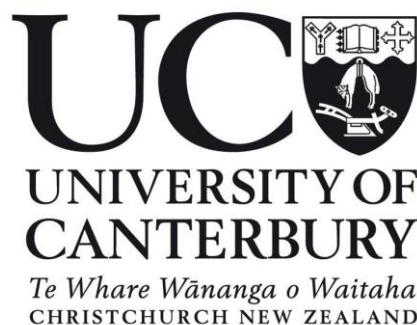


The Politics and Institutional Change in the Senate of Thailand

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Abstract

This thesis aims to study the development and institutional change in the Senate of Thailand with two research questions to be answered: 1) *How has the Thai Senate evolved?* 2) *why does the Thai Senate exist?* It hypothesises that The evolution and the institutional change in the Thai Senate should be analysed in the broader context of Thailand's struggling democracy since 1932: 20 constitutions and 13 coups have resulted from a power struggle between the elite and the masses. The power struggle determines the constitution as “the rule of the game”. A constitution designs political systems and institutions. When the constitution changes, it also changes the arrangement of political institutions, including the parliament. The change in the constitution reflects the reality in Thai politics that power relations have changed. The institutional evolution of the Senate is part of constitutional change, which reflects the shift in power relationships in Thai politics. Also, the upper house in Thailand neither represents special interests or social classes nor improves the quality of the legislative outcome. By contrast, the Thai Senate has been “the guardian of the status quo”, a reserved domain for ‘veto powers’ to take certain political domains out of the hands of democratically elected representatives by constitutional means throughout Thailand's political development since the end of absolute monarchy in 1932. Those in power always employ the upper house as a support base to safeguard their power and influence parliamentary politics.

It was found that, first, the pre-1997 Senate 1997 was mainly an appointed House, but the appointee, composition, and powers of the Senate vary according to the Constitution. Except for the 1946 Constitution, which stipulated that the senators shall be indirectly elected, at the initial stage, they were selected by the Senate Selection Organisation consisting of the incumbent MPs. The 1947 Provisional Constitution and the Constitutions of 1949, 1968, 1974, 1978, and 1991 stipulate that the senators shall be appointed. In some eras, the Senate had the power to trust the government and was designed to be the power base.

Second, the Senate under the 1997 Constitution (2000–2006) was fully elected. In addition to reviewing the legislation, the Senate had two significant powers: selecting and appointing persons in independent agencies, which were newly established under this constitution, allowing the public to punish politicians and high-ranking officials. The Senate under this constitution was designed with the expectation of a non-partisan chamber in line with its core aim of political reform. However, according to the findings of this study, the Senate was also a political support base for powerful political parties at that time.

Third, the Senate under the 2007 Constitution was equally split between elected and appointed representatives. On the one hand, it cannot be denied that the design of the Senate under this constitution, drafted after the 2006 coup, must have some level of democratic legitimacy. However, on the other hand, the experience of the Senate under the 1997 constitution demonstrates that if it is entirely elected, the political system would be dominated by political parties with a majority in parliament. Therefore, senators appointed by the nomination committee must include chairmen of various independent agencies and the judiciary. The Senate continues to be responsible for reviewing legislation and has impeachment powers, but appointments to independent bodies are limited. The selection of candidates falls under the authority of the nomination committee, consisting of chairmen of independent agencies and the judiciary. The Senate only has the power to approve or disapprove of elected and appointed senators in the same House. Therefore, a proxy war exists between the majority and the minority.

Fourth, the Senate under the 2017 Constitution is a fully appointed House. This constitution was drafted after the 2014 coup. The transitory provisions stipulate that during the first five years after the general election, senators must be appointed by the junta leader. The Senate has the power to elect the prime minister and members of the House of Representatives. It also has the power to monitor and expedite the government's implementation of the national strategy and national reforms stipulated in the constitution.

Furthermore, it has the power to vote on draft laws relating to the National Reform program as specified in the constitution and, most importantly, to amend it. However, as well as the requirement for a majority in parliament, the government must receive one-third of the senators' votes to succeed. After five years under the transitional provisions, the senators shall come from the self-selection of professional bodies, while the power under the provisional legislation will also cease to exist. However, the remaining power under the constitutional amendments requires one-third of the votes from the Senate and the approval of incumbent appointments from independent bodies. This constitutional design reflects a throwback to the pre-1997 Senate.

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From Christchurch to Bangkok and Salaya

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Chapter 1

Introduction

1.1 An Overview of the Political Development of Thailand since 1932

1.1.1 *The Siamese Revolution of 1932 and its aftermath (1932-1957)*

The Siamese Revolution on 24 June 1932 marked the beginning of modern Thai political history. The revolution that morning, led by a group of civilians and soldiers called *Khana Ratsadon* or the People's Party, seized power from King Prajadhipok and transformed from an absolute to a constitutional monarchy. Three days later, the 1932 Provisional Constitution was promulgated. This constitution designs the unicameral parliament, the House of Representatives, which is composed of the 70 MPs appointed by the People's Party. Later, the House of Representatives convened for the first time on 28 June 28 1932 to elect Phraya Manopakorn Nititada as the Chairman of the Committee of the People, *de facto* the first Thai prime minister. In the same year, A permanent constitution was drafted and adopted on 10 December 1932 (Puli, 2020: 27-41).

The post-revolutionary politics was in turmoil. The following year, there was a severe conflict. Both from the proposed economic project outline of Pridi Banomyong, the key civilian leader of the People's Party, who was criticised as a communist. Finally, Phraya Manopakorn Nitithada issued a royal decree to abrogate the House of Representatives and refrain from using specific provisions of the constitution. In June 1933, Phraya Phahon Phon Phayahasena staged a coup and restored the House of Representatives. Phraya Phahon Phonphayahasena became prime minister between 1933 and 1938 before the People's Party military leader Plaek Phibunsongkhram, commonly known as Phibun, would be prime minister during 1938-44. Phibun's era was the era of World War II, in which Phibun led the country to join the Japanese side. As World War II drew to a close, Phibun resigned, and a transition of power to civilian leadership took place. There were some civilian prime ministers in this period, including Khuang Aphaiwong (1944-1945, 1946), Seni Pramoj (1945-1946), Thawi Bunyaket (31 August - 17 September 1945), and Pridi Banomyong (24 March - 23 August 1946) (Suthachai, 2008: 32-55).

After World War II, civilian leaders pushed for a new constitution. In which the critical person is Pridi Banomyong. The new constitution was promulgated in May 1946. Under this constitution, the first bicameral parliament was established in Thailand. The second was called the Senate. After the promulgation of the constitution, Pridi Banomyong had firm support in both the House of Representatives and the Senate. Then, the critical turning point was the death of King Ananda on June 9, 1946. Pridi was attacked and criticised for this case. Finally, Pridi announced his resignation. Thawan Thamrongnawasawat, another member of the People's Party from the navy, became the successor to the prime minister. But he remained in office for only a year. On November 8, 1947, the coup d'état led by Pin Choonhavan staged a coup, seizing power and repealing the 1946 constitution (Suthachai, 2010: 41-63).

Following the 1947 Coup, the junta appointed Khuang Aphaiwong as prime minister. The Senate, which served as the parliament during the absence of the House of Representatives, was appointed and established the Constitution Drafting Assembly to draft a new constitution. After the January 1948 elections, the Democratic Party won. Khuang returned to be Prime Minister. Khuang was forced to resign by a military coup in April 1948. Phibun later returned as prime minister. A new constitution was promulgated in 1949. Later, Phibun could not control parliamentary politics before staging another coup in November 1951.

The Phibun government brought the 1932 constitution with the amendments in 1952 back into force. Thai politics during the 1950s was described as “triumvirate rule”. Phibun had no power base to support himself but relied on two strongmen, Sarit Thanarat, who controlled the army, and Phao Sriyanond, who directed the police. These two strongmen then tried to compete for power, and Phibun was out of control, ultimately following the “dirty election” in February 1957. There were widespread anti-government rallies. In the end, in September 1957, the junta known as the Revolutionary Council, led by Sarit Thanarat, staged a coup and took Thailand into a full-fledged military dictatorship for almost two decades (Puli, 2020: 226-243).

1.1.2 Military Dictatorship and the Uprising (1957 – 1974)

After the 1957 coup, Sarit appointed Pote Sarasin as interim prime minister. A new election was called in December 1957. Sarit formed the Chart Sangkhom Party to gather support from the MPs to elect Thanom Kittikachorn, his close confidant, to become prime minister. Sarit went to the United Kingdom and the United States for medical treatment. However, Thanom has a compromising personality. Therefore, he was unable to control politicians and parliamentary politics. Sarit eventually returned to Thailand quietly in October 1958 and staged another coup. Sarit ruled the country as head of the Revolutionary Council without a constitution for more than three months before the promulgation of the 1959 Charter, which granted a special provision called “Article 17”, giving absolute power to the prime minister (Suthachai, 2008: 83-97).

The 1959 Charter required the formation of the Constitution Drafting Assembly to draft the constitution and to perform as a legislative chamber. Sarit became prime minister. It was called "despotic paternalism " in Sarit's era (Thak, 2007)." Under Article 17, Sarit used absolute power to maintain peace and order, and the death penalty was ordered on many occasions. Later, Sarit died in 1963. Thanom succeeded as prime minister until 1968 when a new constitution was promulgated. It took nine years to draft. The 1968 constitution designed the parliament as a bicameral legislature. The House of Representatives is elected, and the junta-appointed the Senate. After the promulgation of the constitution, a general election was held in February 1969. The Sahaprachathai, a political party established by the junta, won the election. Thanom resumed as Prime Minister, but he could not control parliamentary politics. Finally, Thanom staged a self-coup in November 1971 and repealed the 1968 constitution. Thanom ruled the country as the head of the Revolution Council through orders and announcements for almost a year before the release of The 1972 Charter (Puli, 2020: 244-339)

However, new social forces, such as students and middle-class people, were expanded in this era due to socio-economic change over the past decade. In addition, dissatisfaction with the military dictatorship built up over a long time, eventually leading to a massive uprising of the people known as the Uprising of 14 October 1973 (Likhit, 2007: 194-206).

1.1.3 A Transition and the Massacre (1974-1977)

After the Uprising of 14 October 1973, Thanom resigned and fled the country. King Bhumibol announced on television the appointment of Sanya Dhamasakti, a privy councillor and the rector of Thammasat University, as the new prime minister. Sanya was dubbed as the “royally-appointed” prime minister. Likewise, King Bhumibol announced the appointment of members of the National People’s Assembly to elect each other as the new National Legislative Assembly members, replacing the previous one that was appointed by Thanom, to both perform legislative duties and consider the draft constitution. The Sanya government also established a constitution drafting committee to write a new constitution (Suthachai, 2008: 131-134).

A new constitution was promulgated in 1974, followed by elections in 1975. The Democrat Party won the elections, and Seni Pramoj became prime minister. But only in the office for two months. The Seni government ended during an address policy statement to the parliament before taking office, which the 1974 constitution gives the House of Representatives the power to vote for confidence. Kukrit Pramoj, the Social Action Party leader and Seni’s brother, had lobbied various parties to overthrow the Seni government. Later, Kukrit was able to form a new coalition government even though his party only had 18 MPs. However, the Kukrit government lasted only a year due to political instability caused by coalition parties. Finally, Kukrit dissolved the House and called a new general election in April 1976. The Democrat Party won the election, making Seni Pramoj a prime minister again (Puli, 2020: 376-379).

The political climate after the Uprising of 14 October 1973 was the atmosphere of blooming democracy. However, new social forces, such as the students and labourers, overgrew after long periods of suppression during the military dictatorship. Together with communist ideology, this mass rise has alarmed the conservative elite that Thailand will become a communist state. As a result, many right-wing movement groups were organised and used violence against student and labour movements. This situation ultimately led to the Massacre of 6 October 1973 at Thammasat University, where the soldiers brutally suppressed and killed students. That same night, the junta called the National Administrative Reform Council, led by Sa-ngad Chaloryu, staged a coup to seize power from the Seni government (Likhit, 2007: 208-212).

The National Administrative Reform Council repealed the 1974 constitution, promulgated the 1976 constitution, and appointed Thanin Kraivichien, a conservative, anti-communist judge, as prime minister. Meanwhile, The military was no longer protecting the Thanin government. Finally, the revolutionary junta, led by Sa-ngad Chaloryu, staged a coup again. It abolished the 1976 Constitution, promulgated the 1977 Charter instead and appointed Kriangsak Chamanan as prime minister. Later, a new constitution was drafted by the Constitution Drafting Committee appointed by the junta and promulgated in 1978. The 1978 Constitution created a political system called “semi-democracy”, which is the pattern of the Thai political system in the 1980s (Likhit: 208-212).

1.1.4 Semi-Democracy (1978-1991)

The 1978 constitution created a so-called political system. semi-democracy by having an election but allowing civil servants to hold political positions, and the senators were appointed. Within the first four years, they can vote on their trust. In this sense, this constitution is a reconciliation between the traditional elite (military and bureaucracy) and the new elite of politicians (Chai-anan, 1987: 31-41).

Following the promulgation of the 1978 constitution, a new general election was held in March 1979. Kriangsak Chamanan became prime minister with the support of some MPs and most of the senators he appointed. But the Kriangsak government only lasted one year. He resigned in March 1980 after knowing he had lost the support of the appointed senators. The army commander Prem Tinsulanonda succeeded as Prime Minister. Prem was in office for eight years (1980-1988) before announcing that he had no intention to serve as prime minister again in 1988. The Chart Thai Party won the 1988 elections and made Chatichai Choonhavan become prime minister. It is the first elected Prime Minister in more than a decade. The Chatichai government lasted for three years. After facing tensions with the military, another coup took place in February 1991 (Puli, 2020: 414-496).

The junta repealed the 1978 constitution, promulgated the 1991 Charter, and appointed former diplomat Anand Panyarachun as prime minister. Later, a constitution drafting committee was set up. Finally, a new constitution was promulgated in December 1991. After the promulgation of

the constitution, a recent general election was held in March 1992. The Samakkitham Party, a political party supported by the junta, won an election. Its party leader, Narong Wongwan, won the election and was about to become prime minister but was later blocked by US authorities as a suspect of involvement in drug trafficking. Suchinda Kraprayoon, former army chief and one of the critical leaders of the junta, became prime minister instead (Suthachai, 2008: 220-227).

1.1.5 The Black May and Political Reform (1992-2001)

Suchinda's rise to prime minister sparked public outrage because he has always announced that he would not accept any political post. However, when his government addressed the policy statement to the parliament, Suchinda said it was necessary to recant his words for the nation. It resulted in a large rally against Suchinda and the junta's plan to stay in power after the election. It led to massive demonstrations, which turned into a suppression and tragedy known as the Black May 1992. After Black May 1992, King Bhumibol was important in summoning Suchinda and Chamlong to his audience. After the audience, Suchinda resigned, and Anand returned to be Prime Minister again. However, the Anand government was only a three-month interim government waiting to hold new elections in September 1992. The Democrat Party won the election. Chuan became Prime Minister. (Suthachai, 2008: 228-235).

Meanwhile, some voices and movements are calling for "political reform". The parliament then appointed a committee to study the drafting of a new constitution and presented it to the parliament. Still, no action was taken until Chuan dissolved parliament in 1995 and held a new election. Chart Thai Party wins elections Banharn becomes Prime Minister Banharn campaigned to push for political reform by amending the constitution and establishing the Constitution Drafting Assembly to draft a new constitution. Later, Banharn dissolved the House and called a new election (Puli, 2020: 560-579).

After the 1996 elections, the New Aspiration Party won, making former army chief Chavalit Yongchaiyudh the new prime minister. However, drafting a new constitution continued until it was completed and promulgated in 1997. This constitution became another political turning point in Thailand. Later, when the economic crisis occurred, Chavalit

resigned, and Chuan Leekpai returned to be Prime Minister for a second term until 2001 (Likhit, 2007: 226-231).

1.1.6 The Rise of Thaksin Shinawatra (2001-2006)

After the 2001 elections, the Thai Rak Thai party won the elections. And make former telecommunications businessman Thaksin Shinawatra the new prime minister. The Thaksin government was popular with rural voters, the country's majority. The Thai Rak Thai party won a landslide victory in the next election in 2005, and Thaksin became prime minister in a second term. However, Thaksin faced accusations of corruption and abuse of power in many cases, leading to the formation of an anti-Thaksin movement known as the Yellow Shirts. Within a year, it announced the dissolution of parliament and new elections were held in April 2006, but the court voided subsequent polls. Before, in September 2006, Thaksin was ousted from office. When the coup d'état, known as the Council for Democratic Reform, led by Army Commander Sonthi Bunyaratkalin, seized power from the Thaksin government (Kasian, 2006: 5-37).

1.1.7 Between Two Coup (2006-2014)

The Council for Democratic Reform announced the repeal of the 1997 constitution before appointing Surayud Chulanont, a privy councillor and former army chief, a prime minister. Along with the promulgation of the 2006 interim constitution and the announcement of the appointment of the National Legislative Assembly, the junta had arranged for a new constitution to be drawn up by appointing the "National People's Assembly" to elect among themselves before the junta elected and appointed members of the Constitution Drafting Assembly. The junta also appointed the constitution drafting committee to draft a new constitution. When the draft of the new constitution was completed, a constitutional referendum was held in August 2007, which revealed that it was approved. However, there have been criticisms that the referendum took place in the context of martial law, especially in the north and the northeast, which are essential support bases for Thaksin Shinawatra. After passing the referendum, a new constitution was promulgated in August 2007 (Ockey, 2008: 20-28; Ockey, 2007: 133-140).

After promulgating the 2007 constitution, a general election was held on 23 December 2007. The results showed that the People's Power Party, a

Thaksin's second political party formed after the Constitutional Tribunal dissolved the Thai Rak Thai party in May 2007, again won the election and gained a majority. Its leader, Samak Sundaravej, was elected prime minister by the House of Representatives in January 2008. But the government again faced opposition from the Yellow Shirts, which began a large protest. Samak Sundaravej was later removed from the post by the Constitutional Court in the case of conflict of interest (Ferrara, 2015: 241-244).

After Samak's dismissal, Somchai Wongsawat, deputy leader of the People's Power Party and Thaksin's brother-in-law, was elected by the House of Representatives as the new prime minister in September 2008. However, the Somchai government continues to face opposition from the Yellow Shirts protesters. The Somchai government was in office for only about two months. The Constitutional Court ruled to dissolve the People's Party in the case of election fraud. As a result, the party's executive committee was banned from politics for five years, thus disqualifying Somchai from being a minister under the constitution had to resign from the position of Prime Minister, which caused the entire cabinet to be dismissed automatically (Ferrara, 2015: 243-245).

During a time of political vacuum, the Democrat Party, which is the main opposition party, was able to form a government with the former coalition parties of the Samak and Somchai governments. The House of Representatives elected Democrat leader Abhisit Vejjajiva as the new prime minister amid the news that the army was behind the government formation. However, the Abhisit government faced opposition from the Red Shirt protesters, mainly pro-democracy and Thaksin supporters. The collapse of the 2009 ASEAN Summit in Pattaya and the mass demonstrations from March to May 2010 ultimately led to a crackdown by the military. New elections took place on July 3, 2011. Pheu Thai Party, the third political party of Thaksin's party, won the election and made Thaksin's youngest sister, Yingluck Shinawatra, the first-ever female prime minister of Thailand (Ferrara, 2015: 245-263).

When the Yingluck government tried to push for the amnesty bill, a large rally was reignited by the People's Democratic Reform Committee, whose protest leaders were the key figures of the Democrat Party, and the protesters were mainly anti-Thaksin. As a result, Yingluck dissolved the House in December 2013 and called for a new election on 2 February 2014.

However, in many constituencies, that election was blocked by protesters. And later, the court ordered that the election to be invalid. The Constitutional Court later dismissed Yingluck on a charge of abusing power. Ultimately, the self-proclaimed National Council for Peace and Order, led by Army Commander-in-Chief Prayut Chan-ocha, seized power from the Yingluck government on 22 May 2014 (Ferrara, 2015: 283-291).

1.1.8 The 2014 coup and its aftermath (2014-present)

The junta announced the repeal of the 2007 constitution and ruled the country with announcements and orders for more than two months without a constitution. Two months later, it promulgated the 2014 Provisional constitution, which structured the political institutions of the junta known as the "Five Rivers", namely the National Legislative Assembly, the Cabinet, the National Reform Council, the Constitution Drafting Committee, and the Security Council. Later, Prayut was elected by the National Legislative Council, appointed by the junta, as Prime Minister on 24 August 2014 (Pasuk and Baker, 2022: 315-).

The new constitution was drafted by the constitution drafting committee appointed by the junta and carried out during 2014-2015. The 2014 Provisional Constitution provided that a new constitution, drawn by the constitution Drafting Committee, must be approved by the National Reform Council, whose members were also appointed by the junta before leading to a constitutional referendum. However, the National Reform Council did not approve this draft constitution. Therefore, the junta appointed a new constitution drafting committee to draft a new constitution, which can be seen as an attempt to stay in power for as long as possible by the junta. The constitution drafting committee finished drafting a new constitution in early 2016 before holding a constitutional referendum in August 2016. Most people voted in favour of this draft constitution amid criticism of the junta's suppression of dissidents by using the referendum law to arrest and detain them. However, when the referendum approved this draft constitution, King Bhumibol passed away on 13 October 2016, and his son, King Vajiralongkorn, succeeded him. The draft constitution that passed the referendum was later amended before King Vajiralongkorn signed it. A new constitution was promulgated in April 2017 (Khemthong, 2018: 641-651).

After promulgating the 2017 constitution, a new general election was held on March 24, 2019. Although the Pheu Thai Party won again, the junta-backed Palang Pracharat Party was the second largest party. The 2017 constitution allows the senators appointed by the junta leader, Prayut Chan-ocha, to vote for the prime minister and the elected MPs. Palang Pracharat Party nominated Prayut as the prime minister, and with the support of the junta-appointed senators, Prayut can retain his premiership until today (Siripan, 2019: 1-17).

Table 1.1 Coup and attempted coup in Thailand since 1932

No	Event	Coup	Attempted Coup	Leaders	Reason
1	1 April 1933	/		Phraya Manopakorn, others	Against the People's Party / Anti-Communism
2	20 June 1933	/		Phraya Phahon, others	Counter-coup
3	11 October 1933		/	Prince Boworadet, others	Return to absolutism
4	3 August 1935		/	Sawat Mahamat, others	Return to absolutism
5	29 January 1939		/	Phraya Song Suradet and Royalists	Return to absolutism
6	8 November 1947	/		Phibun and Phin Chanhawan, others	Return of the military to politics in the post-war era
7	6 April 1948	/		Kan Chamnongphumwet, others	Transition to military rule

8	1 October 1948		/	Sombun Saranuchit	Demand for military reform and against the 1947 coup group
9	26 February 1949		/	Pridi Banomyon g and the Free Thai Movement	Against the 1947 Coup group and a coup by a civilian group from the People's Party
10	29 June 1951		/	Manat Charupha and others	Against the 1947 Coup group (military leaders from the navy against army elites)
11	29 November 1951	/		Phin Chunhawa n and others	Anti-communism and return to military rule
12	10 November 1952		/	Intellectua l group	Against the military government and its pro-Western policy in the Korean War
13	16 September 1957	/		Sarit Thanarat	Military politics and conflict between army and police elites
14	20 October 1958	/		Sarit Thanarat	Double coup and transition to authoritarianism
15	3 December 1964		/	Nakrop Binsi and others	Military politics (military faction in Air Force)
16	17 November 1971	/		Thanom Kittikacho n	The coup against its government and anti-communism
<i>The Uprising of 14 October 1973</i>					
<i>The Massacre of 6 October 1976</i>					

17	6 October 1976	/		Sangat Chaloryu and others	Anti-communism and transition to authoritarianism following the massacre
18	26 March 1977		/	Chalat Hiransiri	Military politics
19	20 October 1977	/		Sangat Chaloryu, Kriangsak Chomanan and others	Transition to a semi-democratic regime under military leadership
20	1 April 1981		/	Manun Rupkachon and others	Military politics
21	9 September 1985		/	Manun Rupkachon	Military politics
22	23 February 1991	/		Sunthorn Kongsompong Suchinda Kraprayoon and others	Military politics and transition to military rule
<i>The Black May 1992</i>					
23	19 September 2006	/		Sonthi Bunyaratkalin	Transition to military rule
24	22 May 2014	/		Prayut Chan-ocha	Transition to military rule

Source: (Surachart, 2019: 185-186)

Table 1.2 The Constitutions of Thailand 1932 - present

No	Constitution	Period	Drafter	The End
1	1932 Provisional Constitution	27 June – 10 December 1932	The People's Party by Pridi Banomyong	The promulgation

				of the 1932 Constitution
2	1932 Constitution	10 December 1932 – 9 May 1946	Drafting committee with the approval of the House of Representatives	The promulgation of the 1946 Constitution
3	1946 Constitution	9 May 1946 – 8 November 1947	The House of Representatives	1947 Coup
4	1947 Provisional Constitution	8 November 1947 – 23 March 1949	Military junta	The promulgation of the 1949 Constitution
5	1949 Constitution	23 March 1949 – 29 November 1951	The Constitution Drafting Assembly	1951 Coup
6	1932 Constitution (1952 Amendment)	8 March 1952 – 20 October 1958	Military junta	1958 Coup
7	1959 Charter	28 January 1959 – 20 June 1968	Military junta	The promulgation of the 1968 Constitution
8	1968 Constitution	20 June 1968 – 17 November 1971	The Constitution Drafting Assembly	1971 Coup
9	1972 Charter	15 December 1972 – 7 October 1974	Military junta	The promulgation of the 1974 Constitution
10	1974 Constitution	7 October 1974 – 6 October 1976	Drafting committee with the approval of the National Legislative Assembly	1976 Coup

11	1976 Constitution	22 October 1976 – 20 October 1977	Military junta	1977 Coup
12	1977 Charter	9 November 1977 – 22 December 1978	Military junta	The promulgation of the 1978 Constitution
13	1978 Constitution	22 December 1978 – 23 February 1991	Drafting committee with the approval of the National Legislative Assembly	1991 Coup
14	1991 Charter	1 March – 9 December 1991	Military junta	The promulgation of the 1991 Constitution
15	1991 Constitution	9 December 1991 – 11 October 1997	Drafting committee with the approval of the National Legislative Assembly	The promulgation of the 1997 Constitution
16	1997 Constitution	11 October 1997 – 19 September 2006	Constitution Drafting Assembly with the approval of the Parliament	2006 Coup
17	2006 Charter	1 October 2006 – 24 August 2007	Military junta	The promulgation of the 2007 Constitution
18	2007 Constitution	24 August 2007 – 22 July 2014	Constitution Drafting Assembly with approval in the referendum	2014 Coup
19	2014 Charter	22 July 2014 – 6 April 2017	Military junta	The promulgation of the 2017 Constitution

20	2017 Constitution	6 April 2017 - present	Drafting committee with approval in the referendum	
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Source: the author from Noranit (2015), Puli (2020), Likhit (2011), Hicken (2007), Khemthong (2018)

1.2 Why does the Senate matter in Thai politics?

After the 1932 Revolution, bicameralism was not immediately adopted. According to the 1932 Provisional Constitution and the 1932 Constitution, Parliament was unicameral but had two types of members: elected MPs and bicameral appointed MPs. In Thailand, for the first time, according to the 1946 constitution, the Senate was indirectly elected by the MPs who were in office then. According to the 1946 constitution, the Senate had legislation review powers and was seen as the power base of Pridi Banomyong, the civilian leader of the People's Party. In the 1947 coup, the junta repealed the 1946 constitution and promulgated the 1947 interim constitution 63 years later. The Senate was appointed and dominated by the military and had more power than the House of Representatives. In some eras, the Senate President was the president of parliament, and senators could vote of confidence, including active military personnel, who could also be senators. (Chambers, 2009: 7-8)

A crucial turning point was promulgating the 1997 constitution, which was drafted based on “political reform” ideas. This constitution was designed to have the Senate entirely directly elected. It has two additional powers: the power to vote for nominations in the newly established independent agencies such as constitutional court judges, supreme administrative court judges, ombudsmen, and members of the National Anti-Corruption Commission and the State Audit Commission. , and the National Human Rights Commission. Another additional power is to dismiss persons holding political offices, such as prime ministers, ministers, MPs, senators, presidents of the constitutional control bodies mentioned above, and other high-ranking officials (Borwornsak, 2013; Kuhonta, 2008).

