guarantees a high turn-out which militates against buying votes because it would require too much cash to be feasible. An independent Election Commission has been created to administer and oversee elections using the assistance of NGOs. It will have wide-ranging investigative and prosecutorial powers. It can also call for new elections. There is provision for limiting campaign monies and providing candidates and parties with support to guarantee fairness.⁵⁷

In addition to the above provisions as Jumbala describes it, a mixed electoral system was imported from Germany for elections to the House of Representatives. One hundred members are elected from party lists, and the other 400 MPs are chosen from single-member constituencies. The party list system is aimed squarely at deterring vote-buying, allocating seats more fairly, strengthening the party system and giving an opportunity for parties to choose candidates for their knowledge and quality rather than their electability. The single member constituency is seen as fairer than the old multi-member method and constituencies will be smaller in size bringing MPs closer to their constituents.⁵⁸

2. ANTI-CORRUPTION MEASURES

In order to address the sources of corruption in previous governments, codes of conduct for politicians are to be drawn up defining conflicts of interest. Parliamentarians are prohibited from receiving state concessions or monopolies and Ministers must transfer corporate holdings into

⁵⁵ *Ibid.*

⁵⁶ *Ibid.* at 275.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

blind trusts. An asset and liability reporting mechanism is established for all politicians and senior bureaucrats and a National Counter Corruption Commission (NCCC) given the power to investigate and charge any official suspected of being unusually wealthy.⁵⁹

The NCCC will have nine members nominated by the King on the recommendation of the Senate. Their terms will be for nine years and are non-renewable. Their positions cannot be revoked except by a motion of impeachment initiated by one-fourth of the House of Representatives and decided by the Senate by a three-quarters majority. An inquiry into impeachment can be started by a voters' petition or by the House of Representatives.⁶⁰

3. THE INSTITUTION OF VARIOUS CONTROL AUTHORITIES

In addition to the NCCC mentioned above, which is an enhanced version of the old Counter Corruption Commission, the Constitution provides for a number of independent agencies to ensure accountability. A Constitutional Court is to be established which is empowered to deal with all laws challenged as unconstitutional and to decide issues involving overlapping authority. The National Human Rights Commission is to be formed to protect and promote human rights. The Commission will have eleven members and will be empowered to look over complaints arising out of violation of human rights arising out of international treaties and conventions which Thailand has signed. An Ombudsman will be appointed with jurisdiction over maladministration, and the power to report to Parliament on any official's failure to comply.⁶¹

Whenever an ordinary citizen has a dispute with government officials, a special Administrative Court has been established to deal with such matters. It also has jurisdiction over other matters of maladministration.

D. RENDERING GOVERNMENT MORE STABLE AND STRENGTHENING POLITICAL INSTITUTIONS

I. STRENGTHENING THE POSITION OF THE PRIME MINISTER

In the previous regime, one Prime Minister and 48 Ministers made up the Council of Ministers. Under the new Constitution, the Council of Ministers will be made up of the Prime Minister and 35 Ministers. They

⁵⁹ *Ibid.* at 276.

⁶⁰ Interview with Dean B. Uwanoo (29 September 1998) Bangkok [hereinafter *Interview 29*].

⁶¹ *Ibid.*

will be responsible to the House of Representatives collectively and will remain in office as long as they retain the confidence of the House. They will have the power to recommend the dissolution of the House, but no power to recommend the dissolution of the Senate. A two-fifths vote of the existing members of the House is required for a vote of a no confidence debate to be initiated against a Prime Minister. Such a motion must also contain the name of the next Prime Minister who will replace the current one, in case the vote is successful. This is followed by the requirement for a petition to be submitted under s. 304 if the motion is based on charges against the Prime Minister for unusual wealth or malfeasance while in office. If all procedures are followed and the vote of no confidence proceeds, a majority of one half of the total number of existing members of the House of Representatives will be required in order for the vote of no confidence to succeed.⁶² A similar process can initiate a no confidence motion against an individual Minister but with only one-fifth of the signatures of the members of the House.⁶³

2. MORE EMPHATIC SEPARATION OF EXECUTIVE AND LEGISLATIVE FUNCTIONS

The previous Constitution permitted a Minister to retain his seat in the House of Representatives and still become a Minister on the Council of Ministers. This was pinpointed as weakening the role of the Prime Minister and encouraging conflict among the coalition parties.⁶⁴ The new Constitution, although permitting MPs to become Ministers, prohibits them from retaining their seats in Parliament. As Jumbala puts it, "This is to encourage ministers to adhere to the conventions of individual ministerial responsibility and cabinet collective responsibility, for they would become ordinary citizens if sacked."⁶⁵ Ministers can also be drawn from the MPs on the party lists. Jumbala says, "Since Ministers can also come from the party list, the provision stands to be an incentive for parties to put senior party men and competent people on the party list—party list members who become ministers are replaced by the next on the list, whereas a [by-election] is required for those appointed from constituency seats."⁶⁶

⁶² B.E. 2540 (The Constitution of the Kingdom of Thailand), Government Gazette 11 October 1997.114:55a ss. 185-86 [hereinafter *The New Constitution*].

⁶³ *Ibid.*

⁶⁴ *Interview 29, supra* note 60.

⁶⁵ Jumbala, *supra* 50 at 276.