However, the junta that staged a coup on 19 September 2006 repealed the 1997 constitution and arranged for a new constitution to be drafted. The

issue of the origin of the senators has long been a matter of debate among the junta-appointed constitution drafters. A new constitution, passed in 2007, made the Senate half-elected and appointed. However, it still can impeach those holding political positions and high-ranking government officials. As for the appointment of a person holding a position in the independent agencies, the nomination and selection powers were transferred from the Senate to the selection committee, which consists of the president of various independent bodies and the courts. At the same time, the Senate has only the power to approve or disapprove. (Hicken, 2007; Nelson, 2014).

Another coup took place on May 22, 2014. The junta overturned the 2007 constitution and arranged for a new constitution to be drafted and promulgated in 2017. This constitution designed the Senate to be the “mechanism of control” of the junta. The coup was embedded in the new constitution. For the first five years, the 250 senators will be appointed by the junta, including six ex officio senators, the chief of military officers, and the police. The Senate can oversee the “reform” effort initiated by the military government. Also, the junta-appointed senators can vote for the prime minister with elected MPs for the first five years. Also, this constitutional amendment requires one-third of the senators’ votes to be successful. Under this constitution, the Senate became the guarantee of power for the junta that staged a coup in 2014. (Ockey, 2019: 171; Khemthong, 2018: 643–651).

Table 1.3 Parliament of Thailand 1932 – present

No	Period	Constitution	Parliament	Composition	Methods
1	1932-1946	1932 Provisional Constitution	Unicameral	The House of Representatives has two types of membership	Elected and appointed
		1932 Constitution			
2	1946-1947	1946 Constitution	Bicameral	The House of Representatives and the Senate	Direct and indirect election
<i>1947 Coup</i>					

3	1947-1951	1947 Provisional Constitution	Bicameral	The House of Representatives and the Senate	Elected and appointed
		1949 Constitution			
1951 Coup					
4	1951-1957	1932 Constitution (1952 Amendment)	Unicameral	The House of Representatives has two types of membership	
1957 and 1958 Coup					
5	1959-1968	1959 Charter	Unicameral	The Constitution Drafting Assembly	Appointed
6	1968-1972	1968 Constitution	Bicameral	The House of Representatives and the Senate	Elected and appointed
1971 Coup					
7	1972-1974	1972 Constitution	Unicameral	The National Legislative Assembly	Appointed
8	1974-1976	1974 Charter	Bicameral	The House of Representatives and the Senate	Elected and appointed
1976 Coup					
9	1976-1977	1976 Constitution	Unicameral	The National Administrative Reform Council	Appointed
1977 Coup					
10	1977-1978	1977 Charter	Unicameral	The National Legislative Assembly	Appointed
11	1978-1991	1978 Constitution	Bicameral	The House of Representatives and the Senate	Elected and appointed
1991 Coup					
12	1991-1992	1991 Charter	Unicameral	The National Legislative Assembly	Appointed

13	1992-2001	1991 Constitution	Bicameral	The House of Representatives and the Senate	Elected and appointed
14	2001-2006	1997 Constitution	Bicameral	The House of Representatives and the Senate	Elected
<i>2006 Coup</i>					
15	2006-2008	2006 Provisional Constitution	Unicameral	The National Legislative Assembly	Appointed
16	2008-2014	2007 Constitution	Bicameral	The House of Representatives and the Senate	Elected and appointed
<i>2014 Coup</i>					
17	2014-2019	2014 Provisional Constitution	Unicameral	The National Legislative Assembly	Appointed
18	2019-present	2017 Constitution	Bicameral	The House of Representatives and the Senate	Elected and appointed

Source: the author from Chambers (2009), Noranitr (2015), Puli (2020), Hicken (2007), Khemthong (2018)

The acquisition of senators in Thailand since the introduction of bicameralism can be categorised into five ways, including

- **Indirectly elected by the House of Representatives:** The 1946 Constitution (1946 – 1947)
- **Appointed:** The 1947 Provisional Constitution (1947 – 1951), The 1949 Constitution (1947 - 1951), The 1968 Constitution (1968 – 1971), The 1974 Constitution (1974 – 1976), The 1978 Constitution (1978 – 1991), The 1991 Constitution (1991 – 2000)
- **Directly elected by the people:** The 1997 Constitution (2000 – 2006)
- **Half elected and appointed:** The 2007 Constitution (2008 – 2014)
- **Appointed:** The 2017 Constitution (2019 – present, as of 2023)

From the institutional development of the Senate in Thailand with changes in origin and composition and changes in power, The Senate is not

the only House with the power to consult or review legislation, but in many eras. Some constitutions even granted the Senate more power than the House of Representatives, which the people elected. It then leads to the question of how the Senate evolved and the reason and justification for the existence of the Senate in Thailand. These are the questions that lead to this thesis.

1.3 Research questions

This thesis aims to answer two questions for understanding the development and institutional change in the Senate of Thailand:

- How has the Thai Senate evolved?
- Why does the Thai Senate exist?

1.4 Scope of the Thesis

This thesis has a scope of study from the beginning of bicameralism in 1946, landing on the era in Thailand to the present, divided into 4 phases:

- **Phase 1** *The pre-1997 Senate (1932-2000)*, analysing the development of the Senate from the beginning, can be traced back to the time after the 1932 Siamese Revolution that had not yet adopted bicameralism. The first Senate was created under the 1946 constitution, and the Senate before 1997, under the constitution that had a bicameral legislature, had all senators appointed. And in most cases, it was appointed by those in power at the time.
- **Phase 2** *The Senate under the 1997 Constitution (2000-2006)*, in which the people directly elect the senators.
- **Phase 3** *The Senate under the 2007 Constitution (2008-2014)*, in which half are directly elected and the other half are appointed.
- **Phase 4** *The Senate under the 2017 Constitution (2019-present)*, in which the senators are appointed.

1.5 Research Methodology

This thesis employs two data collection methods: document research and in-depth interviews. For document research it examines two types of documents: primary sources (official parliamentary documents, minutes and records of the Senate's meeting, minutes and records of the meeting of the

Constitution Drafting Assembly, and minutes of the meeting of the constitution drafting committee) and secondary sources (books, research, journal articles, newspapers, archives). For the in-depth interview, this thesis will interview the former constitution drafters who were the “designers of the rule of the game” and the former senators and politicians who were the “players” under those rules.

1.6 Structure of the thesis

This thesis consists of seven chapters, including.

Chapter 1 Introduction outlines an overview of the thesis

Chapter 2 Literature Review, examines the relevant literature on bicameralism in comparative perspectives and Thailand and develops this thesis's arguments and conceptual framework.

Chapter 3 The Senate of Thailand in a Historical Perspective (1946-2000), examines the Thai Senate from 1946 to 2000. Only the 1946 Constitution stipulates that the senators shall be indirectly elected, but at the initial stage, they were selected by the incumbent MPs. After 1947, though different versions of the constitution, the Senate was fully appointed, and at some point, it even had power over the House of Representatives.

Chapter 4 Towards Political Reform: The Elected Senate under the 1997 Constitution (2000-2006), examines the Senate under the 1997 Constitution, which was drafted based on the idea of ‘political reform’ after Black May 1992. During this period, the Senate was fully elected with an empowerment on impeachment and selecting and approving the nominations of the newly established independent agencies.

Chapter 5 A New Political Arrangement: The Half-Elected and Appointed Senate under the 2007 Constitution (2008-2014) studies the Senate under the 2007 Constitution, drafted after the 2006 Coup. During this period, the Senate was half elected and appointed, which had power similar to the Senate under the 1997 Constitution.

Chapter 6 The Guardian of the Coup: The Appointed Senate under the 2017 Constitution (2019-2023) studies the Senate under the 2017 Constitution drafted after the 2014 Coup. During this period, the junta fully appointed the Senate and had power over the House of Representatives through various mechanisms for the first five years. After that, the Senate

will be selected from the professional organisation and have less power than in the first five years.

Chapter 7 Conclusion concludes the findings from the thesis.

Chapter 2

Literature Review

This chapter reviews the relevant literature and is divided into four main parts. The first part explores bicameralism's “big picture” from a comparative perspective regarding institutional development, theoretical justification and case studies to analyse how bicameralism has evolved and why it exists in other countries. The second part explores an overview of bicameralism in Thailand to examine how the Thai Senate has evolved as a starting point. The third part explores existing literature on the Thai parliament and the Thai Senate to discover a knowledge gap and how this thesis can fill that gap. Finally, the fourth part will be this thesis's arguments and conceptual framework, developed from a literature review.

2.1 Bicameralism in Comparative Perspective

The development of the bicameral institution can be traced back to ancient times. In ancient Greece, dual advisor-legislative councils appeared in city-states such as Athens, Sparta, Crete, and Carthage. In Athens, political institutions were designed based on more democratic views, while Sparta, Crete, and Carthage had separate assemblies representing various classes of citizens. At the same time, the executive consists of a collective leadership based on wise men who were usually from the wealthy and powerful class. Also, broad-based assemblies that represented the citizens were created. The institutional design of these dual advisory-legislative councils in ancient Greece was influenced by Aristotle's theory of mixed government, in which a good government is a composition of all three classes to be blended – *the one (monarchy)*, *the few (aristocracy)*, and *the many (democracy)*. Furthermore, this theory emphasises a balance of power within society through multiple representations in which no single class can use power to exploit the remainder of the community. Then, the political order is stabilised. (Tsebelis, 1997: 17-19; Shell, 2001: 6).

In ancient Rome, the most well-known bicameral institution was the *Senate*, a “council of elders” appointed by the King to give advice. The Senate was founded to serve as a council of wisdom and sagacity. Although the Senate was designed to be an advisory council, it became a council that directed rather than advised. The senators were appointed for life and

closely linked with the patrician family. Besides the Senate, another council created in Roman times was the *comitia curiate*, whose job was to endorse the new king that the Senate elected after the previous king passed away, approving the king's imperium or ruling over the army. The idea of institutional design of a bicameral-like institution in Rome was influenced by Cicero, who emphasised the senators' contribution to the government's efficiency. While Aristotle's theory of mixed government emphasised political stability, Cicero proposed that each class had a particular strength and that the aristocracy had the courage and ability to contribute to the polity and perform as a "countervailing force" (Tsebelis & Money, 1997: 20–21; Shell, 2001: 6).

In modern times, bicameralism first appeared in England around the fourteenth century. The origin of the present-day British bicameral parliament, the House of Lords and the House of Commons grew from two king's advisory councils: *curia regis concilium* (the Small Council) and *concilium magnum* (the Great Council). The former comprised professional administrators and close personal advisors who met regularly, and the latter consisted of religious and secular feudal lords who met in extraordinary sessions. In 1215, the Magna Carta was signed by King John, and it required the consent of the Great Council for all royal requests for taxation. Membership in the Great Council was expanded mainly because of a need for additional taxes to finance the king. Thus, there was a call for broader representation. By the fourteenth century, the so-called "parliament" consisted of representatives from all three estates in British society, including the clergy, the lords, and other privileged groups. The Great Council was later separated into two bodies, initially based on estates. After that, it was divided into the *House of Lords* and the *House of Commons* based on the distinction between individual and general summons and those representing themselves and their communities. This structure was interrupted when Oliver Cromwell abolished the House of Lords in 1655. However, when the monarchy was restored a year later, the House of Lords was re-established and saw a shift in power from the King to Parliament and from the upper house to the lower house (Tsebelis: 1996: 21–23).

In addition to Britain, bicameralism appeared in other European countries, where the upper house of parliament represented the social classes. Likewise, in Sweden, the Swedish bicameral parliament *Riksdag*

was established in January 1867. It remained bicameral for over a hundred years before the upper house, Första Kammaren, was abolished, and a unicameral parliament was established in 1971. Before its establishment in 1867, the Swedish parliament originally consisted of four essential estates, a traditional social division, including the nobility, the clergy, the burghers, and the peasantry. It was founded during an era of liberalism between the 1850s and 1860s, which saw the guilds abolished and the establishment of free trade, local government, rights of women's inheritance, and partial religious freedom (Nilsson, 2020: 133–134).

The Netherlands is another European country that has a bicameral parliament. Initially, the Dutch parliament was unicameral and known as the *States-General*. It was established in 1914 to commemorate the former Dutch Republic. However, when the Netherlands joined the Southern Netherlands (now Belgium) and Luxembourg in 1815, a constitutional commission was established to draft a constitution. In designing the constitution, the parliament was divided into two chambers. The commission refers to parliaments in major countries such as France or the United Kingdom. The first purpose of the upper house was to create an institution that could prevent hasty law reforms and ‘evil’. The king appointed the upper house members and had a lifelong term of office. Unlike the British House of Lords, the Dutch Senate was not reserved for the nobility. Distinguished mayors and landowners in the north could be members as well. In the northern territory, the nobility never played a prominent role, unlike the southern region, where the nobles had been closely connected to the Austrian imperial court. However, the upper house seems to have become a bulwark for the king and the northern territory. Later, when Belgium seceded in 1830, the Senate did not end with it. A significant change in the Dutch Senate came when the constitution was amended in 1848, allowing members of the lower and upper chambers to be elected. For the Senate, the provincial council is responsible for electing senators. Later, representatives of new social groups elected members of both (van den Braak, 2020: 173–187).

Belgium is another country that has been well acquainted with bicameralism since it was part of the Netherlands. When the country was split and the constitution was drafted, the Belgian Senate resulted from a compromise between the progressive and conservative forces. The Belgian

Senate was initially designed with three main objectives: to be a counterpower for the progressive Chamber of Representatives' political powers, to be a forum for reflection, and to represent large landowners and aristocrats. The Belgian Parliament could be called symmetrical bicameralism when the Senate was almost as powerful as the Chamber of Representatives. It assured conservative forces that its objections would not pass unnoticed. However, the global trend of democracy raised questions about the Senate's legitimacy as a protector of the interests of the elite and an institutional mechanism to check the quality of the legislation. As a result, the Belgian Senate underwent institutional adjustments for more democratic legitimacy at various times by allowing political parties to play a more significant role and limiting the power of the Senate. The significant change is the change in the form of the state: from a unitary state to a federal state. Federalism thus became a justification for not abolishing the Belgian Senate (Popelier, 2018 pp. 215–237).

The United States provides another bicameralism model based on the representation of “the people.” The tradition of bicameralism has been well-rooted since the days of the American colonies. The second legislative chamber was transformed from the Executive Council. In many debates at the Constitutional Convention in Philadelphia in 1787, the delegates were confident about the self-evident appeal of bicameralism and the proposals. The proposals on the design of bicameralism were based on some form of representation proportional to the population. Although the delegates agreed on a bicameral system and how to ensure the best high-quality deliberation in the proposed upper house of the new national legislature, the structure of legislative representation became the most controversial issue at the Constitutional Convention. A result of the “great compromise” was that the Constitution of the United States provided that the lower house, *the House of Representatives*, be elected on a population basis, thus representing a popular dimension. In contrast, the upper house, the Senate, would grant equal representation in all states, representing a territorial dimension. The core idea of the institutional design of the United States legislature is a shift in the concept of representation from representing the social classes to representing the people (Tsebelis & Money, 1997: 26–29; Wirls, 2021: 15–25).

Germany is another example of a federal state with bicameralism. The German constitution, *Grundgesetz*, provides for two legislative bodies: the *Bundestag* and the *Bundesrat*. The *Bundestag* is the primary legislative institution whose function is to adopt bills. In contrast, the *Bundesrat*'s legislative function of approving or disapproving bills is based on the constitutional arrangement – to object to the bill in question if necessary. In other words, the bills were not jointly adopted by the *Bundestag* and *Bundesrat* but by the *Bundestag* alone with different forms of participation of the *Bundesrat*. During the early German constitution, the composition of the *Bundesrat* element was seen as “unpolitical”: a bureaucratic institution without solid political power. However, since the early 1970s, the *Bundesrat* has become a political institution and potential federal government opponent. It is also a council dominated by administrative expertise. Moreover, the *Bundesrat* members come from members of the Land governments, which may not be necessary but often on the same side as the federal government or a majority in the *Bundestag*, depending on the results of the Land elections (Niedobitek, 2018: 198-214).

Another example is Switzerland, which emerged as a federal state in 1848 in connection with the Sonderbund War of November 1847, a short civil war against the confederated cantons. The liberal, urban and dominantly Protestant forces with a majority in the Federal Diet *Tagatzung* proposed a new and more centralised constitution for the Swiss Confederation. This attempt was opposed by the seven conservative, rural and dominantly Catholic cantons, which formed the separate alliance *Sonderbund* in 1845. The liberal majority of the Federal Diet refused and decided to dissolve the independent alliance by military force. In the end, the war ended when the cantons, united by the *Sonderbund*, were defeated. Later, the 1848 Constitution changed the Swiss Confederacy into a federal state, becoming a highly controversial issue. It became a compromise between the liberal majority, who wanted a unitary state and a strong national government and a conservative minority fighting for cantonal sovereignty and maintaining a loose confederacy. To integrate the losers of the Civil War into a new political system, it was necessary to preserve the far-reaching autonomy of the Cantons. Therefore, the 1848 Constitution created a weak central state and maintained cantonal solid independence. However, the large urban Cantons favoured parliamentary representation based on population size, while the small rural Cantons required an equal

number of delegates from each canton. To solve this issue, the Swiss approach was a 'constitutional transplant': adopting the United States model of bicameralism consisting of a chamber based on equal representation and a chamber based on population. Although the Swiss upper house, the Council of States, consists of members of each canton, it was seen less as representing cantonal interests and more as a 'counter-majoritarian' institution (Belser, 2018: 152-181).

The original idea of bicameralism was that the upper house would represent a specific social class while the lower house would represent the people. It was a common phenomenon in the nineteenth century. However, the twentieth century saw a change in the idea of bicameralism as the upper house now started to represent the people as a whole or the states. From the survey of comparative case studies, it was found that the concept of an upper house can be divided into two concepts of representation:

- **Class-based representation**, like in the United Kingdom, Sweden, Netherlands, and Belgium
- **Territorial representation**, like in the United States, Germany, and Switzerland

2.2 A Current Global Perspective of Bicameralism

The data recorded by the Inter-Parliamentary Union (IPU) in 2022 shows that most of the world's parliaments are unicameral. There are 190 parliaments worldwide; 79 are bicameral, and 111 are unicameral (Inter-Parliamentary Union, 2022b). The 79 bicameral parliaments can be seen in Table 2.1

Table 2.1 Countries with bicameral parliament (as of 2022)

No.	Country	The First Chamber	The Second Chamber
1	Algeria	National People's Assembly	Council of the Nation
2	Antigua and Barbuda	House of Representatives	Senate
3	Argentina	Chamber of Deputies	Senate

4	Australia	House of Representatives	Senate
5	Austria	National Council	Federal Council
6	Bahamas	House of Assembly	Senate
7	Bahrain	Shura Council	Council of Representatives
8	Barbados	House of Assembly	Senate
9	Belarus	House of Representatives	Council of the Republic
10	Belgium	House of Representatives	Senate
11	Belize	House of Representatives	Senate
12	Bhutan	National Assembly	National Council
13	Bolivia	Chamber of Deputies	Chamber of Senators
14	Bosnia and Herzegovina	House of Representatives	House of Peoples
15	Brazil	Chamber of Deputies	Federal Senate
16	Burundi	National Assembly	Senate
17	Cambodia	National Assembly	Senate
18	Cameroon	National Assembly	Senate
19	Canada	House of Commons	Senate
20	Chile	Chamber of Deputies	Senate
21	Colombia	House of Representatives	Senate
22	Congo	National Assembly	Senate
23	Côte d'Ivoire	National Assembly	Senate
24	Czech Republic	Chamber of Deputies	Senate
25	Democratic Republic of the Congo	National Assembly	Senate
26	Dominican Republic	Chamber of Deputies	Senate
27	Egypt	House of Representatives	Senate
28	Equatorial Guinea	Chamber of Deputies	Senate
29	Eswatini	House of Assembly	Senate
30	Ethiopia	House of People's Representatives	House of the Federation
31	France	National Assembly	Senate
32	Gabon	National Assembly	Senate
33	Germany	German Bundestag	Federal Council

34	Grenada	House of Representatives	Senate
35	Haiti	Chamber of Deputies	Senate
36	India	House of the People	Council of States
37	Ireland	House of Representatives	Senate
38	Italy	Chamber of Deputies	Senate
39	Jamaica	House of Representatives	Senate
40	Japan	House of Representatives	House of Councillors
41	Jordan	House of Representatives	Senate
42	Kazakhstan	House of Representatives	Senate
43	Kenya	National Assembly	Senate
44	Lesotho	National Assembly	Senate
45	Liberia	House of Representatives	The Liberian Senate
46	Madagascar	National Assembly	Senate
47	Malaysia	House of Representatives	Senate
48	Mexico	Chamber of Deputies	Senate
49	Morocco	House of Representatives	House of Councillors
50	Namibia	National Assembly	National Council
51	Nepal	House of Representatives	Senate
52	Netherlands	House of Representatives	Senate
53	Nigeria	House of Representatives	Senate
54	Oman	Shura Council	State Council
55	Pakistan	National Assembly	Senate
56	Palau	House of Delegates	Senate
57	Paraguay	Chamber of Deputies	Senate
58	Philippines	House of Representatives	Senate
59	Poland	Sejm	Senate
60	Romania	Chamber of Deputies	Senate
61	Russian Federation	State Duma	Council of the Federation
62	Rwanda	Chamber of Deputies	Senate
63	Saint Lucia	House of Assembly	Senate
64	Slovenia	National Assembly	National Council
65	Somalia	House of the People	Upper House
66	South Africa	National Assembly	National Council of Provinces
67	South Sudan	Transitional National Legislative Assembly	Council of States
68	Spain	Congress of Deputies	Senate
69	Switzerland	National Council	Council of States

70	Tajikistan	House of Representatives	National Assembly
71	Thailand	House of Representatives	Senate
72	Trinidad and Tobago	House of Representatives	Senate
73	Turkmenistan	Assembly	People's Council
74	United Kingdom	House of Commons	House of Lords
75	United States of America	House of Representatives	Senate
76	Uruguay	House of Representatives	Senate
77	Uzbekistan	Legislative Chamber	Senate
78	Yemen	House of Representatives	Shura Council
79	Zimbabwe	National Assembly	Senate

Source: (The Inter-Parliamentary Union, 2022a)

2.3 Theoretical Justification for Bicameralism

The theoretical justification for bicameralism generally focuses on three aspects:

- 1) the second chamber can provide more checks and balances as a *veto player*
- 2) the second chamber includes representation among the groups in the society
- 3) bicameralism can affect policy outcomes or improve the legislative process and outcome.

Riker (1992) suggests that a justification for bicameralism is to minimise the tyranny of the majority. Tsebelis & Money (1997: 15–16) argue that bicameralism has political and efficient dimensions. Bicameralism recognises the different interests or preferences expressed in the two legislative chambers, and it can also produce a better, more substantive legislative outcome, for example, the quality of legislation. Patterson and Mughan (1999: 9–16) propose two justifications for bicameralism: *representation* and *redundancy*. While one house, based on popular representation, is composed of elected members that represent the citizens, the other, on a different basis of representation, can represent the interests of social classes, economic interests, or territorial diversity. In addition, the second chamber provides a second opinion. The upper house

in most parliaments is assigned to revise, reconsider, or delay legislation. That is the strength of bicameralism, in which the second chamber can check and balance the lower house. Also, the upper house can prevent the corruption or usurpation of power by the other body, executive, or special interests.

Preece (2000: 80–83) argues that the advantages of bicameralism are the *checks and balances* as the legislature is divided into two houses, which means a reduction of legislative power, *greater scrutiny of proposed legislation, greater scrutiny of other proposals* (approval or disallowance of subordinate legislation, constitutional amendments, appointment of political office holders, or impeachment), *investigative roles on the executive*, a *broader representation* in the legislature, and a check on the abuse of power. On the other hand, one of the main disadvantages of bicameralism is the cost because if there are two houses, it means more politicians and more supporting staff. Another disadvantage of having two houses is a possible conflict if the upper house possesses substantial powers.

Russell (2001: 442-458) proposes four main features of bicameralism: *representation of different interests, the parliamentarian who is more independent of the executive, a potential veto player, and the capacity to perform parliamentary duties*. Llanos and Nolte (2003: 60) outline four fundamental justifications for bicameralism, including the *representation of different interests, the contribution to the preservation of liberties and individual rights, the improvement of the quality of the legislation, and granting stability to the legislative outcome*.

Coakley (2014: 546-547) proposes two justifications for bicameralism: *representation* and *reflection*. First, the second chamber might represent special interests from various distinctive groups such as ethnic, linguistic or religious minorities. Also, particularly in federal states, the second chamber might express regional or territory interests. Second, bicameralism might promote a stable legislative programme with high-quality laws.

A recent handbook on bicameralism published by the International Institute for Democracy and Electoral Assistance (IDEA) (2017) outlines four advantages of bicameralism: *the representation* of sub-national governments, acting as *a body of expert* scrutiny and review, providing a

further *democratic check* on the power of the lower house, and providing *representation* for various socioeconomic interests or ethnocultural minorities. In detail, the reasons for bicameralism are:

- *enabling different principles of representation to be applied* (e.g., states, provinces or regions) or specific communities (religious, ethnic, language or cultural groups) or women, marginalised socio-economic classes, particular interest groups, youth or people with disabilities
- *improving scrutiny and review of legislation* as a second chamber can scrutinise proposed legislation
- *By providing additional democratic checks and balances in the legislative process, a second chamber may act as a veto player that helps prevent the so-called “tyranny of the majority.”*
- *historical legacy*

By contrast, the reasons against bicameralism are *potential conflict, delay, and lack of responsibility, resulting in deadlock or blocked legislative processes, unnecessary duplication, and more cost.*

In summary, theoretical justifications for bicameralism are usually concerned with three main arguments:

- *Checks and balances*, where the upper house can act as a “veto player” to prevent a “tyranny” of the majority
- *Representation* of the “special interests” of various social groups or even the interests of the states or provinces in federal states
- *The improvement of a legislative outcome*, as the upper house can have “second thoughts” to revise or reconsider the legislation

On the other hand, the arguments against bicameralism concern two main aspects: a possible conflict that might arise with the lower house in the legislative process and an unnecessary cost to have another legislative chamber with similar power to the lower house.

2.4 Characteristics and Patterns of Bicameralism

The classical approach in classifying bicameralism is Lijphart’s approach (1999: 205–207), which divides bicameral parliament into *strong* and *weak*. Some features determine the strengths or weaknesses of bicameralism:

- 1) *The formal constitutional powers*, generally the second chambers, tend to be subordinate to the first chambers.
- 2) *In the selection method*, the first chambers are usually directly elected, and the second chambers are not directly elected and lack democratic legitimacy.
- 3) It is *incongruent* if the second chambers are selected by different methods or designed to overrepresent minorities. For example, the second chambers serve as federal chambers.

Based on Lijphart's approach, bicameralism can be classified as *symmetrical* or *asymmetrical*. Symmetrical bicameralism is when the first and second chambers have equal or moderately unequal constitutional powers and democratic legitimacy. In contrast, asymmetrical bicameralism is where those two chambers are highly unequal.

Patterson and Mughan (2001: 42) adopt the idea of asymmetry of constitutional power and identify five characteristics of the upper houses: co-equal with the lower house, co-equal with restrictions, limited exclusive powers and veto, delay and advisory, and subordinate to the lower house.

Table 2.2 Characteristics of bicameralism

No	Characteristics	Examples
1	Co-equal with a lower house	Italy, Liberia, Mexico, Nigeria, Romania, Switzerland, the United States
2	Co-equal with restrictions	Argentina, Australia, Belgium, Haiti, India, Malaysia, Nepal, Pakistan, Philippines, South Africa
3	Limited exclusive powers, veto	Brazil, Chile, Colombia, Germany, Venezuela
4	Delay and advisory	Austria, Canada, Czech Republic, Jordan, Netherlands, Thailand

5	Subordinate to the lower house	The United Kingdom, France, Ireland, Japan, Poland, Russia, Spain
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Source: (Patterson & Mughan, 2001: 42)

In recent work that explores the evolution and trends of the legislatures in Europe, Passaglia (2018, 10–15) identifies five patterns of bicameralism: aristocratic bicameralism, counter-majoritarian bicameralism, chamber of reflection, corporatist bicameralism, and territorial bicameralism.

Table 2.3 Patterns of Bicameralism

No	Pattern	Description	Examples
1	Aristocratic Bicameralism	The lower house represents the people, while the second house is an unelected body of hereditary or appointed people who aim to preserve the traditional aristocratic principle.	The United Kingdom
2	Counter-Majoritarian Bicameralism	The upper house is a means to 'counterweight' the majority	Canada, France
3	Chamber of Reflection	Two chambers share the same degree of legitimacy and are selected in a similar method (direct election), and it is a means to ensure 'further reflection.'	Italy
4	Corporatist Bicameralism	The upper house members are appointed based on vocational or interest groups.	Ireland
5	Territorial Bicameralism	The second chamber represents 'peripheral entities', and bicameralism is a means to ensure the balance of power between the federation and the states, regions, or provinces.	United States, Germany

Source: (Passaglia, 2018: 10-15)

2.5 Institutional Change in Bicameralism

Parliament, like other political institutions, is generally subject to change over time. Therefore, understanding institutional change, in general, should start with an overview of the theories of institutional change.

Goodin (1996: 24–25) argues that social or institutional change might occur by *accident*, *evolution*, or as *a product of intentional intervention*. Any social or institutional element almost certainly combines all these elements. Among these elements, intentionality has a more central role in the evolution of social and institutional change.

Mahoney & Thelen (2009: 4–16) propose a theory of gradual institutional change based on four modes: *displacement*, *layering*, *drift*, and *conversion*. According to Mahoney and Thelen, each type of institutional change is defined by the locus of institutional transformation.

- *Displacement*: “removing existing rules and introducing new ones, in which the change is rapid and sudden. Still, sometimes it can also be slow, and the new institutions are often presented by the ‘losers’ in the old system.”
- *Layering*: “introducing new rules on top of or alongside existing ones, in which the rules or institutions are attached to the existing ones. For example, the amendments, revisions, or additions to the current rules or institutions.”
- *Drift*: “the changing impact of existing rules due to shifts in the environment, in which rules or institutions formally remain the same but their impact changes due to shifts in external conditions.”
- *Conversion*: “the changed enactments of existing rules due to their strategic redeployment, in which rules or institutions remain formally the same but are interpreted and enacted in new ways.”

Tang (2011: 34–41) outlines a process of institutional change, including:

- 1) generation of ideas for specific institutional arrangements
- 2) political mobilisation
- 3) the struggle for power to design and dictate specific institutional arrangements
- 4) the setting of the rules

- 5) legitimisation, stabilisation, and reproduction

The institutional change in bicameralism mainly resulted in two outcomes: *abolition* and *reform* of the second chamber. There are three cases where the upper house was abolished after Worldncluding New Zealand, Denmark and Sweden. In New Zealand, the appointed upper house, *the Legislative Council*, was abolished in 1951 after it had become an ineffective check on the authority of the elected House of Representatives (Jones, 2021: 153). In Denmark, parliamentarism was introduced in 1901. The upper house, the *Landsting*, was abolished through a constitutional change in 1953. Since then, the Danish Parliament *Folketing* has been unicameral (Skjaeveland, 2020: 225). In Sweden, the Swedish parliament has its roots in the four-estate chamber representing the nobility, clergy, bourgeoisie and peasants. A bicameral parliament was introduced in 1866 and lasted until 1970 when a new Riksdag Act was enacted. It replaced bicameralism with a unicameral parliament (Nergelius, 2020: 216). A recent attempt to abolish the upper house was made in Ireland. A referendum was held on 4 October 2013 on whether to move to unicameralism or retain the upper chamber *Seanad Éireann*. The result showed that a narrow majority of 51.7 per cent of the voters voted to keep the upper house. A study shows that those favouring abolition based their argument on “cost savings”, while those who supported the upper chamber were concerned about government control of the legislative process (Maccarthaigh & Martin, 2015: 121).

Thirty-four other countries had a bicameral parliament. However, their upper houses were later abolished, as shown in Table 2.4.

Table 2.4 The countries that used to have the upper house

No.	Country	Period
1	Albania	Until 1928
2	Burundi	1965-1966
3	China	Until 1925
4	Congo-Kinshasa	Until 1965
5	Costa Rica	Until 1847, 1859-1869
6	Croatia	Until 2001
7	Cuba	Until 1960
8	Denmark	Until 1953
9	Ecuador	Until 1979
10	Egypt	Until 1952

11	El Salvador	Until 1886
12	Estonia	1934-1940
13	Greece	Until 1862, 1927-1935
14	Honduras	Until 1865
15	Hungary	Until 1918, 1926-1945
16	Guyana	Until 1966
17	Iceland	Until 1991
18	Iran	Until 1979
19	Iraq	Until 1958
20	Kenya	1963-1966
21	Laos	Until 1975
22	Libya	Until 1969
23	Malta	1921-1936
24	New Zealand	Until 1951
25	Nicaragua	Until 1979
26	Peru	Until 1992
27	Portugal	Until 1974
28	South Korea	1960-1961
29	Sri Lanka	Until 1971
30	Sudan	1953-1958
31	Sweden	Until 1970
32	Turkey	Until 1923, 1961-1980
33	Venezuela	Until 1999
34	Zimbabwe	1969-1989

Source: (Massicotte, 2001:170; The Croatian Parliament, 2022)

On the other hand, the clearest example of *reform* of the second chamber is the attempt to reform the House of Lords in the United Kingdom. This reform process took over twenty years and is still counting, as seen from the timeline in Table 2.5.

Table 2.5 Timeline of the British House of Lords Reform

Year	Milestone
1997	After the general election, the Labor government issued a bill removing the automatic right of hereditary peers to sit and vote in the House. Also, it proposes to create a Royal Commission on Reform of the Lords.

1999	The House of Lords Act receives Royal Assent. It reduced the number of hereditary peers from more than 600 to 92 until further reform.
2000	The independent House of Lords Appointments was created to recommend and approve suitable candidates for membership.
2001	The second Labour White Paper on Reform set out a ten-year plan for reform, proposing to reduce the size to 600: 332 would be nominated by parties based on the vote's proportion in the last general election, and at least 20 per cent of the House should be non-party appointments. The remaining 92 hereditary peers would lose their seats.
2002	A joint committee was appointed to consider House of Lords Reform in May 2002 and reappointed in November 2002. It presents seven options for reform. These options were put to a vote in February 2003, but no consensus occurred.
2003	The third Labour White Paper on Reform proposes to remove the remaining hereditary peers, put the appointments committee on a statutory basis and cap the size at 600. However, it was opposed by those who felt it would solidify an appointed-only chamber
2005	The Constitutional Reform Act was enacted. It modifies the office of Lord Chancellor and the judicial appointment process and provides for a Supreme Court and the election of a Lord Speaker. Meanwhile, the report of the Cross Party Group of MPs proposed a 70 per cent elected House and included a draft Bill to that effect.
2007	The fourth Labour White paper proposed several options for the House of Lords Reform: an all-appointed House, an all-elected House and a half-elected and appointed House. In March, the House of Commons voted for the elected House. A week later, the House of Lords voted for the appointed House.
2008	The fifth Labour White Paper proposes further reform of the House of Lords by having a predominantly elected second chamber but no specific breakdown. The elected and appointed members would serve three non-renewable terms (12-15 years). In addition, three options were presented on the timing of the removal of peers.
2009	The Constitutional Reform and Governance Bill adopts some provisions from the fifth White Paper. However, the Lords also

	opposed it and allowed it to expire when Parliament was dissolved for the 2010 election.
2010	The 2010 general election turned to a hung parliament—three major parties manifestos all the House of Lords reform. The Liberal Democrats supported an elected Upper House, while the Conservatives saw House of Lords reform as a third-term issue. The Conservative-Liberal Democrat Coalition Agreement committed to establishing a committee to push proposals for an entire or mainly elected chamber based on proportional representation and agreed that the appointment of new peers would reflect the vote's share secured by the parties in the last general election.
2011	The first Coalition White Paper on Lords Reform called for an 80 per cent elected chamber. The deputy prime minister presented the House of Lords Reform Draft Bill to the parliament in May.
2012	The Joint Committee on the Draft House of Lords Reform published its report recommending an electoral mandate that 80 per cent of members should be elected and 20 per cent should be nominated. The government accepted many of the recommendations of the Joint Committee but rejected one: the proposal is subject to a referendum before it is put into effect. The House adopted the Reform Bill at the second reading, but 91 Conservatives voted against it, and 19 others abstained. Later, Deputy Prime Minister Nick Clegg announced that the legislation on the House of Lords Reform Bill had been dropped and made a statement announcing the bill's withdrawal.
2013	The Report of House of Commons Political and Constitutional Reform suggested a range of minor scale reforms to reduce the size of the House of Lords, such as a moratorium on appointments, a compulsory retirement age, abolishment of the remaining hereditary peers, fixed term appointments for new peers, expelling peers convicted of a serious offence.
2014	The House of Lords Reform Act received Royal Assent on May 14. It introduced the principle for the resignation of the House of Lords and allowed the members' expulsion in certain specified circumstances.

Source: (Levy, 2014: 30-31; UK Parliament, 2022)

2.6 Bicameralism in Thailand: An Overview

Since the end of absolute monarchy and a transition to constitutional monarchy following the Siamese Revolution of 1932, Thailand has struggled with democracy: 20 constitutions and 13 successful coups. Originally, bicameralism had not been introduced after the revolution. The 1932 Provisional Charter and the 1932 Constitution stated that the Thai parliament is unicameral: the House of Representatives. Bicameralism appeared for the first time after the promulgation of the 1946 Constitution. The upper house, known as *Pruettha Sapha* (the senate), was indirectly elected by the incumbent MPs with the power to consider legislation and also to lengthen the power of Pridi Banomyong, the mastermind from the civilian bloc in the People's Party that staged the 1932 Revolution with his followers in the parliament. The first senate lasted between 1946 and 1947. After the coup in 1947, the junta leaders decided to terminate the senate's term. For the next 63 years, the military primarily influenced the Thai upper house (Chambers, 2009: 7).

The military later dominated the senate, or Wuthi Sapha, when the Thai parliament was bicameral. The Senate had greater power than the House of Representatives, reflecting that the generals dominated politics. The senate speaker was the parliament president; the senators could vote in no-confidence motions, and active military personnel could serve as senators (Chambers, 2009: 8). The turning point was the 1997 Constitution, in which the people directly elected the senators. The Senate had also been empowered and could *vote for the nomination* of constitutional court judges, supreme administrative court judges, ombudsmen, and members of the National Anti-Corruption Commission, the State Audit Commission, and the National Human Rights Commission. They also had the power to *impeach political figures*, including the prime ministers, ministers, MPs, senators, presidents of the constitutional control bodies mentioned above, and other high-ranking officials (Borwornsak, 2013).

However, the 2006 coup ended the 1997 Constitution and led to the drafting of a new constitution. Given the experience of the fully elected Senate under the 1997 Constitution, some members of the Constitution Drafting Committee appointed by the junta even advocated abolishing the Senate. However, most of the drafting committee members agreed on the continued existence of a Senate. The next issue was what method would

recruit the senators: direct elections by the people, appointment by the prime minister or another group of people, or indirect elections. After a long dispute among the drafting members, a compromise was reached on a new method: direct election and appointment by a politically “neutral search committee”. Thus, the Senate under the 2007 Constitution was composed of elected senators from all provinces and appointed senators (Nelson, 2014).

Another coup took place in 2014, which provoked the 2007 Constitution. Under the 2017 Constitution, the Senate had become one of the “mechanisms of control” embedded in the new constitution. For the first five years, the 250 senators will be appointed by the junta, including six ex officio senators, the chief of military officers, and the police. The Senate can oversee the “reform” effort initiated by the military government (Ockey, 2019: 171; Khemthong, 2018: 643–651).

Table 2.6 The Parliament of Thailand 1932 – present

Duration	Type of Parliament	Constitution	Method of Membership	Number of seats
<i>The Siamese Revolution of 1932</i>				
1932-1933	Unicameral	The 1932 Provisional Constitution	Appointment	70
1933-1937	Unicameral	The 1932 Constitution	Election (78) and Appointment (78)	156
1937-1946	Unicameral		Election (91) and Appointment (91)	182
1946-1947	Bicameral	The 1946 Constitution	Indirect election by the House of Representatives	80
<i>The 1947 Coup</i>				
1947-1951	Bicameral	The 1947 Provisional Constitution	Appointment	100
		The 1949 Constitution		

The 1951 'Silent' Coup				
1951-1957	Unicameral	The 1932 Constitution with the amendments in 1952	Election (123) and Appointment (123)	246
1957-1957			Election (160) and Appointment (123)	186
The 1957 Coup				
1957-1958	Unicameral	The 1932 Constitution with the amendments in 1952	Election (186) and Appointment (121)	307
The 1958 Coup				
1959-1968	Unicameral	The 1959 Charter	Appointment	240
1968-1971	Bicameral	The 1968 Constitution	Election (the House of Representatives) / Appointment (the Senate)	120 (1968) 164 (1969)
The 1971 Coup				
1972-1974	Unicameral	The 1972 Charter	Appointment	The junta appointed no more than 299 members before the Uprising of 14 October 1973. After that event, it was selected among the National People's Assembly members
The Uprising of 14 October 1973, which led to drafting of the 1974 Constitution				

1975-1976	Bicameral	The 1974 Constitution	Election (the House of Representatives) Appointment (the Senate)	The House of Representatives 100 (the Senate)
The Massacre of 6 October 1976, followed by a coup				
1976-1977	Unicameral	The 1976 Constitution	Appointment	340
The 1977 Coup				
1977-1978	Unicameral	The 1977 Charter	Appointment	360
1979-1985	Bicameral	The 1978 Constitution	Election (the House of Representatives) Appointment (the Senate)	225 (The Senate, 1979)
1985-1991				263 (The Senate, 1983)
The 1991 Coup				
1991-1992	Unicameral	The 1991 Charter	Appointment	292
1992-1996	Bicameral	The 1991 Constitution	Election (the House of Representatives) Appointment (the Senate)	270 (the Senate)
1996-2000				
The 1992 Black May / A call for 'political reform' that led to the drafting of the 1997 Constitution				
2000-2006	Bicameral	The 1997 Constitution	Direct Election (both the House of Representatives and the Senate)	500 MPs and 200 senators
The 2006 Coup				
2006-2008	Unicameral	The 2006 Provisional Constitution	Appointment	242 members appointed by the junta
2008-2014	Bicameral	The 2007 Constitution	Election (the House of Representatives) and half-elected-	480 MPs (2007) 500 MPs (2011) 150 senators

			appointed (the Senate)	
<i>The 2014 Coup</i>				
2014-2019	Unicameral	The 2014 Provisional Constitution	Appointment	250 members appointed by the junta
2019-present	Bicameral	The 2017 Constitution	Election (the House of Representatives) and Appointment (the Senate)	500 MPs and 250 senators

Source: (Chambers, 2009; Noranit, 2015; Hicken, 2007; Khemthong, 2018)

Studying institutional change in the Senate of Thailand may differ from other case studies because the main challenge is frequent constitutional change. Since 1932, Thailand has had 20 constitutions. Each change of the constitution inevitably changes the structure of political institutions, including the parliament. Therefore, in understanding the change in the Thai upper house as an institution, constitutional change should also be understood. This thesis will argue that the institutional change of the Senate is part of constitutional change. Therefore, the institutional development and the existence of the Senate must start by finding out why Thailand has 20 constitutions first.

2.7 Constitutional Change in Thailand: Why does Thailand have 20 constitutions?

From a legal perspective, the Thai constitution has been questioned as the supreme law for a long time. A prominent Thai legal expert, Wissanu Krea-ngam,¹ explains in his constitutional law textbook that *“the so-called “fundamental laws” are still questionable. Because, in practice, the constitution may come after other laws. It is suspected that is the*

¹ Wissanu Krea-ngam taught law at Chulalongkorn University before being transferred to the position of Deputy Secretary-General to the Cabinet and later the Secretary-General to the Cabinet. During the Thaksin government, Wissanu was appointed Deputy Prime Minister and resigned before the 2006 coup at about three months. After the coup, he was one of the drafters of the interim constitution, and was later appointed as a member of the National Legislative Assembly before disappearing from politics for a while and returning to serve as Deputy Prime Minister in the Prayut government (2014-2023).

constitution the "origin" or "summary" of other laws, especially in countries where constitutions are frequently changed." He also added that *"constitutional law should not be taught in Thailand because, in Thailand, there are frequent constitutional changes. Certain rules cannot be found."* (Wissanu, 1980: 388–389)

On the other hand, from a political point of view, Saneh Chamarik (2006: 8–10) explained that constitutional changes in Thailand reflect the social and political realities of the country, that is, the reality of "power relations". In other words, the realities of the systems and processes within a political society define the clarification of "who gets what, when and how". This relationship of power is established and expressed in various political institutions. Moreover, such a system of political institutions is the constitution. In Saneh's view, the constitution is like an "autobiography" of power relations in the state. When analysing the fundamentals of socio-political processes, the constitution shows the system's roles and functions and the process of power relations. The supremacy of the constitution is not a complete principle in itself. It is a principle based on the actual conditions from the point of view of power relations. It is a principle learned from the West, where it did not come to be randomly but resulted from a consensus on the fundamental rules of the political system. By contrast, the Thai political experience suggests a lack of specific regulations. The constitutional change reflects what is known as "the vicious cycle of Thai politics".

The term "vicious cycle of Thai politics" was introduced by another prominent Thai political scientist, Chai-anan Samudavanija. It is a circulation of having a constitution, election, parliament, crisis, and coup. In detail, Chai-anan described the vicious cycle of Thai politics as the following:

The cycle comprises six recurring phases, namely (1) a military coup, (2) the promulgation of a new or resurrected constitution, followed by (3) a period of politicking and elections, followed by (4) a "honeymoon" period of cooperation and all sorts of new legislation, followed by (5) bitter arguing and stagnation among the governmental elite, followed by (6) a military coup d'etat to restore order and stability. (Chai-anan, 1982: 2)

In Thai constitutional history, it can be seen that out of the 20 constitutions, 15 resulted from a coup², one was from a revolution³, and four were from the parliamentary process. ⁴The experience of frequent abrogation and promulgation of the constitution reflects that the Thai constitution is not the highest law in governing the country but an instrument of the elite to use in competing for and establishing their power without regard for the agreed basic principles. The constitution's core can change according to those who hold power (Somchai, 2021: 40–63).

Constituent Power: Who Has the Power to Establish a Thai Constitution?

A classic explanation of the concept of constituent power in Thailand comes from a prominent royalist legal expert, Borwornsak Uwanno, who proposed the idea of “shared sovereignty” between the king and the people. Borwornsak explains:

“In the Thai democratic system, sovereignty is held by the king and the people. It thus differs from other countries where the people are the only bearers of sovereignty. There are two reasons for this. The first reason relates to traditions. The Thai monarchy is identified with the Thai people, which has become a tradition. The second reason relates to law. Sovereignty has at all times belonged to the king. When the People's Party changed the system of government, the royalty, holder of sovereignty, granted it to the people by giving a constitution. The king accepted to be placed under the constitution's authority but would still have the sovereign power in the people's name. Whenever a coup abolishes the constitution, one must consider that the power given with the constitution goes back to the monarch, the sovereign, before June 24, 1932” (Borwornsak, 2007: 143, in Merieau, 2023: 194).

The court never explicitly accepted this theory (Merieau, 2021: 241). It states that the act is considered legal whenever the king signs the interim constitution after a coup and sovereignty becomes “shared” with the people.

² (1) The 1947 Provisional Constitution (2) The 1949 Constitution (3) The 1932 Constitution (1952 Amendments) (4) The 1959 Charter (5) The 1968 Constitution (6) The 1972 Charter (7) The 1976 Constitution (8) The 1977 Charter (9) The 1978 Constitution (10) The 1991 Charter (11) The 1991 Constitution (12) The 2006 Provisional Constitution (13) The 2007 Constitution (14) The 2014 Provisional Constitution (15) The 2017 Constitution

³ The 1932 Provisional Constitution (promulgated after 1932 Revolution of Siam)

⁴ (1) The 1932 Constitution (2) The 1946 Constitution (3) The 1974 Constitution (4) The 1997 Constitution

In other words, a coup is “legalised” whenever it has the king’s signature (Merieau, 2023: 194). Also, Borwornsak has previously explained that the Thai constitution has the king as an authority that establishes it.