⁶⁶ *Ibid.*

3. EFFORTS TO MAKE THE LAW-MAKING FUNCTION MORE EFFECTIVE

Due the unproductiveness of the previous law-making process, the new Constitution created several vehicles to render the legislature more productive. Before Parliament sat for two 90-day sessions. Under the new regime, two sessions of 120 days have been instituted. The second of these will be devoted to the passage of legislation, interpellations and removals from office of public officials. There is also provision for legislation which is undecided when the House is dissolved to be carried over to the new government. All votes on bills will be open to public scrutiny except for certain instances when secret ballots will be mandated.⁶⁷

V. CONCLUSION

The new Constitution went through a rocky passage. While the draft was tabled on time, on 15 August 1997, many of its provisions excited widespread controversy. The requirement that all MPs hold bachelor degrees was one stumbling block for some. The party list system reaped the ire of the leaders of the smaller parties in Parliament. Most criticism concentrated on the accountability provisions and the decentralization sections which would have altered the powers of the village leaders. In the end, the Chavalit government decided that if its coalition was to survive the debate over the draft in Parliament it would have to acquiesce to its passage. On 27 September 1997 the draft won parliamentary approval in a joint sitting of the House of Representatives and the Senate with 518 votes for, 16 against and 17 abstentions. The King put his signature to the Constitution on 11 October 1997 and the new Thai Constitution became law.⁶⁸

Since its passage, the new Constitution has already started to influence the operation of government. Most recently, two scandals, involving the Ministers of Public Health and Agriculture, have resulted in the Minister of Health resigning and possibly facing corruption charges over inflated prices for the purchase of drugs for the national health program. The new Charter has also become useful for local interest groups empowered with greater control over natural resources and the environment.⁶⁹

But there is still a long way to go. In order to create many of the regulating authorities and courts responsible for administering many of

⁶⁷ *Ibid.* at 277.

⁶⁸ *Ibid.* at 280-84.

⁶⁹ *Interview 29, supra* note 60.

the checks and balances inherent in the new Charter, eight organic laws must be drafted and approved by 11 October 1999, two years exactly after the Constitution became law. These laws must be drafted by the old regime which is constituted under the previous Constitution. The first three have already been approved. But the next five must be drafted and passed by a rather reluctant forum, not very happy with the new regime whose formation they had assisted.⁷⁰ Also, the old unelected Senate is responsible for nominating members of the newly formed Election Commission and Constitutional Court and their nominations have already provoked public criticism. In the next months, nominees for the National Counter Corruption Commission and the Ombudsman will be presented.⁷¹

But the most important limitation on the effectiveness of the new Constitution is the nature of the Thai political culture itself. It remains to be seen whether this change in the law can alter the historical reliance of Thais on patron-client relationships within their political culture. It is unlikely that rural peoples in particular will change their behaviour and no longer vote for their patrons. Beyond the culture itself, is the issue of good governance among corporations. If the private sector does not comply, the eradication of corruption will be difficult whatever the checks activated by the Constitution. The most positive developments are the encouragement the new Constitution offers to pressure groups and NGOs such as consumer protection and environmental protection groups to have their opinions heard. This hopefully will empower consumers, to better deal with greedy commercial interests, and environmental groups, to push for more sustainable resource management.⁷²

VI. APPENDIX A: ELECTIONS SINCE 1932

1933 (November)	1975 (January)
1937 (November)	1976 (April)
1938 (November)	1979 (April)
1946 (January)	1983 (April)
(August)	1986 (July)
1948 (January)	1988 (July)
1949 (June)	1992 (March)
1952 (February)	(September)
1957 (December)	1995 (July)
1969 (February)	1996 (November)

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

VII. APPENDIX B: PRIME MINISTERS SINCE 1932

Coup	1932 (August)		Phya Manopakon Nithithada
Putsch	1933 (June)		Phya Bhahon Yothin
	1938 (December)	Field Marshall	Phibul Songkhram
Coup	1944 (August)		Khuang Aphaiwong
	1945 (August)		Thawee Bunyaket
	(September)		Seni Pramoj
	1946 (January)		Khuang Aphaiwong [King Assassinated]
	(March)		Pridi Banomyong
	(August)		Thamrong Narasawat
Coup	1947 (November)		Khuang Aphaiwong
	1948 (April)	Field Marshall	Phibul Songkhram [PM Kidnapped 1951]
Coup	1951	Field Marshall	Sarit Thanarat [4 Days]
	1951	Field Marshall	Phibul Songkhram
Coup	1957 (September)		Phote Sarasin
	1958 (January)	General	Thanom Kittikachorn
	1959 (February)	Field Marshall	Sarit Thanarat
	1963 (December)	Field Marshall	Thanom Kittikachorn
	1971		[declaration of martial law]
Uprising	1973 (October)		Sanya Dharmasakdi
	1975 (February)		Seni Pramoj
	(March)		Kukrit Pramoj
	1976 (April)		Seni Pramoj
Uprising	1976 (October)	Admiral	Sangad Chaloryu [2 Days]
	(October)		Thanin Kraivichien
Coup	1977 (November)	Admiral General	Sangad Chaloryu [22 Days] Kriangsak Chomanan
	1980 (March)	General	Prem Tinsulanonda
	1988 (August)	General	Chatichai Choonhavan
	1989 (July)	General	Suntorn Kongsompong [11 Days]
	(July)	General	Chatichai Choonhavan
Coup	1991 (February)		Anand Panyarachun
	1992 (April)	General	Suchinda Kraprayoon
	(June)		Anand Panyarachun
	(September)		Chuan Leekpai
	1995 (July)		Bankarn Silpa-Archa
	1996 (November)	General	Chavalit Yongchaiyut
	1997 (November)		Chuan Leekpai