Table 2.7 Borwornsak’s Explanation of the Constituent Power in Thailand

Constitution	Authority to establish political regimes and organisations
The 1932 Constitution	The King and the House of Representatives
The 1946 Constitution	The King and the House of Representatives
The 1947 Provisional Constitution	The King and the junta
The 1949 Constitution	The King, the Parliament, and the Constitution Drafting Assembly
The 1932 Constitution (1952 Amendments)	The King and the Coup Group (junta)
The 1959 Charter	The King and the Revolutionary Council (junta)
The 1968 Constitution	The King and the Constitution Drafting Assembly
The 1972 Charter	The King and the Revolutionary Council (junta)
The 1974 Constitution	The King and the National Legislative Assembly
The 1976 Constitution	The King and the National Administrative Reform Council (junta)
The 1977 Charter	The King and the Revolutionary Council (junta)
The 1978 Constitution	The King and the National Legislative Assembly
The 1991 Charter	The King and the National Peacekeeping Council (junta)
The 1991 Constitution	The King and the National Legislative Assembly
The 1997 Constitution	The King, the Constitution Drafting Assembly, the parliament, and the people

Source: Borwornsak Uwanno (2001). เจตนารมณ์รัฐธรรมนูญ (*The Spirit of the Constitution*), in the academic seminar document "4 Years of the Constitution: Problems and Obstacles to Political Reform.". Nonthaburi: King Prajadhipok's Institute, pp. 13-20.

In Borwornsak's explanation, the king can establish every constitution, depending on who he joins. In the case of a coup that revokes the original constitution and drafts an interim constitution, the king is the one who has the power to establish the constitution along with the junta. However, if it is a permanent constitution, the king can establish it with the House of Representatives or the Constitution Drafting Assembly. Piyabutr (2020: 91) argues that this explanation leads to two questions:

- Does the king have veto power on the promulgation of the constitution? Or must the king sign the constitution in all cases without discretion? If the king does not have such veto power and signing is only a ceremony as the head of state, how could the king be regarded as the constitutional authority?
- According to democratic principles, the *people* are the ones who have the power to establish the constitution. Suppose the monarch has the final decision on whether to agree to use the constitution drafted and approved (by parliament or the people voting in a referendum). Can Thailand be considered a full democracy?

In Western constitutional theory, the constitution means the country's supreme law. However, when analysing the socio-political reality, Thailand has had 20 constitutions in a 90-year period, clearly showing that the constitution is not theoretically the supreme law. In other words, Thai politics has no precise rules. Constitutional change in Thailand reflected a shift in power relations among the political and social forces in the country. The powerholders will write the rules of the game. Therefore, this thesis will not discuss the supremacy of the constitution in jurisprudence. However, it will consider the constitution to reflect Thai political power. As mentioned, the fact that there were 20 constitutional changes in Thailand shows how power relations have changed. Therefore, many rules of the game in Thai politics depend on who wrote them, and Thailand does not yet have a single set of rules accepted by all socio-political forces. One must understand the power struggle in Thai politics to understand these constitutional changes.

This thesis will divide key actors in Thai politics into two large groups: the *elite* and the *masses*.

2.8 The Key Actors in Thai Politics

Elite: Definition in Social Science Literature

Many different scholars have defined the term “elite”. In the elite theory, the most well-known schools of thought in social sciences are the Italian School. Pareto (1935: 1423–24, 1433) defined the elite as the “*class of the people who have the highest indices in their branch of activity*”. In his view, the elite “*consists of two classes: 1) the governing elite, comprising individuals who directly or indirectly play considerable part in government 2) the non-governing elite, comprising the rest*”. Mosca (1939: 50) defined the term “ruling class” as describing the elite. He wrote, “*In all societies - two classes of people appear – a class that rules and a class that is ruled. The first class, always the less numerous, performs all political functions, monopolises power and enjoys the advantages that power brings. In contrast, the second, the more numerous class, is directed and controlled by the first in a manner that is now more or less legal, now more or less arbitrary and violent, and supplies the first, in appearance at least, with material means of subsistence and with the instrumentalities that are essential to the viability of the political organism.*” Michels (1915) proposed the “iron law of oligarchy” to explain that in an organisation, there are a small number of persons who make decisions.

In political science, Lasswell (1961: 66) used the term “political elite”, explaining that “*the political elite comprises the power holders of a body politic. The power holders include the leadership and the social formations from which the leaders typically come and to which accountability is maintained during a given generation. In other words, the political elite is the top power class.*” Dahl (1961: 90) explained the elite as “*the political stratum – a small stratum of individuals much more highly involved in political thought, discussion and action than the rest of the population.*” Putnam (1971: 651–681) also used the term “political elite”, describing them as “*those who in any society rank toward the top of the (presumably closely intercorrelated) dimensions of interest,*

involvement, and influence in politics.” Likhit (1975: 1) explains that elites are “the small groups of people in a society who control most of the wealth, has a top social status, and either directly or indirectly influence the decision-making process that affects society... what distinguishes between the elite and the mass are wealth, social status, and power.”

In sociology, Mills (1959: 3–4) used the term “power elite”, explaining that *“the power elite is composed of men... in positions to make decisions having major consequences... They are in command of modern society's major hierarchies and organisations.”* Field et al. (1990: 152) define the elite as *“persons who are able, by their strategic positions in powerful organisations, to affect national political outcomes regularly and substantially.”*

From the definitions in various fields of social science, it can be seen that the elite have three essential characteristics:

- They are a minority.
- They possess wealth, status, and power.
- They influence the decision-making process.

Who Are the Elites in the Thai Context?

The Traditional Elite

Monarchy

Theoretically, Thailand has been a constitutional monarchy since 1932. However, the role of the Thai monarch in politics is undeniable. According to the official discourse published by the Thai authority, the monarch plays a vital role in supporting democracy. During regular times, the king supported democracy by advising politicians. Moreover, in times of crisis, the king can save the nation when other political institutions fail. However, this discourse dates back to King Bhumibol’s reign, and the monarch’s role in this discourse seems more personal than monarchal (Ockey, 2005: 116).

The monarchy diminished in status significantly after the 1932 revolution by the People’s Party before regaining its prominence following the elimination of a key Party leader, Pridi Banomyong, in the 1947 coup,

and power returned to the royalists and the military. The revival of the monarchy is political and redefines the “constitutional monarchy” in conservative ideology. The key figure who contributed to the explanation of the “new monarchy” was Prince Dhani Nivat. In the 1940s, before King Bhumibol came to the throne, Dhani described Siam’s monarchy as always being democratic because the king ascended the throne with the consent of the people. In Dhani’s explanation, the Thai monarchs were always theoretically elected by the people. This principle came to be known as *anekchonnikon samosonsommut*. Dhani also referred to Buddhism by describing the Thai monarch as the Righteous King or *Dhammaraja*. These descriptions were all composed to explain the royalists’ version of the constitutional monarchy. The “new monarchy” characteristics were sacred, popular and democratic (Thongchai, 2008: 19–23; Dhani Nivat, 1947: 1–16).

McCargo (2005) argues that the monarchy is the apex of Thai politics and conceptualises the so-called “network monarchy”. In his argument, the monarch was “the ultimate arbiter of political decisions in times of crisis. The monarchy was the primary source of national legitimacy; the King acted as a didactic commentator on national issues, helping to set the national agenda, especially through his annual birthday speeches; the monarch intervened actively in political development, largely by working through proxies such as privy councillor and trusted military figures.” The network monarchy operates in informal ways and does not rely on the institution. McCargo (2021: 564) revisits his argument that although a succession from King Bhumibol to King Vajiralongkorn took place, the network monarchy persists and exerts enormous influence.

Military

The military is also influential in Thai politics, and the “symbiotic relationship” with the monarchy cannot be separated. They need each other to pursue their objectives. The military’s political intervention could not succeed without explicit or implicit support from the palace. At the same time, the court also depends on the military as the guardian of national security and the continuity of the throne (Morell and Chai-anan, 1982: 64). All governments since 1932 had sought the king’s endorsement to legitimise their rule, including after the coup and power shifts among the Thai elite (Riggs, 1966: 107).

The relationship between the monarchy and military is what Chambers & Napisa (2016) term a “monarchised military”, which draws from a concept of the “parallel state”: an asymmetrical nexus between a powerful monarch and Privy Council and a military leadership that work together to sustain a palace-centred political order from which the military obtains its legitimacy.

The military saw the protection of the monarchy as its principal priority, and it would use any means to achieve this, including staging a coup and arresting people considered to be the nation's enemies. All Thai constitutions state that the king is the head of state, and the king is the head of the Thai armed forces. However, it does not mean the constitution authorises the king to command soldiers directly. The relationship between the monarchy and the military has worked differently from what the constitutions have stated. The army has been the key to the monarchy’s power over elected governments and bureaucracy. The palace always connected with the armed forces through proxies to maintain royal supremacy in the political sphere (Supalak, 2022: 2–5).

Bureaucracy

Riggs’s earliest concept on Thai politics (1966) explained that Thai politics could be best understood as “bureaucratic polity” because bureaucracy had an influential and significant role in the policy process. Bureaucracy can control and shape policy issues. The political arena and the struggle for power, wealth, and other public values played across the shifting lines of personal factions rather than through social structures. Thai politics is thus a struggle among bureaucratic factions, particularly military factions, over its power and interests. In Riggs’s argument, only bureaucracy and small groups of businesspeople were politically relevant.

This concept of bureaucratic polity was challenged later after the uprising of 14 October 1974 when the question arose as to whether the bureaucratic polity had ended (Zimmerman, 1975). Anek (1988) also points to the business association’s growing influence on Thailand’s politics and policy process in the late 1980s. The Thai bureaucracy faced a massive change during the Thaksin government when it initiated bureaucratic reform (Akira, 2014), and it no longer played a crucial role in Thai politics. In other words, Thailand is no longer a bureaucratic polity. However, when the coups took place in 2006 and 2014, bureaucracy became more influential in

politics again. Notably, the 2014 coup saw an expansion of bureaucratic power and budget. Prajak and Veerayooth (2018) point to the embeddedness of the military regime after the 2014 coup and a group of Sino–Thai conglomerates. Chatchada (2021) also references a revival of “bureaucratic polity” after the 2014 coup. Although its dynamic differs from the 1960s, the coup has again made the bureaucracy a robust and influential actor in Thai politics.

The judiciary is another bureaucratic branch that increasingly plays a significant political role. Since 2006, the Thai court, especially the Constitutional Court, has been more actively involved in politics by ruling on controversial cases, changing the political landscape. This phenomenon is called the judicialisation of politics. For example, the Constitutional Court dissolved significant political parties, banned the parties’ executives from politics, toppled two prime ministers, and directly challenged important government policies (Dressel, 2010: 672). However, McCargo (2014: 437) argues that the term “judicialisation” is positive, while in Thailand, the judiciary’s involvement in politics has been more ambiguous. Furthermore, in Thailand, the Constitutional Court had become part of the problem rather than a solution for a troubling “juristocracy”.

Mérieau (2015) proposes the concept of a “Deep State”, arguing that in the case of Thailand, the deep state is composed of state agents who oppose the rise of electoral politics and seek to maintain and strengthen a particular and preferred social, political, and economic order with the monarchy as its symbolic stone by using royal legitimacy. It is more institutionalised than the network monarchy. It argues that the judiciary was chosen as one of the Deep State’s main proactive agents.

The New Elite

Politician

The rise of elected provincial politicians was evident by the late 1970s. The critical point is that power lies not just in the hands of the bureaucratic polity but also in those of provincial Thailand due to an openness of the political arena that allows the local politician to have a share in power through electoral politics. Robertson (1996: 924–941) employs the term “rural network politician” and argues that Thailand has leaned more towards “participatory politics” since 1973, and the source of power has

been moving from the bureaucratic polity to “money” as a resource in patron-client relationships. This provincial politician is described as *Chao Pho*. The emergence of *Chao Pho* in the mid-1970s resulted from the socio-economic changes that had made politicians in parties emerge as a new force in competition with the military. As a result, local business people grew and became part of the new social force (Sombat, 2000: 53–73). *Chao Pho* accumulates wealth from illegal and criminal activity and later invests in legitimate businesses to cover unlawful enterprises or expand their range to legal activity. When Thai politics constituted more participatory democracy, *Chao Pho* was involved in more national or local politics, either directly participating in politics by running elections or indirectly participating by providing financial support to the candidates (Ockey, 2000: 74–96; Ockey, 2004: 81–100).

The emergence of *Chao Pho* can be analysed in terms of the power shift from the bureaucratic polity in Bangkok to the extra bureaucratic force in provincial Thailand. When the Thai political arena became more open, and the socio-economic changes made *Chao Pho* build their wealth, an opportunity arose for *Chao Pho* to have more shares in political power through electoral politics, either contesting the elections by themselves or providing financial support to candidates. The emergence of *Chao Pho* led to the creation of an extensive political network in the local constituency, or it is widely known as setting *Hua Kanaen* (electoral canvasser) to gather votes in the constituency. In many provinces, *Chao Pho* had thus established itself as a political family, which is crucial in determining election results.

Provincial politicians dominated the parliament between the 1970s and 1990s. Still, everything changed in the 2000s when the Thai Rak Thai party won the election, which made founder Thaksin Shinawatra the prime minister. Thaksin is a telecommunications businessman who accumulated wealth from the state telecommunication concessions. In one way, at least, it has become a representative vehicle for capitalists. Thaksin can also connect with his business competitors. It could provide both business benefits and advance Thaksin’s political ambitions. Business and politics are not new. Before Thaksin entered politics, the parliament had many business people elected. However, it was a group of provincial businessmen or *Chao Pho*. However, what Thaksin did was much more significant because he brought the big business group onto the political stage. At the

same time, Thaksin portrayed himself as a capitalist with a heart. His government issued responsive policies for people experiencing poverty. Thaksin's victories in the 2001 and 2005 general elections completely changed the landscape of electoral politics (Hewison, 2010: 119-133; Baker, 2005: 107-137).

The Masses

Thai politics is not just a struggle and power negotiations among the elite. It also involves the masses. Anek (1996: 201-223) proposes the influential concept "A Tale of Two Democracies", explaining the different perceptions of elections and democracy between the middle class and rural people in Thailand. Anek explains that the problem of democratisation in Thailand is the "endless quarrels between the two political villains: the ambitious, dictatorial officers and the greedy, irresponsible politicians." The military leaders have a support base among the highly educated middle class. Anek argues that democracy in Thailand has failed and has been unable to settle down because of the differing views on democracy, elections, and politics between the middle class and rural poor. Rural people do not value democracy as an ideal. It is a mechanism to benefit their communities and the political elite. Elections are local, not a national matter. Voting cannot be separated from other sociocultural obligations. Voting provides a feeling of giving back to those who are friendly and helpful to the community. Moreover, they do not want compensation for abstract things like laws, policies, or the public interest.

On the other hand, the middle-class view is that people should be knowledgeable and considerate of the collective rather than their interests. Voting is the selection of representatives of the nation and representatives of constituencies to perform legislative and administrative functions. Voting should be independent of social, cultural, and financial obligations. This distinction has always been linked to interruptions in Thai democratisation. Since democracy is ruled by a majority who, in the Thai context, are the rural people, the middle class tends to be dissatisfied with the elected government. It then allows the middle class to support a coup to overthrow the elected government. It is a paradox of Thai politics. The people who

elect the government and those who oust the government from office are different groups. (Anek, 1996: 201–223)

The question of why Thailand's middle class is so anti-democratic and so likely to support a coup d'état to dethrone the government following an election they do not like has drawn attention among scholars. More recently, Thorn & Chanon (2019) explain that the Thai upper middle class grew exponentially in the mid-1980s and the mid-1990s. Along with the economic liberalization-driven economic expansion, they formed a normative perception of politics as the core central value—for example, order, personal moral qualities and loyalty to King Bhumibol. The perception of a threat to these values has been the principal influence in turning the Thai upper middle class against democracy. Kanokrat (2021) explains that building democratic institutions during the democratic consolidation limited the power of the middle class, especially the upper middle class, rendering them unable to establish themselves in democratic institutions like a political party, legislative or executive branch, local government or interest group. In such a democracy, the lower classes and elected elites can claim legitimacy through democracy and have considerable power. As a result, the upper-middle-class minority is marginalised and begins to question democracy.

Meanwhile, an explanation challenges Anek's concept of *A Tale of Two Democracies* by arguing that the Thai countryside has experienced socioeconomic changes over the past two decades. Walker (2012) proposed the idea of a “political peasant”, explaining that a new socioeconomic dynamic has dramatically changed the relations between the Thai peasants and the state and has become a political force. Apichat et al. (2013) explain that economic and political changes over the past 20 years have destroyed the conditions for the existence of the patronage system. There are no longer the traditional farmers who never see the wide world. It also rejects the idea of the urban-rural difference. However, the real difference is the difference between the lower and upper middle classes. Somchai (2016) also affirms that traditional farmers no longer exist. Economic and social changes have transformed villagers' consciousness to have independent actions. Villagers know what is happening now in society outside the village.

2.9 Existing Literature

The Literature on the Thai Legislature

The Thai legislature is an understudied issue, whether it is a discontinuity of political development or does not “matter” to understand Thai politics. There is limited literature on the Thai parliament. Therefore, English and Thai literature will be included to provide a broad picture of how the Thai legislature is studied—starting with English-written works. The earliest work is by Morell (1974), who examines the political implications of introducing a legislative institution into the political process of military rule in Thailand from 1968 to 1971, focusing on legislative and executive interaction and legislative performance. However, this work was conducted in the era of military dictatorship under Thanom Kittikachorn in the 1960s when, understandably, the parliament did not have significant power in Thai politics. However, an exciting issue from this research is that the growth of extra-bureaucratic institutions is essential for efficient administrative performance. A political system needs to be created to cope with future challenges effectively; this points to urban change, rural insurgency, and economic development.

In the era of democratic transition after the promulgation of the 1997 Constitution, Stern (2006) examines three aspects of the House of Representatives between 1997 and 2002: legislative activity, House committees, and the House administrative service. This research attempts to illustrate how the Thai parliament moves from being just a “rubber stamp” chamber to a political institution with substantial influence over the formulation and implementation of public policy. The enhancement of interest groups’ involvement in legislative institutions was primarily a more diverse and active civil society. It best explains the developments and changes in Thailand’s parliamentary behaviour as it has been driven more by results in political participation than by shifts in party conduct or electoral reform. It can be argued that the parliament is not yet constituted to be a significant, meaningful political institution in the era of democratisation despite growing participation in the lawmaking process.

Another English-written work analysing the weakness of the Thai parliament is that of Siripan (2013), which argues that the Thai parliament’s weakness is linked with constant conflicts between parliament and political parties on the one hand and military and societal elites on the other. In

addition, the Thai parliament has been able to neither serve as an opposing force against military rule nor act as a cornerstone on which the democratic system can develop. It pointed to the core problem of the Thai parliament, which is that it is weak and not a meaningful institution in Thai democracy. In other words, the real power in Thai politics does not lie in the legislature. Still, outside the parliament, it could explain why the principle of parliamentary supremacy has never been constituted in Thai politics.

In Thai literature, there is also a limited number of works. It is mainly legal-based and provides a small picture of the parliament by looking at its technicality. For example, Narong & Surawut (1999) examine the power, functions, and roles of the appointed Member of Parliament in Thailand from 1932 to 1991, and Suratchanee (2012) studied the legal problem of the use of a power of committee against the executive to control the administration under the Request Order of the Committee of the House of Representatives and Senate Act, B.E. 2554 (2011). Apart from this, the effectiveness of the Thai parliament was examined by Noranit and Somkit (2004), who examined the parliament's role and functions in legislation, scrutiny of the executive, and the appointment and impeachment of political office holders.

The Literature on the Thai Senate

Like the literature on the Thai parliament, the Thai Senate is also an understudied issue as a limited number of works exist. The English-written works can be divided into two aspects: institutional development and design and the senatorial election and political family dimension of the senators. On the institutional development, Chambers (2009) examines the Senate under the 1997 and 2007 Constitution, arguing that the pre-1997 Senate was a “decided preference” among elites for an appointed body which can be relied upon to safeguard the institutional pillars of power, namely the entrenched elites, bureaucrats, and the judiciary. However, the elected Senate under the 1997 Constitution failed when the Thaksin government dominated it.

After the 2006 coup, the 2007 Constitution created a compromised composition of the Senate by having half of the senators appointed and half elected. It suggests that bicameralism is perhaps a more appropriate form of the Thai parliament than unicameralism, as it can accommodate the political

forces in Thai politics, including the palace, royalists, demonstrators, the pro-Thaksin demonstrators, the military, police, political parties, business conglomerates and associations, and NGOs (Chambers, 2009). Also, it provides a broad picture of how the Thai Senate developed from 1946 to 2007.

Another piece of work that provides a broad picture of the institutional development of the Senate is Rich (2013), who studies constitutional development in Thailand from 1932 to 2007, focusing on the Senate under the 1997 Constitution. It argues that the various strongmen at the helm of national affairs used the Senate as an instrument of power. The drafters of the 1997 Constitution were aware of a need to revive public faith to have wise people in the Senate. However, the Senate under the 1997 Constitution was flawed and proved to be a failure, as electing senators who are not involved in politics is impossible. Rich's work argues that the fully elected Senate under the 1997 Constitution was incompatible with a constitution that aims to make the Senate apolitical and non-partisan.

Nelson (2014) studies the debate on the institutional design of the Senate under the 1997 and 2007 constitutions by analysing the Constitution Drafting Assembly minutes. In the eyes of the drafters of the 1997 Constitution, Thailand's political system still needed the Senate "to some extent" because of its two fundamental duties: screening laws and balancing the power of the political parties in the House. However, given the experience with the elected Senate under the 1997 Constitution, termed the "Spouses House", there was a call to abolish the upper house. Nevertheless, the 2007 Constitution drafters considered the Senate valuable but felt its recruitment needed to be revised. It thus resulted in the half-elected and half-appointed Senate (Nelson, 2014). This work provides some picture of the debate among the drafters of the 1997 Constitution and those of the 2007 Constitution over how the Senate is designed.

The other segment of the English-written works on the Senate focuses on the 2000 senatorial election. As part of his work regarding the democratisation of Thailand after the event of Black May 1992, Tamada (2009) argued that most elected senators in the 2000 Senate Election were former government officials and termed it the House of Public Officials. Therefore, it was not different from the past appointed Senate. Tamada's argument is partly valid since most elected senators were former public

officials. However, the fully elected Senate under the 1997 Constitution was more of a political network, looking at relationships with MPs, ministers, or even local politicians, rather than a network of former bureaucrats.

In contrast to Tamada's work, Nishizaki (2019) studies the extent of political families' influence through the elected senators and party-list MPs in Thailand. It places the political families as the focal point of analysis, arguing that the elected Senate and the party-list system have "contributed to hampering good governance and democratic pluralism by tightening political families' control over Parliament". Its argument is based on the findings that many elected senators and party-list MPs exist. Furthermore, the Senate has been under the influence of various political parties. As a result, the Senate and party-list system have been an alternative means for power-sharing among political families who even pass this influence to a new generation, ensuring their families' continuity in the parliament. Nishizaki's work focuses on the nature of electoral politics in Thailand: the influence of many political families remains strong in various constituencies. So, when it comes to the election of senators under the 1997 Constitution and partisan election and appointment under the 2007 Constitution, it has become a new opportunity for political families to extend their power and influence beyond an old boundary.

Most Thai-written works on the Senate are legal-based, taking an old institutionalist approach by looking at law and constitution. Sopon (1992) studies the Senate's role in checking the executive between the 1946 and 1991 Constitutions. Pattama (2000) examines the role and authority of the Senate under the 1997 Constitution. Kiattiphoom (2007) studies the problems of the direct election of the Senate under the 1997 Constitution. Nada (2010) analysed the issues and effects resulting from the selection of senators under the 2007 Constitution. Amorn (2012) investigates the problems of the impeachment of political officeholders by the Senate. Suteera (2015) explores the appropriate method of senatorial acquisition in Thailand. Poom and Chompunoot (2014) explore the background and evolution of the Thai Senate and the acquisition of the Senate in other democratic countries to find a suitable method of senatorial acquisition in Thailand.

This thesis does not reject the legal-based approach to studying institutional change in the Thai Senate, as it also provides valuable data for

analysis. However, Thai politics does not always work formally but through informal relationships. Therefore, if such an informal relationship is also examined, the institutional change in the Senate can be fully understood.

Apart from legal-based works, one work on the Thai Senate employed a political-based approach. Sumalee (2005) examines the power relations between the Senate and the government under the 1997 Constitution. It determines whether the new power relations complied with the will of the constitution. It found that in terms of the formal aspect, the 1997 Constitution allows the Senate to play significant roles in direct and indirect scrutiny and balance the government authority. However, on the informal part, the casual relationship also substantially influences power relations between the Senate and the government.

The most recent work which helps further an understanding of the dynamics of institutional change in the Thai Senate is Korn (2014). It examines the institutional development of the Senate from 1946 to 2013 by analysing the debate in the official documents while drafting the constitution. This work provides a broad picture of how the Senate has changed, which could be an excellent starting point for this research. On the other hand, it is another legal-based work that generally focuses on the formal dimension of politics by examining laws and constitutions. Understanding Thai politics is not simply a traditional political structure but also a power relationship within the society.

Despite being limited in number, literature on the Thai Senate still sheds some light on further research, mainly on how the Thai Senate evolved both as an institution and the idea of the creation and empowerment of the upper house. However, as stated in the introduction, the institutional change in the Senate and Parliament results from frequent constitutional changes. So, attention needs to be turned to the literature on the constitution drafting process, focusing on how the Senate is designed.

2.10 Research Problems

A literature review on the Thai parliament and the Thai Senate provides a picture of how to conduct further research on the politics and institutional change in the Thai Senate. Based on the literature review found, this thesis can fill the gap regarding three critical research problems.

First, limited literature exists related to the Thai parliament and Senate. Although the legislature might not be regarded as a significant political institution for understanding the dynamics of Thai politics compared to other institutions like the monarchy or the military, an institutional change in parliament and the Senate can be understood as a shift in power relations in Thai politics. This thesis aims to shed light on that aspect by analysing the institutional change in the Senate as it has been proven to be an institution that preserves power for those who hold power to maintain the status quo. So, this thesis is also an attempt to generate more work on this issue to encourage debate and create a greater understanding of the dynamics of Thai politics.

Second, most works employ a legal-based approach in explaining the change in the Senate by analysing laws and constitutions. This thesis does not reject this approach to studying politics by looking at its formal dimension. However, this thesis aims to reflect that Thai politics also has an informal dimension through power relationships and political networks, which is crucial. This thesis then focuses on the institutional change in the Senate but alternatively attempts to explain it in a way that reflects a shift in power relationships in Thai politics.

Third, there needs to be a more systematic explanation of how the Senate has changed from 1946 to the present. However, some valuable works analyse the institutional development of the Senate. However, as stated earlier, most works employ a legal-based approach and do not analyse the issue of power relations. This thesis aims to fill this knowledge gap by providing an alternative explanation of the institutional change in the Senate in a way the formal politics (laws, constitutions) and informal politics (power relationship, political network) have been considered. In other words, this thesis tries to argue that the institutional change in the Thai Senate is a part of constitutional change that reflects the shift in power relationships in Thai politics.

2.11 Conceptual Framework

Based on the literature review, the existing theory of bicameralism might not be able to explain the Thai Senate as it neither checks and balances, representing special interests, nor improves the legislative outcomes. Instead, the power holders have employed the Thai upper to preserve its power throughout political development. Instead, the creation

and existence of the Thai Senate should be analysed in a broader context of the power struggle in Thai politics. Since the end of absolute monarchy in 1932, Thailand has had 20 constitutions and 13 successful coups. It reflects a power struggle among the *elite*: either the traditional elite (the monarchy, military, and bureaucracy) or the new elite (politicians) and the *masses* (the people). A power struggle determines “the rule of the game”, the constitution. Twenty constitutions since 1932 prove that Thailand still has not accepted the game’s rule. A constitution designs a political system and establishes political institutions, including the parliament. The choice of the parliament form – unicameral or bicameral – is decided after the rule of the game is written. After the coup, the junta established a unicameral parliament and appointed members of their network. The choice of unicameralism can be understood as a branch of the military regime that is also the “guardian of the status quo”. By contrast, bicameralism is also a choice for constitutional design. The House of Representatives represents the people in the lower house, while the Senate is designed to safeguard the political order in the upper house.

This thesis argues that the Thai Senate should be understood as the guardian of the status quo throughout the country’s political development. The design choice for a parliamentary institution – unicameralism or bicameralism – will also reflect the power struggle over who has power: the elite or the masses.

2.12 Research Hypothesis

Hypothesis 1: The evolution and the institutional change in the Thai Senate should be analysed in the broader context of Thailand's struggling democracy since 1932: 20 constitutions and 13 coups have resulted from a power struggle between the elite and the masses. The power struggle determines the constitution as "the rule of the game". A constitution designs political systems and institutions. When the constitution changes, it also changes the arrangement of political institutions, including the parliament. The change in the constitution reflects the reality in Thai politics that power relations have changed. The institutional change of the Senate is part of constitutional change, which reflects the shift in power relationships in Thai politics.

Research question 2: Why does the Thai Senate exist?

Hypothesis 2: The upper house in Thailand neither represents special interests or social classes nor improves the quality of the legislative outcome. By contrast, the Thai Senate has been “the guardian of the status quo”, a reserved domain for ‘veto powers’ to take certain political domains out of the hands of democratically elected representatives by constitutional means throughout Thailand's political development since the end of absolute monarchy in 1932. Those in power always employ the upper house as a support base to safeguard their power and influence parliamentary politics.

2.13 How does the Thai Senate fit a theory of democracy?

Along with the argument that the Thai Senate has been the “guardian of the status quo” throughout Thailand’s political development, this thesis will apply the concept of embedded and defective democracy developed by Merkel (2004) to analyse further the drafting of a constitution and the institutional design of the Thai Senate in a broad picture of a theory of democracy.

Merkel (2004) explains that embedded democracy *"follows the idea that stable constitutional democracies are embedded in two ways. Internally, the specific interdependence/independence of the different partial regimes of a democracy secures its normative and functional existence. Externally, these partial regimes are embedded in spheres of enabling conditions for democracy that protect it from outer and inner shocks and destabilizing tendencies."*

Embedded democracy has three dimensions: vertical legitimacy, Liberal constitutionalism and the rule of law and effective agenda control. It comprises five critical partial regimes: electoral regime, political rights, civil rights, horizontal accountability, and effective power to govern.

Table 2.8 Dimensions, Partial Regimes and Criteria for Embedded Democracy

Dimensions	Partial Regimes	Criteria
Vertical legitimacy	Electoral regime	Elected officials
		Inclusive suffrage
		Right to candidacy

	Political rights	Correctly organised, free and fair elections
		Press freedom
		Freedom of association
Liberal constitutionalism and the rule of law	Civil rights	Individual liberties from violations of own rights by state/private agents
		Equality before the law
	Horizontal accountability	Horizontal separation of powers
Effective agenda control	Effective power to rule	Elected officials with the effective right to rule

Source: (Merkel, 2004: 33-58)

In contrast, if any partial regimes of embedded democracy are damaged in a way that changes the logic of constitutional democracy, it is called a defective democracy. Merkel (2004) defines defective democracies as “*democracies in which the partial regimes are no longer mutually embedded, the logic of a constitutional democracy becoming disrupted.*” There are four types of defective democracies: Exclusive Democracy, Domain Democracy, Illiberal Democracy and Delegative Democracy

Table 2.9 Types of Defective Democracy

Types	Characteristics
Exclusive Democracy	One or more segments of all adult citizens are excluded from the civil right of universal suffrage.
Domain Democracy	The 'veto powers', such as the military, guerillas, militia, entrepreneurs, landlords or multi-national corporations, take certain political domains out of the hands of democratically elected representatives by constitutional or extra-constitutional means.
Illiberal Democracy	The incomplete and damaged constitutional state. The executive and legislative control of the state are only weak by the judiciary. Constitutional norms have little binding impact on government actions, and individual civil

	rights are either partially suspended or not yet established.
Delegative Democracy	The legislature and the judiciary have only limited control over the executive branch. Actions of government are seldom committed to constitutional norms. Checks and balances are undermined.

Source: (Merkel, 2004: 33-58)

Chapter 3

The Senate of Thailand in a Historical Perspective (1932-2000)

The 1932 Siamese Revolution began modern Thai political history, transforming the absolute monarchy into a constitutional monarchy. Bicameralism was not implemented immediately. The first two constitutions promulgated in 1932 established the unicameral parliament known as the House of Representatives with two types of members: elected MPs and appointed MPs. With the third constitution in 1946, bicameralism was introduced as a parliament consisting of the House of Representatives and Senate. However, the development of bicameralism in Thailand has remained the same. There have been many coups and rebellions, consistent abolishment of the constitution and promulgation of a new constitution. The latter has occurred so often that it can be said to be a "pattern" of a Thai political realm in which democracy is not yet 'the only game in town'. The Thai parliament alternates between unicameral and bicameral and between elected and appointed members.

This chapter explores the historical context of the development of the Senate in Thailand, starting from the 1932 Siamese Revolution until before the promulgation of the 1997 constitution when the Thai parliament was bicameral. It studies the institutional design and the reality of the Senate in different stages, which appeared in 7 constitutions: the 1946 Constitution (1946-1947), The 1947 Provisional Constitution (1947-1949), the 1949 Constitution (1949-1951), the 1968 Constitution (1968-1971), the 1974 constitution (1974-1976), the 1978 constitution (1978 -1991), and the 1991 Constitution (1991-1997). This chapter aims to provide a "big picture" of how the Senate has evolved as the guardian of the status quo in Thai political history. Furthermore, it will argue that Thai politics before 1997 was not an 'embedded democracy' as it was frequently interrupted by military coups. The Senate was designed to be a reserved domain for power holders, especially the military, and created a defective instead.

3.1 The Early Years of Thai Democracy (1932-1957)

3.1.1 Setting the Rule of the Game: The 1932 Provisional Constitution

The Siamese Revolution of 1932

The modern political history of Thailand began on 24 June 1932, when a group of young civilian and military officers known as *Khana Ratsadon* or the People's Party staged a coup⁵ against King Prajadhipok (Rama VII) that ended the absolute monarchy. This event is known as the Siamese Revolution of 1932. Its first announcement, drafted by Pridi Banomyong, states that:

"it [The People's Party] must establish a government by an assembly so that many minds can debate and contribute, which is better than just one mind. As for the head of state of the country, the People's Party has no wish to snatch the throne. Hence, it invites this king to retain the position. But he must be under the law of the constitution for governing the country and cannot do anything independently without the approval of the assembly of people's representatives."

Three days after the revolution, King Prajadhipok returned to Bangkok and agreed to be a constitutional monarch, endorsing the 1932 provisional constitution, which Pridi Banomyong drafted. This constitution established a fundamental principle in the new regime: sovereignty belongs to the people, as demonstrated in Article 1.

The 1932 Provisional Constitution created a unicameral legislature, *Sapa Pootaen Ratsadon* or the House of Representatives. The composition of the House of Representatives was divided into three phases.

Phase 1: The People's Party appointed 70 persons as provisional MPs

Phase 2: Within six months, or when the country returns to normal, the Assembly consists of 2 types of membership: type-1 (elected MPs) and type-2 (appointed MPs)

Phase 3: When more than half of the population has passed an elementary education, or within ten years at the latest, the type-2 membership would be abolished

Of the first 70 MPs appointed by the People's Party, 33 were members, 32 were senior bureaucrats, and 5 were non-bureaucrats.

⁵ The event of 24 June 1932 might also be explained as a "breakthrough coup". Huntington (1968: 207) defines it as a coup in which the military overthrows an existing regime to inaugurate a new bureaucratic elite in power.

Therefore, the appointment of these MPs could be viewed as an attempt to compromise by the People's Party (Nakharin, 2010: 313).

Table 3.1 The 70 Appointed MPs in the House of Representatives

Clique	Number
The People's Party	33
Senior bureaucrats	32
Non-bureaucrats	5
Total	70

Source : (Nakharin, 2010: 313)

Table 3.2 The House of Representatives, 1932-1933

Type	Period	Acquisition	Number
Unicameral	1932-1933	appointed	70 (56 or 78.5% military reserve domain)

Source: (Chambers, 2013: 125)

3.1.2 Setting the Rules of the Game: The 1932 Constitution

The House of Representatives opened its first meeting on 28 June 1932. At that meeting, the House chose Phraya Mano Pakorn Nititada⁶ as the Chairman of the Committee of the People, de facto the first Thai prime minister. Also, in that meeting, Pridi Banomyong proposed establishing a sub-committee to draft a new 'permanent' constitution' because the provisional constitution had been urgently drafted and might have some faults. Accordingly, the House of Representatives appointed a 7-member sub-committee to draft a new constitution, with Phraya Mano as the chairman and Pridi also a member (The Secretariat of the House of the Representatives, 1932a: 11, 13-14). Then, on 23 September 1932, two additional committee members were appointed (The Secretariat of the House of the Representatives, 1932b: 270).

A draft constitution was presented to the House of Representatives on 16 November 1932. This draft constitution signalled a compromise between King Prajadhipok and the People's Party. Phraya Mano stated: *"..in drafting this constitution, the sub-committee communicated with the king*

⁶ the People's Party viewed Phraya Mano Pakorn Nititada as a progressive senior aristocrat in the old regime. See Nakharin (2010: 334)

throughout, to the point where it could be said that it was a collaborative process. As a result, the draft proposed here has been submitted for royal approval on every point. And to say the king approved does not mean he approved the content. It was more than that. The king was very pleased with the draft." (Baker & Pasuk, 2000: 160)

The legislature under the draft was the same as in the provisional constitution. The parliament, known as the House of Representatives, was unicameral and consisted of two types of membership: type-1 members (elected MPs) and type-2 members (appointed MPs). The form of parliament has been a long-running debate among the sub-committee members. As reasoning behind a choice of a unicameral legislature, Phraya Mano stated to the House, *"When we [the drafters] had considered thoroughly, we were drafting a new constitution, and there is no tradition to force us. The affairs can be carried out quickly under unicameralism. But bicameralism is different as it might take too long. I have observed some countries that have a bicameral legislature. The affairs are carried out slowly. In some countries, the main reason to have bicameralism is because of tradition. However, the recently emerging constitutions employ unicameralism. So, we agreed to employ unicameralism as in the provisional constitution."* (The Secretariat of the House of Representatives, 1932c: 360)

The reason for establishing the type-2 membership can be learned from Pridi Banomyong's statement to the House, which deemed it is necessary to have the type-2 members as *Phi Liang* (mentor), a 'guardian', to protect the people's interests since a lot of Thai people were not educated sufficiently yet: *"To have type-2 members does not mean to maintain power. It is a misunderstanding. Some claim that we want to be dictators, which is not true. The necessity to appoint type-2 members for half the assembly is to help the elected members of the Assembly of People's Representatives in the early period of the constitutional regime. **We all know that many people are not educated sufficiently to protect their interests. If we let these people elect their representatives alone, it will cause a disaster for them.** Because the candidate might be wealthy, these insufficiently educated people might think that the rich aim to protect the people's interests, but ultimately, they might only care about their interests. The People's Party swears that if the people are fully educated, we will let them rule themselves without having*

type-2 members. So, we determined that once half the eligible voters have passed elementary education, this transitory provision will be abolished immediately. Even within ten years, if less than half of the eligible voters pass elementary education, this transitory provision will be abolished. The People's Party hopes to provide full education for the people. Please understand that type-2 members are similar to Phi Liang and support affairs following the constitution and will be the real protectors of people's interests, regardless of whether they are rich or poor, which was an objective of the People's Party when we changed the system of government. " (The Secretariat of the House of Representatives, 1932d: 549-551)

Table 3.3 The House of Representatives, 1933 – 1946

Type	Period	Acquisition	Number of MPs
Unicameral	1933 - 1937	78 elected by eligible voters / 78 appointed	150 (50 or 64.1% military reserve domain of the appointed)
Unicameral	1937 - 1946	91 elected by eligible voters / 91 appointed	182 (58 or 63.7% military reserve domain of the appointed)

Source: (Chambers, 2013: 125).

3.1.3 The Counter-Revolution

After the promulgation of the 1932 constitution, the new regime still faced many problems, especially regarding approaches to solving economic problems and conflict among the new regime's leaders and a group that remained loyal to their lords and opposed the new rule. A critical case involves an economic project proposed by Pridi Banomyong, which met strong opposition for being inclined toward communism. On 1 April 1933, the Phraya Manopakorn government issued a royal decree to close the House of Representatives and suspend specific constitutional provisions. It can be regarded as the first coup as it allowed executives—the prime minister with absolute power—to run the country without the House of

Representatives. Additionally, the government issued a royal decree on communist actions, causing Pridi to flee the country. Then, on 20 June 1933, Phraya Phahonphonphayuhasena staged another coup to revive the constitution and the House of Representatives (Suthachai, 2008: 33-34).

After the coup by Phraya Phaholpolphayuhasena, Pridi was summoned to return to the country. However, this created dissatisfaction among royalists and conservative military officers. Later, on 11 October 1933, in what is now known as Boworadet Rebellion, an anti-People's Party militia calling themselves the "National Salvation Group", gathered forces at Nakhon Ratchasima to bring an army to surround Bangkok with Prince Boworadet as the leader. In the end, with Plaek Phibunsongkhram as commander, the party was able to recover the city. As a result, the People's Party held even more power, while the royalists lost their role and were heavily suppressed (Suthachai, 2008: 37).

After the Rebellion, more intense conflicts existed between the People's Party and King Prajadhipok. Selecting type-2 members was one factor in the 'uneasy relationship' between the monarch and the People's Party. King Prajadhipok demanded that the government provide him with a list of names, and he would select the candidates himself. However, for the People's Party, selecting the type-2 members was a 'non-negotiable' issue and allowing the king to choose 'denied their political and ideological interpretation of constitutional monarchy (Suthachai, 2008: 37).

When his demands were unmet, King Prajadhipok announced his abdication on March 2, 1935. In his abdication statement, King Prajadhipok also mentions the appointment of the type-2 members

"The permanent Constitution was an improvement, owing to representations I made, but still one-half of the membership of the Assembly I appointed. I agreed to have two categories of members in the hope that the second category members, whom I was to appoint, would be chosen freely from those with ability and experience in government administration, without regard to their party affiliation, so that they might assist and guide the elected members. But when the time came to appoint second-category members, I had no voice in their selection, and the government chose practically all from among its supporters, regardless of experience. I am willing to surrender the powers I formerly exercised to the people as a

whole, but I am not willing to turn them over to any individual or any group to use in an autocratic manner without heeding the voice of the people” (Suthachai, 2008: 37)

After King Prajadhipok abdicated the throne, the government and the House of Representatives invited Prince Ananda Mahidol to become the new king. However, because King Ananda Mahidol was studying in Switzerland and was still young and unable to perform his duties as a king, the House of Representatives has therefore appointed a panel of regents consisting of 3 people, including Prince Oscar Anuvatana, Prince Aditya Dibabha, and Chao Phraya Yomarath (Pan Sukhum) (Prasert, 1974: 181)

Afterwards, the House of Representatives resolved to appoint a regency, which was later sworn in on March 24, 1934. However, Prince Oscar Anuvatana, the President of the Council of Regency, committed suicide on 20 August 1935 after being pressured by the royal family because of political problems within the royal court. The House of Representatives passed a resolution to appoint Chao Phraya Bijayendra Yodhin as the new regent and appointed Prince Aditya Dibabha as the Chairman of the Council of Regency. Prince Aditya Dibabha supported constitutional monarchy and smooth relations between the monarchy, the government, and the House of Representatives (Prasert, 1974: 206; Suthachai, 2008: 206).

3.1.4 The Rise of Phibun World War II

After Phraya Phaholphonphayusana announced that he would not accept the position of Prime Minister after the elections of 12 November 1938, Phibun became prime minister. Phibun was a key leader of the People's Party military group who played a crucial role in cracking down on the Boworadet Rebellion. Phibun's rise to power was more likely to lead to militarism, coupled with fascism in Italy, Japan, and Germany, which was rooted in nationalism and militarism. Phibun believed in having absolute power to build a nation under a strong leader. Examples of critical nationalist policies during the Phibun government include changing the country's name from Siam to Thailand and composing a new national anthem (Prasert, 1974: 206).

The Pacific War erupted in December 1941 and completely changed the status of the Phibun government. When the Japanese Army landed in Thailand, the Thai army was forced to allow the Japanese to move through

Thailand to attack British Malaya and Burma. The Japanese offensive was the first step for the Phibun government to ally with Japan. Later, on January 25, 1942, the Phibun government declared war on the United Kingdom and the United States. Cooperation with Japan allowed Phibun to exercise dictatorial power (Suthachai, 2008: 46-47).

However, the expansion of Phibun's power and influence during World War II did not occur without challenge. Pridi Banomyong was appointed a regent between 1941 and 1944 after being sacked from the Phibun government as finance minister. Pridi organised an underground resistance group called the "Free Thai Movement". With World War II almost ending, Phibun resigned from the premiership in August 1944. Khuang Aphaiwong became the new Prime Minister and remained in office until August 1945. He was then succeeded by Thawi Bunyaket, followed by Seni Pramroj, a former Thai ambassador to the United States who remained in office until January 1946. During this period of civilian premiership, apart from reviving the country, one of the most important tasks was to draft a new constitution that paved the way for a transition to parliamentary politics (Puli, 2020: 159-169).

3.1.5 Setting the Rules of the Game: The 1946 Constitution

The drafting process of the 1946 constitution can be learned from its preamble, which shows the consensus and cooperation among civilian leaders and its aim for a transition to parliamentary democracy. The regent Pridi Banomyong advised the prime minister Khuang Aphaiwong that *"although the democratic constitutional government had brought progress to the country in many different ways, and the people were truly grateful for the benefits of this system of government, public affairs had changed considerably. Hence, it was time to abolish the temporary section of the constitution and amend it"*. The special commission was appointed and worked through the government of Khuang Aphaiwong, Thawi Bunyaket, and Seni Pramroj (Baker & Pasuk, 2000: 162-163). The new constitution was finally promulgated in May 1946.

The 1946 Constitution was drafted based on seven fundamental principles introduced by Pridi Banomyong, including:

- Abolition of the type-2 MPs

- Abolition of the provision that states that royalty must be above politics
- A bicameral parliament consisting of the Senate and the House of Representatives
- A Senate consisting of senators whom the people indirectly elect
- A House of Representatives consisting of members elected by the people
- Cabinet appointments made by The King that must be co-countersigned by the Speaker of the House of Representatives and the President of the Senate
- Prime Minister and ministers are not required to be members of Parliament, and Ministers, members of the House of Representatives, and senators must not be active civil servants (The Secretariat of the Cabinet, 1945, cited in Prachan, 1977: 219)

At the end of World War II, Pridi tried to reconcile with the royal family and royalists by pushing for the return of dignity to political prisoners such as Prince Rangsit and the pardon of royalists who had been counter-revolutionary rebels. Shortly after World War II, King Ananda Mahidol appointed Pridi as an elder statesman and signed the 1946 constitution, reflecting a new political convention and its acceptance as a constitutional monarch (Nattapoll, 2013: 117).

Pridi attempted to create consensus among the Thai elite with a proposal to draft a new constitution, which was the origin of the 1946 constitution. Seni Pramoj's younger brother, an aspiring royal politician, was appointed secretary. Later, when Pridi took office as Prime Minister on 24 March 1946, the Constitution Drafting Committee elected Phra ya Manavarajsevi as committee chairman instead. It could be said that the 1946 constitution was drafted in an atmosphere of compromise between royalists and the royal court, and the political party led by Pridi Banomyong, along with two Pramoj siblings as its co-founders (Asa, 2021: 8).

3.1.6 The Senate under the 1946 Constitution

Designing the Senate

The parliament under the 1946 Constitution was bicameral, consisting of *Sapha Pootaen Ratsadon*, or the House of Representatives, and *Phruettha Sapha*, or the Senate. The idea for establishing the Senate can be found in the statement of the special commission on drafting the new constitution. Thongplew Chonlaphum, a former student of Pridi and his long-time supporter, stated in the Assembly on 25 February 1946 that it was necessary to have the upper house because the Senate could act as a ‘buffer’ between the king and the House to prevent further conflict.

“When we abolish the type-2 members and have a unicameral house, it might be dangerous. So, we should have a guarantee for the country. In particular, Thailand is a constitutional monarchy where the king is the head of state. In the case of unicameralism, there may be a conflict between the king and the House, such as in the case of King Prajadhipok, who vetoed the bills but was overridden by the House, later causing the king to abdicate. Moreover, if the king cannot abdicate every year and if such an event occurs, I am very concerned and worried that it will be hard to find a Chakri king because nobody will want to take the throne if he takes the throne. Still, the parliament overrides him, and he must abdicate. Our country is a constitutional monarchy, so we should have a tool to be a “buffer” between the House of Representatives and the king. We don’t want any conflict that would damage the king’s honour and cause the king regret at some point, which might cause a big political problem. So, we think that the Senate would be the first buffer.” (The Secretariat of the House of Representatives, 1946a: 12)

Other commissioners also claimed that type-2 membership had been abolished. Phraya Manovarajsevi stated, *“... Principally, having two membership types is not unicameralism. It is bicameralism but in the form of unicameralism. A guarantee is in place for the type-2 members. Once we abolish such a guarantee, we don’t have any other guarantee but bicameralism.”* (The Secretariat of the House of Representatives, 1946a: 29) Chao Phraya Sri Dharmadibes also added that if there is no such ‘guarantee’ once the type-2 membership is abolished, it would be chaotic. *‘You should sympathise with them (the People’s Party) that, in the first place, they must guarantee that the constitution will work well, and it is right to have type-2 members. The type-2 members are Phi Liang (mentors). They are tired people, so they must be guaranteed to stay (in power) for ten*

years. As you can see, even though type-2 members were ‘the Promoters’ in the House to control it, 1933 was chaotic. And if there is no type-2 membership and no guarantee, think how chaotic it would be.’ (The Secretariat of the House of Representatives, 1946: 36)

The institutional design of the Senate’s role and power in the 1946 constitution saw a political struggle between Pridi Banomyong and the Democrat Party. First, the original draft constitution states that the Senate and the House of Representatives should be able to scrutinise the state affairs administration. The Democrats wanted to eliminate such power from the Senate; however, after an equal number of votes each way, the House Speaker voted to retain the original draft (The Secretariat of the House of Representatives, 1946b). Second, Pridi’s supporters proposed that the Senate should have the power to vote for a no-confidence motion. Again, there was an equal number of votes, and the House Speaker voted to retain the original draft, stating that this power was reserved for the House of Representatives (The Secretariat of the House of Representatives, 1946c). Third, the original draft constitution noted that the government must address the policy statement before taking office with a vote of confidence in the parliament. The Democrats proposed to eliminate such power from the Senate, but, in the end, a majority favoured the original draft constitution (The Secretariat of the House of Representatives, 1946b)

These three controversial issues on the role and power of the Senate demonstrate Pridi’s victory over Democrats and an attempt by his side to establish the Senate as its political support base. Eventually, the House of Representatives voted 165-1 to approve the new 1946 Constitution (The Secretariat of the House of Representatives, 1946b). This overwhelming result shows a consensus among the civilian leaders to compete in parliamentary politics. But what cannot be overlooked is that despite this success, the Democrats and conservatives were not entirely satisfied with the new constitution.

What can be seen in the 1946 Constitution is that the idea of *Phi Liang* still exists, though, in that version, alongside the terms ‘guarantee’ and ‘buffer’. The institutional design of the Senate in the 1946 Constitution drafting process also shows a political struggle between Pridi’s faction and the Democrat Party. Pridi-affiliated parties wanted to use the Senate as a political support base. On the other hand, the Democrat Party, as an agent

of conservative forces in parliamentary politics, attempted to limit the Senate's power so that it would not benefit Pridi-affiliated parties as much. Pridi's faction, however, eventually won in determining the role and power of the Senate. It was the first cleavage among civilian leaders, and Democrats were dissatisfied with these 'rules of the game'. In sum, the 1946 Constitution was a victory for Pridi Banomyong, particularly in establishing the Senate. On the other side, the conservatives and the Democrats were not pleased with the new constitution, especially the role and power of the Senate. This dissatisfaction would be exacerbated later in the 1946 Senate Election.

The promulgation of the 1946 constitution changed the Thai political landscape by shifting the power relationship from the military to civilians. Parliamentary politics began when the constitution was enacted. Pridi Banomyong explains, *"After the promulgation of the full democracy constitution of 9 May 1946, which the People's Party held fulfilled the duty announced to the people on 24 June 1932, the People's Party dissolved itself. The promoters and People's Party members parted company to undertake their activities. One group went into personal businesses not connected with politics. Another group, who preferred to serve the nation through politics, entered various parties to each person's vision. For instance, Khuang Aphaiwong and friends joined the Democrat Party; Thawan Thamrongnawasawat and friends entered the Constitutionalist Party; Sanguan Tularak and friends entered the Sahachip (Unionist) Party; and so on. I joined no party."* (Baker & Pasuk, 2000: 164)

Composition and Power

Under the 1946 Constitution, the Senate consisted of 80 senators whom the people indirectly elected. Although senators were indirectly elected, the transitory provision of the 1946 Constitution stated that in the initial period, the senators would be selected by the *"Senate Election Organisation"*, consisting of the existing members of the House of Representatives before the promulgation of the 1946 Constitution (The Royal Thai Government Gazette, 1946). In addition, the senators were required to be active bureaucrats with at least a bachelor's degree or equivalent or serve as heads of a division while being bureaucrats or former MPs.

On legislative power, the Senate had the power to review legislation. The senators could not vote no-confidence in the government but could jointly vote on the government policy statement with the MPs. In addition, the senators could question cabinet ministers.

Also, the Senate President and the Speaker of the House of Representatives jointly countersigned the royal command of the prime minister's appointment (The Royal Thai Government Gazette, 1946).

Significance of the Senate

The 1946 Senate Election

The House of Representatives at that time was dominated by Pridi's faction⁷. After a by-election in August 1946, Pridi's side had three-quarters of the eighty-two seats, while the Democrat Party held only fifteen per cent (Ferrara, 2015: 128). Moreover, Pridi became prime minister in March 1946. Therefore, the result of the Senate election was foreseeable.

Table 3.4 The Result of the 1946 Senate Election

Affiliation	Number of Senators
The People's Party	42*
Sahachip Party	19
Constitutional Front Party	18
Independent Party	1
Total number of senators	80

Source: (Suthachai, 2010: 421-422)

Unsurprisingly, the result of the Senate election showed a victory for Pridi's faction. The total number of senators was eighty; seventy-nine were Pridi supporters, including Pridi himself. Only one candidate from the Democrat Party was elected. It is noteworthy that Pridi's supporters were elected senators, and it could be said that the type-2 MPs helped elect each other as senators. It was interpreted as Pridi's means of increasing his supporters. However, it may not have been necessary to do that much because there was already strength from the elected MPs in the House of

⁷ Namely Sahachip Party, a party formed by Pridi supporters who were former members of Free Thai Movement and the Constitutional Front, a party formed by Pridi's follower Thawan Thamrongnawaswat.

Representatives (Suthachai, 2010: 421-422; Wilson, 1962: 207-208; Ferrara, 2015: 127).

The election result shows that all the candidates from the list of three parties were elected senators. However, among the elected senators, only one was from the Democrat Party list (Leng Srisomwong) and a member of the People's Party. Notably, five elected senators were the People's Party members from Phibun's clique (Suthachai, 2010: 54-55). The reaction to the Senate election between Pridi Banomyong and the Democrat Party differed significantly. The Democrat Party response was aggressive and furious. Seni Pramoj wrote, "*The result of the 80-senator election shows an absolute victory of Pridi's associates. A good person like Chao Phraya Sri Dharmadhibes, who was on the Khuang Aphaiwong's list, failed to get elected as he was listed as the 81st. On the other hand, the war criminal, war millionaire, peace millionaire, a person who used to row for Pridi, and even the Promoters thrown away by history were elected senators. The election result was miraculous, so the people condemned this Senate. Some named it Phruesap Sapha⁸, which means the assembly of buffaloes*" (Seni, 1968: 84). In addition, Seni claimed that Leng Srisomwong, the only elected senator from the Democrat Party list, did not know in advance that he would be selected as a senator. He quit after just a few days and did not attend meetings (Seni, 1966: 179). Seni also revealed that Chao Phraya Sri Dharmadhibes, one of the leading figures of the royalist group, was very angry with Pridi's associates. He felt that he was 'dishonoured' after coming in 81st place despite being a senior with experience who held the title of *Chao Phraya* (Suthachai, 2010: 55). This reaction was an early breaking point between the Democrat Party and the Pridi faction, which could not compromise within parliamentary politics (Sorasak, 1988: 234).

Pridi seemed to be aware of the Democrats' reaction. He wrote, "*The result of the (Senate) election shows that all the candidates from the Democrat Party's list lost. Thus, it caused the losers to feel resentful and ashamed because they assured election to those high-ranked nobles and blamed the electors they electing the wrong candidates instead of choosing Chao Phraya, Phraya, Phra, etc.*" He also revealed a political tactic among his affiliated parties before the Senate election: "*Sahachip Party, Constitutional Front Party, and the Independent Party separately made a*

⁸ The Senate under the 1946 Constitution was known in Thai as *Phruettha Sapha*.

list of candidates just a few days before the election date. These three parties knew the strategy of the Democrat Party because Democrat members told them. So, these three parties urgently consulted each other and made one list of candidates”. (Pridi, 1976: 30)

Apart from the result of the Senate election, the role of the Senate provided additional evidence to confirm that the Senate was employed as a political support base for the Pridi government. During the seventeen months under the 1946 Constitution, the Senate considered 65 bills and approved 62. Among these bills, 56 were proposed by the Pridi government, and most were approved quickly by the Senate with little debate and unanimous votes (Tweepong, 1987). The consideration of the annual budget bill was similar to that of the other bills. A few senators debated against the 1946 yearly budget bill until they were persuaded to ‘conform’ to the government's will (The Secretariat of the Senate, 1946a: 360-384). The same occurred with the 1947 annual budget bill (The Secretariat of the Senate, 1946b: 563-582).

Table 3.5 The Senate of Thailand, 1946-1947

Parliamentary Form	Period	Acquisition	Number of Senators
Bicameral	1946-1947 (terminated by the 1947 Coup)	Indirectly elected by the House of Representatives	80 (42.5% being ex-military)

Source: (Chambers, 2009: 9)

3.1.7 Setting the Rules of the Game: A Coup and the 1947 Provisional Constitution

After the Senate election, Pridi Banomyong seemed to have strong and stable political support in the parliament since his affiliated parties dominated the House of Representatives and the Senate. However, the situation suddenly changed on 9 June 1946. King Ananda Mahidol was found shot dead in the royal palace. His younger brother, 20-year-old Prince Bhumibol, was crowned the new king as King Bhumibol Adulyadej (Rama IX). The Pridi government was blamed by its rival for incompetence as it could not explain the King’s death clearly. The conservatives saw this incident as an opportunity to bring down Pridi and his faction by attacking

Pridi through the media. The situation worsened when Pridi censored the press, which criticised his government. After heavy pressure, Pridi stepped down on 22 August 1946. Thawan Thamrongnawasawat succeeded Pridi as the new premier (Suthachai, 2008: 63).

However, the Thawan government was also under heavy pressure from the conservatives and lasted only a year. Eventually, it was ousted by the coup on 9 November 1947, which was described as a '*counter-revolutionary measure motivated by reactionary forces who had never accepted the revolutionary overthrow of 24 June 1932*' (Ferrara, 2015: 132). The coup of 1947 marked the end of the alliance formed during World War II. However, it also created a new alliance between the king, the royalists, the Democrat Party and a group of military officers who had lost power in the post-war era (Nattapoll, 2013: 165-166).

The junta, led by former Phibun subordinate Phin Choonhavan, revoked the 1946 Constitution and promulgated the 1947 Provisional Constitution⁹. Democrat Party leader Khuang Aphaiwong was appointed as an interim prime minister. The enactment of the 1947 provisional constitution was controversial since there were two regents at that time: Prince Rangsit and Phraya Manovarajsevi. Only Prince Rangsit signed the interim constitution. The latter did not sign, instead fleeing from his home on the day of the coup (Suchin, 1973: 72). Royalists, such as Seni Pramoj and Kukrit Pramoj, also played a crucial role in drafting this constitution (Kobkua, 2003: 223).

3.1.8 The Senate under the 1947 Provisional Constitution

Designing the Senate

According to the 1947 Provisional Constitution, the parliament was to be a bicameral system consisting of the House of Representatives and the Senate, with the senators appointed by the King. In total, there was the same number of MPs. In addition, the transitory provisions stipulated that in the

⁹ Edwin Stanton, the U.S. Ambassador to Thailand (1947-1953), noted that this constitution "came to be known as the "water-jar" constitution, because Colonel Luang Kach (Kat Katsongkram), the most active figure in these events, had kept it hidden in a large red earthenware water jar." See Stanton (1957: 209)

initial term, senators would be appointed by the King within 15 days from the date of promulgation of the Constitution. If it was necessary to have a meeting of the Senate, it could do so. In this case, the Senate would have the powers and duties of the parliament until the election of members of the House of Representatives (The Royal Thai Government Gazette, 1947a).

Composition and Power

Under the 1947 Provisional Constitution, the King had the power to ‘select’ and appoint the senators, with appointments made within 15 days after the promulgation of the constitution. The number of senators was equal to the number of MPs; no provision prohibited an active civil servant from becoming a senator, and the senatorial term was six years. However, when the term reached three years, half of the senators had to draw a lot to be replaced.

On legislative power, a senator could propose and approve an annual budget bill, apart from legislation review. However, the Senate had no power to call for a censure debate or to vote no-confidence in the government. Still, the senators could jointly vote no-confidence with the MPs when the government stated its policy to the parliament (The Royal Thai Government Gazette, 1947a; Kobkua, 2003: 223).

In reality, the 1947 Provisional Constitution provided the King with a Supreme Council of State, which acted as His Majesty’s advisers and Regents for the first time. Furthermore, to accommodate the court party's and the royalists' desires, the constitution further endowed the king with the right to nominate senators, also countersigned by the Prime Minister. With such political power, the regent Prince Rangsit was able to appoint those who supported the cause of the monarchy in its relation with the executive and the lower house and thus ensured that the new Constitution would reflect the royalist ideology of the constitutional monarchy (Koblua, 2003: 238).

The new senators were appointed on 22 November 1947. Although the King had the power to select the senators formally, King Bhumibol was not in the country then. Instead, the “Supreme Council of State”, consisting of five members, acted as a council of regency, thereby taking control of the appointments. Of the hundred newly-appointed senators, most were

conservatives and royalists. More specifically, 77 were senior aristocrats in the old regime, and 10 were royals (Suthachai, 2010: 430-433). Sithiporn Kridakara, the Agriculture Minister in the Khuang government (1947-1948), revealed that during the process of selection, Khuang “*cooperated closely with the Supreme Council of State chaired by Prince Rangsit*” and was “*careful not to let ‘pseudo-democracy’ occur again.*” (Khuang, 1968: 87-88) It can be implied that Khuang referred to the 1946 Senate election in which Pridi’s faction was mainly appointed. Prince Rangsit, a member of the Supreme Council of State, which acted as a council of regency, refused to appoint all but eight of the junta’s nominees but instead appointed mostly princes and businesspeople close to the palace as senators (Chambers, 2013: 142).

Table 3.6 The Appointment of Senators under the 1947 Provisional Constitution

Faction	Number of Senators
Senior aristocrats in the old regime	77
Royalty	10
Others	11

Source: (Suthachai, 2010: 430-431)

Notably, the list of senators appointed on 22 November 1947 did not match the list of senators proposed by the junta. According to the junta’s list, the Senate should mainly have consisted of the junta’s members and bureaucrats. Only 18 persons would be royal. However, as seen from the official appointment, most appointed senators were conservatives and royalty. It can be implied that Khuang attempted to show that he was not a ‘puppet’ for the junta, although the junta appointed him as prime minister (Suthachai, 2010: 432-433).

Table 3.7 List of the proposed senators by the military junta

Faction	Number of Senators
Members of the junta	33
Royalty	18
Aristocrats / Bureaucrats	44
Merchants	4

Source: (Suthachai, 2010: 432-433)

Table 3.8 The Senate of Thailand, 1947-1951

Parliamentary Form	Period	Acquisition	Number of Senators
Bicameral	1947 – 1951 (terminated by the 1951 Coup)	Appointed	100 (35, or 35% ex-military)

Source: (Chambers, 2009: 9)

The Significance of the Senate

The appointment of the Senate in 1947 saw a shift in the power relationships in Thailand. In particular, the 1947 coup, jointly supported by the royalists and the military, marked an end to the political domination of the People's Party, which had monopolised power since 1932. The appointment of senators in 1947 was an attempt to revive the power and influence of the royalists, who had lost this privilege because of the 1932 revolution.

Since there was no lower house then, the 1947 provisional constitution granted the Senate the power to *act as parliament* until the general election. Then, the royalist-dominated Senate could play a vital role in setting up the Constitution Drafting Assembly to write a new constitution 'based on their ideology and political imagination'. The Senate then proposed two constitutional amendments. The first amendment, promulgated on 5 December 1947, was on the electoral constituency and the minimum age of the MP candidates, raising it to thirty-five years old (The Royal Thai Government Gazette, 1947b). The second amendment, promulgated on 23 January 1948, provided regulations for establishing the Constitution Drafting Assembly to draft a new constitution (The Royal Thai Government Gazette, 1948; Somchai, 2018: 235-236, 293-295; Nattapoll, 2013 45-49).

After senatorial appointments in November 1947, a new election was called in January 1948. The Democrat Party won this election and kept Khuang Aphaiwong as premier. However, this time was different. Khuang could claim his legitimacy as the elected prime minister, and the Democrats' power was strengthened. Having seen Khuang and the conservatives' power more secured, on 6 April 1948, Khuang was forced by the military to resign. Phibun returned to power for the second time after Khuang's "hijacked" resignation (Ferrara, 2015: 132-133). As such, the role of the Senate under

the 1947 provisional Constitution can be divided into two periods: before and after Khuang's "hijacked" resignation.

During the five months before Khuang was forced to resign (10 November 1947 – 6 April 1948), the Senate considered three bills, all proposed by the government. The senators mostly agreed with little debate and quickly approved the bills in three consecutive readings without revisions. The senators never questioned any cabinet ministers. The role of the Senate was significantly different after Khuang was forced to resign and Phibun became premier a second time (6 April – 23 June 1948). The Senate considered thirteen bills, eleven proposed by the cabinet and two proposed by MPs. Among these bills, seven were approved, and four were rejected, including the annual budget bill. In this period, the Senate scrutinised the bills strictly and slowly. Although the Senate rejected some bills, the House of Representatives eventually voted to override and pass those bills (Krich, 1973: 76, 84). It demonstrates how, after Khuang was forced to resign, the role of the Senate was in apparent conflict, with the appointed senators on one side and Phibun on the other. The senators were displeased at how Phibun had returned to power.

On the other hand, Phibun and the junta knew they could not manipulate and use the Senate as a support base. For this reason, they attempted in every way to strengthen their power, including threatening to jail individuals on rebellion charges, killing four former ministers from the northeast who had been Pridi followers (Tweepong, 1987: 132), and giving money and political positions to MPs who split from the Democrat Party to join the Phibun government (Suchin, 1973: 158). As a result, within a few months, Phibun gained considerable support in the House of Representatives, as 75 out of 100 MPs changed loyalties to support Phibun despite having no support from the Senate (Jesda, 1974: 73).

3.1.9 Setting the Rule of the Game: The 1949 Constitution

Following the second amendment of the 1947 Provisional Constitution, the Constitution Drafting Assembly (CDA), consisting of 40 members, was established to draft a new constitution. The election of this CDA took place on 7 July 1948. Unsurprisingly, the Assembly was dominated by the royalists, with more than half of the Assembly members comprising senior aristocrats and royalty. Prominent drafters included

former prime minister Seni Pramoj, the senior judge Chao Phraya Sri Dharmadibes, and Phraya Sri Visarn Vacha, a former permanent secretary of the Ministry of Foreign Affairs in the reign of King Prajadhipok. Apart from dominating the Senate, the conservatives now also dominated the CDA, putting them in a position to determine and design their “revived” ideal political system to strengthen their power (Suthachai, 2008: 69).

3.1.10 The Senate under the 1949 Constitution

Designing the Senate

The underlying idea of the institutional design of the Senate can be examined from the debates of the Constitution Drafting Assembly. As stated earlier, the Assembly was mainly dominated by conservatives. Therefore, it is foreseeable that drafting the 1949 constitution would benefit the conservatives. To justify establishing the Senate, the argument was made that the voters needed to be sufficiently educated and lacked interest in political affairs. As such, someone needed to protect their interests. In this context, because the people revered him, the King was considered an impartial figure in choosing the senators.

Regarding the lack of education, Phraya Attapit Pisan stated that “*no matter how our constitution might be destroyed, the rural people won’t be concerned or feel regret. It shows that our civic education is still fragile. For this reason, is it appropriate to have only the House of Representatives elected by the people as a legislature, which is an important institution? I am afraid it won’t be successful. Since education is still weak and people are unconcerned, unicameralism is unsuitable for our country.*” (The Secretariat of the House of Representatives, 1948a: 122-123)

The lack of interest in political affairs is evident in Luang Prakorb Nitisarn’s statement, “*Our democracy, we call it democracy. But it was too rushed as it was ‘premature’. Are our people 100% ready for democracy? We should consider it deeply. To say that our people are not yet ready (for democracy) does not mean that I don’t want (democracy). I want to be democratic, but are our people ready? Our people do not yet know their duty. Only a minority came out to vote, but seventy or eighty per cent did not. So, should (the people) be protected by others? Who would be a more suitable person than the king?*” (The Secretariat of the House of Representatives, 1948a: 135-137). Or Phraya Sri Thammarat’s statement, ‘

If the members of both houses are elected, they are equally democratic. But for a country where the people do not have sufficient knowledge and are not interested in political affairs, like our country, we should allow the king to exercise his royal prerogative to appoint the senators or one type of membership.’ (The Secretariat of the House of Representatives, 1948b: 157-159)

Because Thai people were deemed not sufficiently educated and lacked interest in political affairs, Jong Jaipakdi stated that a *“king is a person who stands on high ground. He has his money. Nobody can bribe him. Please don’t call me a monarchist. I only consider it for the sake of the nation.”* (The Secretariat of the House of Representatives, 1948b: 68)

Although most Assembly members supported appointing senators, there was also a counterargument that the King should not have such power. Indra Singhanetr explained that the King would be blamed if the appointed senators were imperfect.

“Supposed the King selects (the senators). I want to ask whether these appointed senators are 100% perfect?... If we give the King power to select the senators who are not ‘perfect’, His Majesty will be criticised.”

“The king reigns but does not rule. The power to rule belongs to us, the people. Therefore, I think we should not subject His Majesty to criticism. I think it is better to let the people, who are the owners of this country and eligible voters, know that whom they elect is their business and can be criticised no matter what. If they (the elected senators) don’t perform well, the people will punish them anyway. Hence, you said that to allow the people to elect (the senators) is risky; I would say that to allow the King to select (the senators) is also very risky because you place the revered institution at risk.” (The Secretariat of the House of Representatives, 1948b: 194-195)

Composition and Power

Under the 1949 Constitution, the Senate consisted of 100 senators selected and appointed by the King and countersigned by the Privy Council President. A senator could not be an active civil servant. The senatorial term was six years, but after three years, one-half of the senators were to conclude

their terms by drawing lots. Also, the Senate President was made the president of the parliament.

On legislative power, senators did not have the power to propose bills. Still, the constitution extended the legislative review period to 60 days for regular and 30 days for financial bills. The most crucial legislative power of the Senate was its veto power, where the Senate could veto a bill approved by the House of Representatives for up to one year.

The cabinet had to state its policies to the House of Representatives and the Senate. When the cabinet delivered a policy statement to the Senate, the Senate could submit remarks to the House of Representatives for its consideration in the vote of confidence for the government. Moreover, this constitution also created a new tool for the Senate, where the Senate could call for a general debate without voting.

Although the Senate had no power to call for a vote of no-confidence, the Senate could also debate such issues when a censure debate called by the House of Representatives ended. It might submit remarks to the House of Representatives for its consideration in the vote of no-confidence (The Royal Thai Government Gazette, 1949). It reprises the role of the Senate as *Phi Liang*.

The Significance of the Senate

Under the transitory provisions, the senators under the 1949 Constitution were primarily those appointed under the 1947 provisional constitution. In other words, after the 1947 coup, the appointed senators, mostly the conservatives and royalists, retained their positions. However, following the resignation of Khuang in April 1948, when Phibun returned to power, the senators appointed by Khuang in 1947 continued to oppose Phibun strongly. Although the 1949 Constitution specified that one-third of the senators had to draw lots, the Phibun government and the junta still could not interfere in the process of the new senatorial appointment because the constitution specified that the President of the Privy Council would countersign the royal command of the senatorial appointment. It meant the President of the Privy Council nominated and proposed the list of senators. This constitutional provision prevented Phibun and the junta from

manipulating the Senate as a political support base. However, Phibun sought more support from the House of Representatives. In the formation of the second Phibun government on 28 June 1949, Phibun allocated more positions in the cabinet to MPs than the first government did. Among the 27 cabinet ministers, there were 12 MPs. Seven of these 12 held key ministries (Tweepong, 1987: 146).

Senate actions in this period show that it continued to oppose the Phibun government. Among the 60 bills put forth (46 bills proposed by the cabinet and 14 by the MPs), the Senate approved only 17. The Senate vetoed many key bills the cabinet and MPs proposed, with 35 out of 60 rejected. The senators widely debated and scrutinised many bills (Krich, 1973: 99, 115). One of the critical bills vetoed by the Senate was the annual budget bill, making two consecutive times in which the Senate had rejected the annual budget bill. Eventually, the House of Representatives voted to reaffirm the annual budget and other financial bills, making them law (The Secretariat of the Senate, 1950: 651-697).

During these two years, the senators questioned the cabinet ministers 35 times, which is high by historical standards. However, these questions were aimed at scrutiny rather than providing a platform for the government to make a statement (Krich, 1973: 100-105). The most powerful tool of the Senate was the general debate without voting, which occurred only once on 1 October 1951, after the “Manhattan Rebellion” incident.

After that event, 27 senators requested to open a general debate without voting. The debate lasted four days. Apart from questioning the Phibun government on cracking down on the riot, many senators condemned the Phibun government. It was reported that Phibun was not delighted with the debate and condemnation. This debate was one of the causes that led to the “Radio Coup” on 29 November 1951 (Sutach, 1972: 77-78), in which Phibun seized power, revoked the 1949 Constitution, and brought back the 1932 Constitution with some revisions. This coup took place just three days before King Bhumibol returned to Thailand. It was also revealed that after the King returned, he was not pleased with the junta for revoking the 1949 Constitution, regarded as the “architecture of power” that aimed to establish an ideal political system favoured by the conservatives. As a result, Phibun had to meet King Bhumibol three times before the King agreed to sign and enact the revised 1932 Constitution. The junta had to

adjust provisions that curbed the monarch's power (Nattapoll, 2009: 117-118).

3.1.11 The “triumvirate rule”

Unlike his first time as Prime Minister during World War II, Phibun's return relied on the support of two other critical political actors, Phao Sriyanond and Sarit Thanarat. Phao controlled the police force and managed Phibun's post-1951 domestic political machine. Sarit commanded the army and had accumulated great wealth. The nature of Thai politics was that of a “triumvirate” of three mighty factions: the 1947 Coup Group, Phao, and Sarit. In addition, Phibun sought a new power base by working closely with and receiving aid from the United States (Thak, 2007: 56).

However, this triumvirate rule only ran smoothly throughout the 1950s. Both strongmen, Sarit and Phao, competed for power without Phibun being able to provide balance. At the same time, Phibun attempted to build his power base by forming the Seri Mananga Sila party as a machine in parliamentary politics. Later in the election on 26 February 1957, Phibun's Seri Manangkhasila Party won a landslide election victory amid allegations of widespread fraud. Dubbed the “dirty election”, its results sparked widespread anti-Phibun demonstrations, to the point that Phibun had to declare a state of emergency to suppress the protests. However, his efforts were, in the end, in vain when Sarit, as a military commander, seized a heroic role by simply telling the protesters to go home (Puli, 2020: 227-241).

On 17 September 1957, the Revolutionary Council led by Sarit successfully seized power from the Phibun government. Initially, the junta did not revoke the revised 1932 Constitution. Instead, Pote Sarasin was appointed interim prime minister, a former foreign minister in the Phibun Government and secretary-general of the Southeast Asian Treaty Organisation (SEATO) (Puli, 2020: 243).

Table 3.9 The House of Representatives, 1951 – 1957

Parliamentary Form	Period	Acquisition	Number of MPs
Unicameral	1951 – 1957	123 elected by eligible voters / 123 appointed	246 (106 or 86.1% military reserve domain of the appointed)

Source: (Chambers, 2009: 9)

3.2 The Age of Military Dictatorship (1957-1973)

3.2.1 Setting the Rules of the Game: The 1958 Coup and the 1959 Charter

Sarit staged a coup in September 1957 and, upon its success, appointed Pote Sarasin as prime minister without cancelling the 1932 constitution (and the 1952 amendments). As a result, a new election was held in December 1957. Sarit established the Chart Sangkhom Party after the election to gather MPs from other political and non-political parties until there were enough votes to make Thanom Kittikachorn prime minister before Sarit went to the United States and the United Kingdom for medical treatment. However, Thanom was a compromised man who lacked political skills. Therefore, when faced with Chart Sangkhom party members' demands, Thanom could not cope. In the end, Sarit secretly travelled back to Thailand and staged another coup on 20 October 1958, bringing Thailand into a total military dictatorship for many years (Puli, 2020: 243).

Sarit ruled the country for a time as the head of the Revolutionary Council before adopting the 1959 Charter. Under this charter, the legislature was unicameral, known as the “Constitution Drafting Assembly”, as it performed a dual function of legislating and drafting a new constitution (The Royal Thai Government Gazette, 1959). The Constitution Drafting Assembly was dominated by military generals consisting of 180 military officers and 60 civilians (Prasert, 1974: 926-930). Although the Assembly was established in 1958, it started to draft a new constitution only in 1961 by appointing the relevant commissions. The most important was the constitution drafting commission, consisting of 15 commissioners, who

were tasked with making the draft based on the framework determined by the Assembly. Thanom Kittakachorn, Sarit's close confidant and former premier, chaired the constitution drafting commission. Among 15 commissioners, 9 were military officers, and 6 were civilians (Korn, 2013: 97-98).

One of the critical features of this constitution was Article 17, which gave Sarit absolute power, stating that *“During the enactment of this constitution, if the Prime Minister deems appropriate for suspension or to suppress acts that undermine the security of the Kingdom or the Throne or acts that are destructive, disturbing, or threatening to peace within or from outside the Kingdom. Through the resolution of the Council of Ministers, the Prime Minister shall have the power to order or perform any act, and such order or act shall be regarded as a lawful order or act.”*

When the Prime Minister has given orders or acts following the provisions of the preceding paragraph. Let the Prime Minister notify the Council.” (The Royal Thai Government Gazette, 1959)

Sarit's power at this time was significant and continued to grow until his sudden death in 1963 from health issues, making him the first Thai Prime Minister to die while in office. His successor was Thanom Kittikachorn, on whom he had once placed great trust as prime minister in 1957 before he travelled abroad for treatment. Furthermore, Thanom had another crucial political ally in Praphas Jarusathien. Although Sarit's death caused a significant political shock, continuity appeared in many aspects. For example, Thanom maintained Sarit's political structures and networks. Additionally, the 1959 Charter remained in effect, and members were still appointed to the Constitution Drafting Assembly. The cabinet was not changed either, and the military dictatorship continued (Puli, 2020: 301-306).

Table 3.10 The House of Representatives and the Constitution Drafting Assembly, 1957-1968

Parliamentary Form	Period	Acquisition	Number of MPs
Unicameral (The House of Representatives)	1957 - 1957 (terminated by the 1957 Coup)	160 elected by eligible voters / 123 appointed)	186 (military reserve domain)

Unicameral (The House of Representatives)	1957 – 1958 (terminated by the 1958 Coup)	186 elected by eligible voters / 121 appointed	307 (98 or 80.9% military reserve domain of the appointed)
Unicameral (The Constitution Drafting Assembly)	1959 - 1968	Appointed	240 (175 or 72.9% military reserved domain)

Source: (Chambers, 2009: 9)

3.2.2 Setting the Rule of the Game: The 1968 Constitution

The main issue facing the Revolutionary Council between 1958 and 1968, apart from communism, was drafting a constitution, as the military government stalled this process for quite some time (Puli, 2020: 326). It took more than nine years for the Constitution Drafting Assembly to draft a new constitution before it was promulgated in 1968 (Suthachai, 2008: 106). Finally, as public dissatisfaction grew, King Bhumibol made a speech during a music performance at Thammasat University on March 13, 1968, "*please submit it, and I will sign immediately.*" (Siam Nikorn, 15 March 1968) In addition, in an international context, the promulgation of the 1968 constitution was supported by the United States, which believed that restoring parliamentary politics would reduce pressure and legitimise the rule, leading to more excellent political stability and continued resistance to communism (Kullada, 2007: 158-160).

3.2.3 The Senate under the 1968 Constitution

Designing the Senate

In designing the 1968 constitution, the issue of parliamentary form was discussed. There wasn't much conceptual debate; the majority agreed there should be two types of members, preferably a unicameral or bicameral legislature, to maintain the *Phi Liang*, preserve the will of the junta, and guarantee the power to balance the House of Representatives.

The ideas behind the institutional design of the Senate under the 1968 Constitution can be analysed from the debate on the Constitution Drafting Assembly. Here, it is apparent that the concept of *Phi Liang* continued to

exist. The Assembly had different opinions on which form of legislature Thailand should have: a unicameral or bicameral chamber. However, these two proposals were based on the idea that *Phi Liang* is still necessary for Thai democracy. In other words, Thailand needs to have a so-called “Guided Democracy”.

For those who support bicameralism, the reasoning varies. For example, Sawaeng Senanarong explained that the *Phi Liang* is necessary because of a culture of top-down government, saying, “*We desire to have a Phi Liang system, one type of membership, one chamber to check and balance, or to be a Phi Liang to sustain the order. It is a fact that appears no matter whether it is unicameralism or bicameralism in Thailand. Therefore, I use the word Phi Liang. I don’t want to use the word maintaining power as we want to balance the power for the Phi Liang system to sustain until our democracy is mature or our education is on an appropriate level. Soon, I think that a desire to have a Phi Liang system is inevitable. Since our culture is accustomed to the top-down government and the young still respect the senior, I think that in the first period, this Phi Liang system is necessary.*” (The Secretariat of the House of Representatives, 1962a: 6-8)

Jitt Thanachote explained that it was necessary to have *Phi Liang* because most people were not still interested in democracy, and the people’s faith in democracy had declined: “*The necessity to have one chamber to act as Phi Liang in “guided democracy”, I think that it is still necessary for Thailand. Since we have employed a democratic regime for almost 30 years, we can see that most people are still not interested in our democratic regime, as we can see from a low voter turnout. Moreover, many elected members caused the people’s faith in this supreme institution to decline. So if we talk about a necessity, I think the Phi Liang system is still necessary, although our government has been democratic for a long time.*” (The Secretariat of the House of Representatives 1962a: 26-28)

Luang Prakorb Nitisarn, also a drafter of the 1949 Constitution, explained that having the Senate as a buffer between the House of Representatives and the King was necessary. He stated, “*I want to emphasise that in the regime in which the King is head of state, the second chamber is essential. Why? It is necessary because it will be a ‘buffer’ between the King and the members elected by the people. Without this*

buffer, the throne would be risky if the unicameral house had a resolution that could harm the country.” (The Secretariat of the House of Representatives 1962a: 46-47)

Once again, the ‘readiness’ of the Thai people for democracy was used to justify the Senate as Phi Liang in the 1968 Constitution. To explain this claim, the Revolution of 1932 must be condemned as it took place when Thai people were not yet ‘ready’, leading to the failure of Thai democracy. Samai Rueangkrai explained, *“The only problem is how and when we should grant the rights to the people. We must not do it suddenly like the revolution of 24 June 1932. At that time, the people were addicted (to the rights) until the situation was degraded, and it could not be fixed. The people have only rights but not duties. Hence, having a unicameral parliament without type-2 membership is dangerous”* (The Secretariat of the House of Representatives 1962b: 49-51). Prasong Booncherm added, *“Having a unicameral parliament is one of the factors that cause our constitution struggles...For Thailand, we should have the Phi Liang system forever because of what we have seen in the past. How has the impulse without careful consideration by having unicameralism caused a disastrous effect?”* (The Secretariat of the House of Representatives 1962b: 56)

In addition to the ‘readiness’ of the Thai people, some claimed the upper house should be ‘representative of wisdom’ as the *Phi Liang* who could guide and provide recommendations for the country. The acquisition of this upper house must be from appointment, as Dechchart Wongkomolchet stated, *“We aim to make the upper house member a ‘representative of wisdom’...In Thailand, I don’t see any other method of acquisition of the member of the upper house, supposedly the ‘representative of wisdom’ but the appointment. If we let the people elect, it will overlap between these two houses, and simultaneously, we might not get a suitable, highly qualified person to represent wisdom. At some point, the upper house has to act as Phi Liang, especially on an issue that needs careful consideration, such as the annual budget, customs, or bills related to international relations. It should be regarded that in Thailand, the past elected members did not perform their duties effectively. So, we need someone who can guide us or provide a useful recommendation for the country. The upper house can perform this duty.”* (The Secretariat of the House of Representatives 1962c: 72-73)

Most of the Constitution Drafting Assembly members voted to support bicameralism. Moreover, nobody voted in support of a fully-elected Senate. (The Secretariat of the House of Representatives 1962c: 94)

Composition and Power

According to the 1968 Constitution, the National Assembly was bicameral, consisting of the House of Representatives and the Senate.

- The total number of senators was three-fourths the total number of MPs
- The term of senators was six years, but after the first three years, half of the senators would be drawn by lots and put up for re-election
- There was no provision to specify the person who would countersign the royal command of the appointment of senators. So, in practice, the prime minister would hold the responsibility. In other words, the prime minister could nominate a list of senators.
- Also, there was no prohibition for an active civil bureaucrat to assume a political post. The Senate President was the president of the parliament, who would countersign the royal command of the prime minister's appointment (Royal Thai Government Gazette 1968). That means the President of the Senate played a vital role in the prime minister's nomination as they could call for the meeting of the National Assembly, consisting of the appointed senators and elected MPs.
- A prime ministerial candidate had to obtain a majority of votes in the parliament, which meant they had to get approval from the Senate to become a premier. Therefore, the Senate President and the senators could determine who will be prime minister after an election. In particular, the senators were to be appointed by the prime minister, a junta leader Thanom Kittikachorn. It showed a junta's attempt to remain in power and continue to dominate politics by making the Senate a political stronghold.
- The Senate was granted control over the selection of the Prime Minister, given that confidence votes were to take place in joint sittings. As a result, any government commanding Senate support only needed 15 per cent of the elected members of the House to win a confidence vote with an absolute majority of both houses (the Senate

was three-fourths the size of the House of Representatives). The Senate was also empowered to delay the passage of most legislation by as much as one year (Ferrara, 2015: 161).

Significance of the Senate

The 1968 constitution was designed to sustain the junta's power, with the Senate as one such means. It can be seen from the fact that the senators are appointed, can propose bills, and can vote no-confidence with the MPs. The Senate, under the 1968 constitution, was thus a powerful institution. Apart from the power of legislation review, a senator could introduce a bill like the MPs, and the Senate could veto the bills for up to one year. This power was the same as that under the 1947 provisional constitution. In addition, a senator could question the ministers and call for a general debate on the power of checks and balances. But the most effective tool of the Senate under the 1968 Constitution was the power to call for a censure debate.

Furthermore, a vote of no-confidence had to take place in the parliament. In other words, an appointed senator could make a vote of confidence of the ministers or the cabinet. In this sense, it is evident that the Senate under the 1968 Constitution was designed to play a crucial role in providing stability for the future government after the promulgation of 1968 and, foreseeably, allow Thanom's clique to retain power once Thailand returned to parliamentary politics.

The 1968 Senatorial Appointment

Unsurprisingly, the appointed senators were primarily military generals, despite Thawi Bunyaketu, the President of the Constitution Drafting Assembly, denying a rumour that the quota of appointed senators would be allocated among the army, navy and air force (Siam Rath, 13 June 1968). Even Pote Sarasin, a former prime minister who served as national development minister in the Thanom Government, also emphasises that the opposition cannot form a government because the government parties have support from the senators. Therefore, the MPs could not defeat the government. Pote argued, too, that no government in the world appoints senators to overthrow the government (Prachatiptai 2 July 1968). Among the 120 newly appointed senators, 91 were military and police officers and

21 were civilians. Five appointed civilian senators canvassed for the votes to form the ruling party. The newly appointed senators were expected to provide a political support base for the government after a general election.

Moreover, the government also revealed its intention to retain power by setting up a political party (Siam Rath Weekly, 28 July 1968). Seni Pramoj, the expected new Democrat Party leader at that time, criticised this military-dominated Senate, saying, *“It is a purpose of the current constitution, which is known, that it aims to provide stability to the government. Thus, the appointment of senators has to go to that point.”* (Siam Rath, 1968a) Yut Saeng-Uthai, the secretary-general of the Council of State and a former 1949 Constitution drafter, also pointed out that *‘I am not surprised because the appointment of senators was made as I expect everything. In politics, there is a friend and an enemy. Nobody will appoint an enemy to overthrow you.’* (Siam Rath, 1968b)

Once the appointment of senators was officially settled, another critical step to ensure that the Thanom government would take control of the Senate was the selection of the President of the Senate. As stated in the constitution, the President of the Senate is also the President of the National Assembly, who would countersign the royal command of the prime ministerial appointment. In other words, the Senate President nominates candidates for prime minister with the parliament's support. The prime minister (Thanom) then appoints the senators themselves. Hence, the President of the Senate must be a person who was trustworthy for Thanom.

The selected Senate President was Nai Worakarn Bancha, a former foreign minister, finance minister and deputy prime minister in Phibun Government. He was elected MP in Chiang Rai and was respected among top military officials due to his generosity and *Nak Leng*¹⁰ personality (Prachatipatai 21 July 1968). Even Thanom himself confirmed that he (Nai Worakarn Bancha) was an “appropriate” person because he was experienced as a foreign minister and also served in the royal court. Moreover, he was loyal to the king (Prachatipatai 23 July 1968).

¹⁰ Sombat (2000:54) explains that *Nak Leng* “has to be daring, courageous, honest, and manly. He is someone who will never shy away from a fight or any confrontation”

Table 3.11 Occupational groups of the appointed senators (4 July 1968 – 17 November 1971)

Occupation	Number	Percentage
Military officer	67	55.83%
Police officer	7	5.83%
Civil bureaucrat	23	19.17%
State enterprise officer	2	1.67%
Retired bureaucrat	18	15%
Banking officer	2	1.67%
Lawyer	1	0.83%
Total	120	100%

Source: Tweepong (1987: 174)

Table 3.12 The Senate of Thailand, 1968-1971

Parliamentary Form	Period	Acquisition	Number of senators
Bicameral	1968 – 1971 (terminated by the 1971 Coup)	Appointed	1968: 120 (93 or 78% military reserved domain); 1969: 44 additions (26 military) = 164 total and 72.5% military reserved domain

Source: (Chambers, 2009: 9)

The role of the Senate under the 1968 Constitution foreseeably served and ensured stability for the Thanom government in parliamentary politics. In three years and four months, the Senate considered fifty-nine bills (six bills were introduced by the MPs, and the cabinet submitted fifty-three) and approved fifty-one bills. These bills were quickly passed and approved by the Senate within a short time with little debate, which did not discuss key content but admired the government instead (Krich, 1973: 131). Among the approved bills, a critical one was the annual budget. Consideration of the 1969, 1970, and 1971 annual budget bills in the meeting of the Senate followed a similar pattern: quick approval and little debate.

3.2.4 Setting the Rule of the Game: Thanom's Self-Coup in 1971 and the 1972 Charter

Three years later, after the promulgation of the 1968 constitution, the Revolutionary Council, led by Thanom, seized power and revoked the constitution. It was reported that Thanom's self-coup happened because MPs constantly demanded benefits, causing the Thanom government to lack control over parliamentary politics.

“Behind the fact that the Revolutionary Council had to seize power this time, there was another important reason: MPs ..exercising their rights and liberties beyond their limits. Until the government cannot endure (MPs), the supporters always try to demand benefits. For example, when drafting the annual budget bill, they seek to allocate money to support their provinces. It's a popular vote. Giving only this is not satisfactory, and many demands remain. When they didn't give up, he was dissatisfied and found a way to overturn various laws. The opposition has severely attacked the government, such as in the recent elections in Sukhothai. A rude insult was made to the father and mother of some senior government members. It is an excessive exercise of liberty without considering the detriment of others.” (Prachatiptai 23 November 1968)

Thanom, as a leader of the Revolutionary Council, ruled the country without a constitution for a year. Finally, in December 1972, he promulgated the 1972 charter, which had only 23 articles.¹¹ The crucial reason here, as recorded by Prasert Pattamasukhon, former secretary-general of the parliament, was that the royal ceremony to appoint Prince Vajiralongkorn as Crown Prince and an heir to the throne was scheduled to be held in December 1972. To perform this ceremony, a prime minister must countersign the royal command regarding the appointments. As such, the 1972 Charter was promulgated (Prasert, 1974: 1054-1055).

The 1972 Charter established the unicameral National Legislative Assembly as the parliament. Further, in its essence, Article 17 gave absolute

¹¹ It was revealed by Prasert Patamasukhon, the secretary-general of the National Assembly at that time, that a reason for the promulgation of the 1972 charter was the royal ceremony to appoint Prince Vajiralongkorn as Crown Prince and an heir to the throne, which was scheduled to be held in December. To perform this ceremony, a prime minister must countersign the appointment's royal command. As such, the 1972 Constitution was promulgated. See Prasert (1974: 1054-1055)

power to the leader of the junta, Thanom Kittikachorn. The content of this constitution was politically regressive. The National Legislative Assembly had 299 members, most of whom were appointed by the military and senior civil servants for 3-year terms. In addition, the 1972 Charter provided for drafting a new constitution presented by the government, though the junta tried to delay the draft (Noranit, 2015: 178-179). This delay triggered public outrage and led to the uprising of 14 October 1973.

3.3 A Transition and the Massacre (1973-1977)

3.3.1 Setting the Rule of the Game: The 1974 Constitution

To monopolise power, Thanom's allies began to cause dissatisfaction among the junta and the military. At the same time, university students emerged as a social force due to the country's development policy and the expansion of educational opportunities in the Sarit era. As a result, the students began to play a role in socio-political movements in the 1970s. A critical factor that led to the collapse of the Thanom regime was the Thung Yai Naresuan Incident, a scandal in which high-ranking government officials used helicopters to hunt in Thung Yai Naresuan and the case of the arrest of students demanding a constitution. All of these led to one of the most significant political rallies in Thai political history, the uprising of 14 October 1973 (Puli, 2020: 348-359).

After the uprising of 14 October 1963, Thanom resigned from the post of prime minister and left the country. King Bhumibol issued a statement on television calling for national unity. Simultaneously, King Bhumibol also announced the appointment of Sanya Dharmasakti, Privy Councilor and Rector of Thammasat University, as the new Prime Minister. Sanya was dubbed as the “royally appointed prime minister” (Chantana, 2011: 63). He recalled that event:

“The royal secretary came to me and said to follow him (the King). He will go on TV. At that time, a special overhaul TV station came into Chit Park. I went too but went to the room downstairs. I'm standing by the door. Then the King informed me that the government (of Field Marshal Thanom) had resigned, so I appointed Sanya Dharmasakti as Prime Minister. When the announcement was complete, a soldier was running to tell me that the King had ordered an audience and waited at the car. I just ran. His

Highness beckoned him to follow and said, "Go on TV now" (and make) a promise to the people that there would be a completed constitution within six months and a pure election soon after. But I asked the people to calm down from the blood and gun smoke. I was like a robot on TV at that time. Go on TV on his command." (Puli, 2014: 97-98)

The Sanya government was formed hurriedly at the Chamberlain Division in Chitralada Palace on the night of 14 October 1973. It consisted of civil servants or military ministers, many of whom were part of the Thanom government (Suthachai, 2008: 131-132). In addition, several ministers were civil servants close to the royal court (Asa, 2021: 185-186). Shortly after Sanya was appointed prime minister, a group of scholars led by Chai-anan Samudanjia, Pramote Nakornthab and Suebsaeng Phromboon visited his residence with a proposal to establish a new constitution drafting committee and the constitutional review committee. This proposal, drafted by Chai-anan, included a constitution review committee consisting of 65 people representative of various groups of people. But at that time, the National Legislative Assembly appointed by the Thanom government still existed. Chai-anan revealed in his autobiography that this proposal had eventually been withdrawn. Sanya said King Bhumibol had a better idea to establish a so-called "National People's Assembly" selected from people across the country from various occupations and letting them elect among themselves the members of the National Legislative Assembly to consider the draft constitution (Chai-anan: 459-460).

In the middle of the night, on 10 December 1973, a royal command appointed 2,347 National People's Assembly members. These members would elect from among themselves members of the National Legislative Assembly. The formation of the National People's Assembly was sudden and secretive. It is said that it was something that King Bhumibol quietly initiated by allowing various agencies to compile a list of people from all walks of life, from business people, government officials, and even workers and farmers, without anyone knowing for what purpose. Even Sanya admitted to knowing little in advance. The establishment of the National People's Assembly was an attempt to pressure and overthrow the National Legislative Assembly appointed during the Thanom government, whose members gradually resigned against their will. In this way, there was

pressure to reform an Assembly that was not flawed from the military dictatorship era. In addition, King Bhumibol's popularity and, as such, his influence have grown considerably. The decisive point for the quick resignation of the NLA was that more than 95 per cent of the former NLA members had also been appointed to the National People's Assembly. In sum, this event attests to the monarchy's political role in the aftermath of the uprising of 14 October 1973 (Asa, 2021: 190-191, 241).

Sanya appointed a constitution drafting committee of 18 members, chaired by the justice minister Prakorb Hutasingh. It was composed of four lawyers, four judges, three academics, two civil bureaucrats, two journalists, one politician, one businessman, and one military officer. Among these were prominent scholars in political science like Chai-anan Samudavanija, Pramote Nakornthab, and Pongpen Sakuntabhai, and public law academics like Amorn Chantarasomboon and Jitti Tingsapat. Also in these numbers was Kukrit Pramoj, a drafter of the 1968 Constitution, Sompob Hotrakit, who served as the secretary-general of the Council of State and deputy justice minister (Somchat, 1980: 32).

3.3.2 The Senate under the 1974 Constitution

Designing the Senate

The Sanya Government submitted the first draft of a new constitution on March 7, 1974. From the first draft, the parliament was bicameral and consisted of the House of Representatives and the Senate. The House of Representatives was entirely elected, consisting of two hundred and forty members. The Senate consisted of 100 senators elected by the House of Representatives from a list proposed by the Privy Council consisting of 300 candidates. The Speaker of the House of Representatives would countersign the royal command of the senatorial appointment. The term of the Senate was in conjunction with the House of Representatives, meaning the senatorial term expired at the same time as the term of MPs or a house dissolution. So, based on the first draft, a senator's term depended on the term of MPs. In terms of legislative power, a senator could propose a bill. The government had to state its policies with a vote of confidence to the parliament, which meant senators could vote to support the government before the administration started. The MPs and senators could question

cabinet ministers, and the House of Representatives and the Senate could call for a general debate without voting. A no-confidence motion had to occur in a parliamentary session, meaning the senators could vote to support the government's confidence (The Secretariat of the House of Representatives, 1974a: 655-712).

When the constitution's first draft was submitted to the National Legislative Assembly, Pridi Banomyong, who had lived in exile after the 1947 coup, voiced his concern. Giving power to the Privy Council to propose a list of 300 potential senatorial candidates may lead to selecting persons who know or used to work with a privy councillor and, therefore, inequity. Moreover, it might damage the reputation of the Privy Council as an institution. As such, there needed to be four or five persons to propose the list of potential senators first, and then the Privy Council would select three hundred likely senators. Pridi stated that he accepted this new 'invention' to acquire senators, but he questioned whether this invention was democratic, arguing that it was not (Pridi, 1974: 15-17).

On the other hand, Chai-anan Samudavanija, one of the constitution drafters, responded to Pridi's comment by openly attacking Pridi and the People's Party. Chai-Anan stated that the method of acquisition of senators employed in this constitution was not as 'deceitful' as the method used by the People's Party to select the type-2 MPs, in which King Prajadhipok assumed that he would have the power to 'select' and 'appoint' the type-2 members. Still, when the time came, the King could only appoint. In addition, the Senate under the 1974 Constitution was not designed to control the House of Representatives as with the 1946 Constitution, in which the transitory provision allowed the House, mainly consisting of Pridi's followers, to select the senators. Chai-Anan also questioned Pridi's assertion that it was undemocratic (Chai-anan, 1974: 38-39).

The second draft constitution was submitted to the National Legislative Assembly on 31 July 1974 by the special commission set up by the Assembly. This commission, chaired by Pairoj Jayanama, revised the draft on many aspects of the Senate. In this revised draft constitution, the Senate consisted of the senators appointed by the King and countersigned by the President of the Privy Council. Additionally, a senator's term did not depend on the MPs' term. If the House were dissolved, it would not affect the senatorial term.

Further, a senator could question and propose a bill, but the power to a vote of confidence when the government states its policies and the no-confidence motion was eliminated. Only elected MPs could take part. For the first time in Thai constitutional history, this revised draft specifies that the Speaker of the House of Representatives was the President of the National Assembly. At the same time, the Senate President was a Vice-President of the parliament (The Secretariat of the House of Representatives 1974b), reflecting the political implications and importance of the popularly elected House of Representatives over the unelected Senate.

The second draft constitution was submitted for consideration in a meeting of the National Legislative Assembly to much debate, especially surrounding the provisions related to the Senate. Attitudes toward the design of the Senate under the 1974 Constitution could be analysed from this debate, which can be divided into two sides: those who oppose bicameralism and support unicameralism and those who think that the Senate is still necessary and the King should appoint the senators.

The history of the Senate drove the supporters of unicameralism as a political support base for power holders. As Bunting Tongsawasdi explain,

“Bicameralism in Thailand has no origin. It is different from other countries where there is an origin to their bicameralism—for example, the federal states. We used to have a type-2 membership before. When the Promoters of the 1932 Revolution wanted to replace (type-2 membership) with the Senate, they appointed their supporters as senators to ‘control’ the House of Representatives. It was political. It was a power struggle. So when we have a chance, why don’t we try (other forms)? There is no reason to have bicameralism. Why don’t we try unicameralism to match the people’s will?” (The Secretariat of the House of Representatives 1974c: 373-374)

Somkid Srisangkom added, *“In Thailand, the history of the past 40 years shows either bicameralism or unicameralism with many types of membership. It was a power struggle among the power holders or the minority in each period. During the early period of the revolution, type-2 membership, like bicameralism, was established. It was to maintain power. However, the claim of the power holders at that time was that people needed to be educated sufficiently to rule by themselves. This claim has been maintained continuously for 40 years. The claim is that if a unicameral house is established and the people still need to be educated, in other words,*

people are still stupid; they would elect incompetent representatives and cause chaos. It has been an excuse for the power holders in each period. But the fact is that if unicameralism would cause chaos and a coup, every coup is a power struggle among the minority. It does not involve the 'stupid' and 'uneducated' people." (The Secretariat of the House of Representatives 1974c: 378)

Prominent political science academics appointed as Assembly members, such as Saneh Chamarik and Promote Nakhontab, mirrored the previous opinion. Saneh stated that the assumption that the people are not yet ready is no longer valid and the Phi Liang system is simply a way of holding power: *"The hypothesis that supports the idea of bicameralism is an understanding that people are not yet ready. A bicameralism is a form of government that would allow the Thai parliament to employ a 'Phi Liang' system to maintain an administration of state affairs. I think the hypothesis that 'people are not yet ready' might have been true in the past, but I am unsure now. I want to assert that this hypothesis is no longer true. The past 40 years of Thailand's political experience show that this Phi Liang system, either with bicameralism or unicameralism with two types of membership, is the system the executives want to employ to control political power. We have already seen its advantages and disadvantages from our previous experience."* (The Secretariat of the House of Representatives 1974c: 381-383)

Pramote Nakhonthab also agreed that the Senate was used as a political tool, adding that this also caused damage to bureaucratic political leaders, saying, *"If we look at the past, we will learn one thing: the Senate was used as a political tool, at least, to take political advantage of who was going or not going to form a government or who was going or not going to bring down a government. When used to take political advantage, it produced a political leader from the bureaucracy. It caused damage to society, which cannot produce a political leader."* (The Secretariat of the House of Representatives 1974c: 410)

The main argument for the supporters of unicameralism is that it will be a buffer between the House of Representatives and the King. This claim has been employed since the 1946 Constitution. As Ueuantip Premyothin stated, *"The most important reason to have the Senate is that we have a monarchy. The Senate would be a buffer between the supreme institution*

and the House of Representatives. The monarchy and the House of Representatives would be 'too close' without a Senate. If the King does not sign (the bills), it would cause a conflict between these two institutions. This is the most important reason Thailand should have a bicameral house because it could prevent a further conflict." (The Secretariat of the House of Representatives 1974c: 391)

The supporters of bicameralism supported the idea that the King should appoint the senators, claiming that the King is 'righteous' and the people should be confident in the King's judgement. Pairoj Jayanama, the Chairman of the special commission whose personal opinion was that the senators should be indirectly elected, accepted the idea of giving the King power to appoint the senators because the King never indeed appointed the senators except under the government's proposal. He stated, "*Don't we believe he is a righteous king? The interests of the royal family are committed to the country's well-being. The constitution states that the King shall appoint experts specialising in academic matters and others who would benefit the country. Certainly, he would not appoint a minister's secretary to this assembly. He only needs to consider the personal competency of who will be appointed. We just presented him with an appointment power. I don't see any damage.*" (The Secretariat of the House of Representatives 1974c: 388-389)

Chana Rungsaeng also stated his confidence in the king's judgement: "*I trust, respect, and have confidence in the King's judgment. We will have competent senators to work here in this parliament. However, if you don't trust the King's judgment, my fellow distinguished members, please vote for unicameralism. I trust His Majesty, so I vote for bicameralism by his consideration.*" (The Secretariat of the House of Representatives 1974c: 413)

Thanat Khoman also explained that even in the days of absolute monarchy, the King was not elected. Still, he regarded the public interest of most people, and even after 1932, the King never deprived the people of rights. Therefore, future senators appointed by the King can be trusted and confident. But he denied that this method lacks trust in the Thai people: "*Hence, all I can say is that we can trust and be confident that the senators, whom the king would supposedly appoint, would be honest people who*

regard the public interest of our country. And they can help the members of the House of Representatives elected by the people and have a vision and duty to make our country peaceful and prosperous. I think that if we consider matters in this respect, this is the most suitable method for the current condition of our country today.”

“However, it is not that we don’t trust the Thai people’s ability. I am also Thai. So, it is impossible to look down upon Thai people because I also look down upon myself, which nobody wants to do. But we must admit that something makes us think that bicameralism would be more beneficial to our country than other methods. In particular, if we consider the many countries that have developed democracy, these countries still seek support from the second chamber. It is believed that two houses will bring our country prosperity.” (The Secretariat of the House of Representatives 1974c: 439-441)

Although most Assembly members favoured allowing the king to appoint the senators, there was also a counterargument that if the future senators were not good, the King could be blamed for his judgement. As Charun Suphap explained, *“Suppose the future senators are incompetent, and their behaviour is not good. People would say that it is the King’s performance. Instead of becoming more charismatic and majestic, the King would be affected by this. This is a concern for me. As such, I think that the monarchy should not be brought into this affair. Our King was unjustly blamed for many incidents, including this Assembly and the National People’s Assembly of Thailand.”* (The Secretariat of the House of Representatives 1974c: 400)

Eventually, most Assembly members voted to support bicameralism (The Secretariat of the House of Representatives 1974c: 445). the 1974 Constitution was officially promulgated on 7 October 1974 (The Royal Thai Government Gazette, 1974). However, just eleven days later, it was revealed that King Bhumibol “extremely disagreed” with the provision that the President of the Privy Council would countersign the royal command of senatorial appointment. The King himself appointed the President of the Privy Council. Therefore, it would violate the principle that the King must be above politics. In addition, it would make the President of the Privy Council similar to a political organisation (The Secretariat of the House of Representatives 1974d: 1-2). This statement led to an urgent constitutional

amendment in December 1974. The final revised amendment was completed in January 1975, in which the Prime Minister would countersign the royal command of senatorial appointment instead. (The Royal Thai Government Gazette, 1975).

When he presented the 1974 draft constitution requiring the King to appoint senators and the President of the Privy Council to countersign, as stated above, King Bhumibol strongly opposed it. Prime Minister Sanya Dhamasakti recalled the event: *"About the fact that the Senate has been established and the President of the Privy Council shall countersign the royal command [of the senatorial appointment]. The King said that this issue "burned" him with fire. How does it burn? Allowing the King to appoint senators would affect the monarchy. Who is the victim if the Senate is sloppy and not good? The King would suffer. But the King also signed [The 1974 Constitution] and ordered as a mandate that it must be corrected. We brought it to the parliamentary meeting and resolved it immediately by making the Prime Minister countersign the royal command [of the senatorial appointment]. It shows that the Prime Minister has chosen [the senators]. If the Senate is damaged, the Prime Minister is damaged. It is a true democracy as in the West."* (Sanya, 2015: 8)

Composition and Power

According to the 1974 Constitution, the Senate consisted of 100 senators. The minimum age for senators was thirty-five years old. The prime minister countersigned the royal command of the senatorial appointment. The constitution also prohibited active civil servants from being senators. The term of a senator was six years. But during the early period of promulgation of this constitution, once a term reached three years, half of the senators would be drawn by lots.

Regarding legislative power, the Senate under the 1974 Constitution had less power than the Senate of previous constitutions. The Senate could only review legislation and question cabinet ministers. In addition, the Senate's veto power on any bill was reduced from one year (under the 1949 and 1968 Constitutions) to 180 days (Royal Thai Government Gazette 1974).

The Significance of the Senate

The 1974 Constitution specified that the prime minister would countersign the royal command of the senatorial appointment, meaning technically, the prime minister would propose a list of senators for the king to appoint. However, it was reported that Prime Minister Sanya Dhammasak would “find it difficult” to select the 100 persons since many likely candidates would be disqualified (The Voice of the Nation, 1975a). This speculation was confirmed when it was reported that Sanya asked his 25 cabinet ministers to nominate 100 senators. Thalerng Thamrongnawaswat, deputy agriculture and co-operatives Minister, revealed after receiving a letter from the prime minister’s secretary that Sanya wanted him to suggest two names. But, he added, *“The prime minister makes it clear that he may not take my two nominees”*. Deputy Justice Minister Sompop Hotarakit said it is “inevitable” that the prime minister would have to nominate many retired officials. *“He (the prime minister) doesn’t have much choice because this constitution prevents the young from becoming senators* (The Voice of the Nation, 1975b).

The 100 senators under the 1974 Constitution were officially appointed on 26 January 1975, the same date as the general election. As expected, more than half of appointed senators were retired bureaucrats. It was also reported that these 100 appointed senators received a congratulatory letter from Sanya (The Voice of the Nation, 1975c).

Table 3.13 Occupational groups of the senators appointed on 26 January 1975

Occupation	Number	Percentage
Active civil servants	1	1
Retired civil servants	58	58
Politician	2	2
Businessmen	8	8
Merchants	7	7
Financial and banking business	2	2
Teacher	5	5
Lawyer	6	6
Farmer	2	2
Doctor	2	2

Engineer	1	1
Housewife	2	2
Social worker	2	2
Journalist	2	2
Total	100	100

Source: Tweepong (1987: 187)

Table 3.14 The Senate of Thailand, 1975-1976

Parliamentary Form	Period	Acquisition	Number of Senators
Bicameral	1975 - 1976	Appointed	100 (17 or 17% military reserved domain)

Source: (Chambers, 2009: 10)

Those appointed can be considered allies to Prime Minister Sanya Dhamasakti or those close to Sanya, such as Banharn Silpa-archa¹², whom Praphat Uaychai nominated and was close to Sanya (Pattara & Intarachai, 2016: 73). Most appointed senators came from networks with connections with the Thai elite, and 90 per cent were over 60 years old. They can be classified into four groups: former members of the National Legislative Assembly, former ministers in the Sanya government, former high-ranking government officials, and government officials close to the royal court (Asa, 2021: 208-209).

3.3.3 Setting the Rule of the Game: The Massacre, The 1976 Constitution, Another Coup, and the 1977 Charter.

From the election in January 1975, 22 political parties joined the House of Representatives, with the Democrat Party having the largest share. Seni Pramroj was appointed as prime minister. Under the 1974 Constitution, the government had to state its policy points to the parliament with a vote of confidence before taking office. Kukrit Pramroj of the Social Action Party, and Seni's brother, had lobbied many political parties not to vote for the Seni government. Eventually, the Seni government was utterly defeated. Later, the Social Action Party, which had only 18 MPs, formed a

¹² Banharn Silpa-archa later became the prime minister from 1996 – 1997.

government with Kukrit as Prime Minister. But only a year later, the stability of the Kukrit government was fragile when the coalition parties had problems allocating ministerial positions. As a result, the small coalition parties gradually withdrew support until the Kukrit government no longer held the majority of votes. Knowing that the Democrat Party would call for a vote of the no-confidence motion, Kukrit dissolved the House and called for a new election in April 1976. The results of this election showed that the Democrat Party had the most MPs, and Seni Pramroj was once again appointed prime minister. However, the Seni government had only been in office for about six months when the Massacre of 6 October 1976 occurred at Thammasat University. It was a great tragedy and the end of the student movement. Further, it led to a coup by the junta, the National Administrative Reform Council, led by Sa-ngad Chaloryu (Puli, 2020: 376-379, 401-402).

The National Administrative Reform Council had promulgated the 1976 constitution, with Article 21 granting absolute power to the prime minister, similar to Article 17 in the past. It appointed Thanin Kraivichien, a judge of the Supreme Court, as prime minister. Thanin was a far-right conservative and key anti-communist figure. The Thanin government had pursued the harsh, direct policies of extreme right-wing conservatives. It was known as the "Shell Government", meaning that the shell-like junta protected the government. However, due to a radical far-right approach and a power struggle within the army, it no longer wanted to be a "shell". In October 1977, the Reform Council staged another coup and seized power from the Thanin government, which they had themselves appointed (Puli, 2020: 401-413).

3.4 Semi-Democracy (1978-1991)

3.4.1 Setting the Rule of the Game: The 1978 Constitution

After the coup on 20 October 1977, the junta revoked the 1976 constitution and replaced it with the 1977 charter. Kriangsak Chomanan, former armed forces Supreme Commander, was named the new prime minister. Soon after Kriangsak assumed his post, the constitution drafting committee was appointed to create a new draft.

The new committee, comprised of 35 members, was chaired by Jitti Tingsapat, the former Supreme Court judge. The composition of this

committee can be seen as a ‘compromise’ among forces in Thai politics since it consisted of various persons from different groups, including political party leaders, former MPs and senators, legal experts, and constitutional law and political science scholars. Kramol Tongthammachart, one of the drafters, stated that this committee did not intend to draft a new constitution to serve as a power base for the junta to maintain power forever. Instead, it aimed to create a constitution that guaranteed democratic government and political stability in Thailand (Kramol, 1981: 65-66). From the composition of the drafting commission, drafting a new constitution required compromise from electoral forces, as prominent party leaders were also appointed.

3.4.2 The Senate under the 1978 Constitution

Designing the Senate

The Constitution Drafting Commission submitted the Constitution’s first draft to the National Legislative Assembly on 23 June 1978. In this draft, the parliament was bicameral and consisted of the Senate and the House of Representatives. The prime minister countersigned the royal command of the senatorial appointment. The total number of senators was three-fourths the total number of MPs. However, on the transitory provision, the junta-transformed National Policy Council Chairman would countersign the royal senatorial appointments on the same date as the general election during the first six years of its promulgation. That means the junta leader would propose the name of senators, which could be seen as an attempt to retain the junta’s power after an election. On legislative power, the Senate had no power to introduce bills, only the power of legislation review. The senators could question cabinet ministers but could not call for a general or censure debate. The National Legislative Assembly passed this draft on its first reading and set up the extraordinary commission, chaired by Chalermchai Sittisas, to consider it and submit it for its second reading (The Secretariat of the House of Representatives 1978a).

At first, the commission agreed that the parliament should be bicameral, consisting of the Senate and the House of Representatives (The Secretariat of the House of Representatives (1978b)). However, the commission reviewed their agreement and changed to a unicameral chamber

consisting of two types of members—elected and appointed—with the same number of members for each type. They reasoned that this would be a ‘critical point’ for the country before becoming a full democracy and would ‘lay a foundation’ for a democratic regime by providing a means to solve the government’s problems effectively and stabilise the government for the sake of national security and the people’s prosperity. However, this change was stipulated in the transitory provision for the first four years, which meant other related clauses had to be revised (The Secretariat of the House of Representatives, 1978c).

The commission submitted the second revised draft constitution to the National Legislative Assembly on 29 September 1978. In this draft, all provisions related to the Senate were removed, and the parliament was made unicameral, consisting of two membership types. On the transitory provision, during the first four years of its promulgation, the number of elected and appointed MPs was equal. The junta leader, the Chairman of the National Policy Council, proposed a list of appointed MPs for the King to select and would countersign the royal appointments (The Secretariat of the House of Representatives 1978d). The atmosphere of the Assembly meeting was one of compromise as some members asked the commission to review the form of parliament. The Assembly voted to support the review of the structure of parliament (The Secretariat of the House of Representatives 1978f).

The reason that some Assembly members asked to review the legislative structure mainly involves the concept of *Phi Liang*, which is that there should be a chamber to ‘sustain’ the political system during a transitional period. Kriang Keeratikorn stated, *"I believe everyone here in this chamber has the same feeling as me that our regime is not yet firmly settled enough to allow the people to elect only one chamber. Therefore, it is necessary to have Phi Liang for longer, which I guess might be longer than four years as stated in the transitory provision."* (The Secretariat of the House of Representatives, 1978e).

Uthit Naksawat also supported the *Phi Liang* notion but added that it should specify that the Senate can take part in a no-confidence motion. *"I 100% agree that it must be controlled and supervised and have Phi Liang. If not, chaos would occur as in the past, 14 October 1973 and 6 October 1976 and the coup and election and coup and election and coup. Such chaos*

would be repeated. Our country would go nowhere. Therefore, it must have Phi Liang to supervise and sustain to move forward. However, we must not have Phi Liang stay together. Therefore, I propose bicameralism.”

“If we want a secured country, secured government, no vote-buying, and (a government that) cannot be overthrown easily, specify to attend the meeting and vote jointly. It can either bring down or save the government. Who will overthrow the House of Representatives if the government is stable and can eliminate corruption? The senators can attend the meeting to save and secure (the government). I think it will be more secure than what you drafted. Dividing into two groups (of membership) is not good.” (The Secretariat of the House of Representatives 1978e: 367-369)

Later, the committee changed to bicameralism and submitted a revised draft constitution to the National Legislative Assembly. Another vital issue was the President of the parliament, in which the revised draft constitution specified that the Senate President was to be the President of the parliament (The Secretariat of the House of Representatives, 1978g). The importance of this position lies in the fact that the draft constitution stipulates that the President of the National Assembly countersigns the royal prime ministerial appointment. Therefore, this position would be vital in nominating the prime minister's name. Finally, the 1978 Constitution was officially promulgated on 22 December 1978 (The Royal Thai Government Gazette 1978).

In drafting the 1978 constitution, the military leaders opened space for other elite groups to get involved. However, these leaders were nevertheless ready to intervene to their advantage, especially concerning a unicameral legislature with two types of members, including appointed members, or a bicameral chamber with appointed senators. Either choice was expected to provide a political power base to negotiate with political parties after the election. One of the two primary leaders, Kriangsak, controlled the government, while the other, Sa-ngad, headed the junta-transformed National Policy. They needed help to compete for the member appointments (Asa, 2021: 353-354). Sa-ngad wanted a unicameral parliament and for the chairman of the National Policy Council to countersign the royal MP appointments so he could have the opportunity to become prime minister. Kriangsak was able to gather allies and reduce the power of Sa-ngad so much that he could prevent Sa-ngad's plan from being successful (Chai-

anan, 1982: 103, 105). It was said that the struggle for political power between Sa-ngad and Kriangsak caused the promulgation of the constitution to be delayed until the end of 1978 (Kramol, 1981: 66)

Composition and Power

According to the 1978 Constitution, the composition and power of the Senate were divided into two periods: the transitory provision, enacted for the first four years of its promulgation, and the following period after its expiration. In terms of its composition, the Senate totalled three-fourths of MPs. The minimum age for senators was thirty-five years old. The senator could not be affiliated with any political party. No provision prohibited active civil servants, including senators, from assuming a political post. Particularly in the early period of promulgation, at two years, one-third of senators would be drawn by lots. When it reached four years, half of the remaining senators from the first two years would also be removed by lots. The constitution did not specify who would countersign the royal command of the senatorial appointment. As such, the prime minister would be left to do so. In addition, the Senate President was to be the parliament president, with a crucial role in nominating the prime minister and legislative affairs (The Royal Thai Government, 1978).

The prime minister, moreover, was given the power to appoint the Senate, which was designed to function as the bureaucracy's 'informal political party' (Chai-anan 1989: 333). Aside from exercising control over much of the parliamentary agenda, the Senate was granted extensive legislative powers during the interim period. The constitution required the motions of no confidence and bills dealing with budgets, economic policy, and national security to be deliberated and approved in a joint sitting of the two chambers. Having realised that the restoration of 'Thai-style democracy' to its earlier, authoritarian form was no longer feasible but having no intention of returning to the 'open politics' of the 1973-76 period, Kriangsak and his junta fell back on the abortive effort made a decade earlier, in 1968, to establish something of a 'semi-democracy' (Ferrara, 2015: 188).

The Significance of the Senate

The Senate was a powerful institution during the first four years of promulgation. The most powerful tool of the Senate was the power to

provide political stability to the government, nominate a prime minister, and vote in no-confidence debates. Like the previous constitution, the 1978 Constitution specified that the President of the National Assembly would countersign the royal prime ministerial appointment and the president of the parliament, meaning that technically, the President of the Senate would name the prime minister. To do so, the President of the Senate, who acted as the president of the parliament, must call for a parliamentary session, which meant the appointed senators could jointly vote for a prime minister with the elected senators. Another Senate tool was the power to vote in censure debates. Finally, the appointed senators could vote to support the prime minister or cabinet minister in a no-confidence debate (The Royal Thai Government Gazette, 1978). These powers made the Senate under the 1978 Constitution a ‘political stronghold’ in Thailand's ‘semi-democratic’ government during the 1980s.

On legislative power, a senator could jointly debate and vote with the MPs on a bill stated by the cabinet related to national security, the monarchy, or the economy. In particular, the annual budget bill must be voted on in a parliamentary session, meaning that the appointed senators could vote and approve the annual budget bill with the elected MPs. Moreover, bills introduced by the elected MPs could only be submitted if they obtained approval from the Extraordinary Commission on Bill Consideration. This commission consisted of 17 persons: 3 appointed by the cabinet, six appointed by the Senate, and eight appointed by the House of Representatives. Therefore, it ensured government control over legislative affairs. However, once the four-year transitory provision expired, the Senate would have less legislative power. Therefore, senators could not jointly debate with the MPs on crucial bills. As a result, the annual budget bill would no longer be considered and voted on in the parliament but considered separately between the lower and upper houses (The Royal Thai Government Gazette, 1978).

Table 3.15 The appointed senators on 22 April 1979

Affiliation	Number
Royal Thai Army	112
Royal Thai Navy	38
Royal Thai Air Force	34
Royal Thai Police	10

Civilian	31
Total	225

Source: Matichon (23 April 1979)

Among the appointed senators from the military were the Chief of Staff from the army, navy, and air force and the commandant of the academy of the military, navy, and air force. No members from the National Policy Council, the permanent secretary, and the commander in chief of the army, navy, and air force were appointed senators. Only the permanent secretary of the Ministry of Defence was appointed as a senator. The military officers who were in charge of the regiment, namely the Division Commanding General (Major General), Regimental Commanding Officer (Colonel), and Battalion Commander (Lieutenant Colonel), were all appointed as senators, including those from the powerful “Young Turks”¹³ clique (Matichon, 1979a). Of the civilian-appointed senators, some were merchants and bankers.

The appointment of senators could be analysed as a political reward for the soldiers who participated in staging the coup, as well as an attempt to maintain power and expand the power base by appointing a close comrade. In addition, the number of political positions is limited, for example, minister or secretary to minister. As such, appointing senators is a solution to allocate such positions to other military officers (Matichon, 1979b). After the senatorial appointment on 22 April 1979, Kriangsak Chomanan said it was for the ‘stability’ of the government: *“I did not choose randomly, but took the government’s stability as a priority. If the government works well, they will support it, but if it does not, they won’t. The disunity of harmony and debate in the House is a different story and must be separated.”* (Matichon, 1979a).

Former appointed senator Krachang Banthumnavin (1983-1989) explained that the senatorial appointment under the 1978 Constitution depended on two conditions: how the prime minister came to power and how the military allocated the quota of senators. If the prime minister came to power alone, he would have more voice in a senatorial appointment. On the other hand, if the military had more power, the prime minister must

¹³ Chai-Anan (1982: 23-24) explains that the ‘Young Turks’ was a popular name for the group of young military officers who were graduates of the Royal Chulachomklao Military Academy’s Class 7. It was a powerful military clique in that period.

allocate a greater quota of senators for the army. He said there was an attempt among those who wanted to be senators to lobby the prime minister, politicians, or influential figures. But he asserted that he had never lobbied anyone.¹⁴

Another key post was that of the Senate President, who would serve as the parliament president and have a crucial role in naming a prime minister. Initially, the junta leader Sa-ngad Chaloryu was supposed to be the Senate President. But Sa-ngad suddenly fell ill (Siam Rath, 1979d). Eventually, Harin Hongsakul, an air chief marshal and former President of the military-installed parliament after the 1976 and 1977 coups, was selected as the Senate President on 9 May 1977 (Siam Rath, 1979c). Harin called an urgent parliament meeting to choose the prime minister the next day. Still, it was boycotted by the four parties with the most seats in the House (Social Action, Thai Nation, Democrat, and Thai Citizen) as the meeting had to be scheduled only three days in advance. These parties regarded it as a ‘political tactic’ to call a meeting when the MPs had to return to their constituencies in provinces and could not come back to attend this meeting to select the prime minister on time. Chuan Leekpai, a deputy leader of the Democrat Party, said that the stage ‘has been set’ (Siam Rath, 1979b). Despite facing a boycott from the four major parties, the National Assembly voted to select Kriangsak Chomanan to become a prime minister once again with three hundred and eleven votes in parliament. In particular, among these votes, two hundred were from senators, while one hundred and eleven were from MPs (Siam Rath, 1979a). The selection of Kriangsak clearly shows that the appointed Senate had a crucial role in determining a prime minister. Thus, the Kriangsak government could be called a minority government as it received less than half of the votes in the House of Representatives.

The Senate as a ‘Political Stronghold’ of the Semi-Democratic Government (1979-1983)

According to the 1978 Constitution, the total number of members of the parliament was 526, including 301 elected MPs and 225 appointed senators. The transitory provision allowed the Senate to participate in a no-confidence vote during the censure debate. If the cabinet minister wanted to

¹⁴ Krachang Banthumnavin, personal communication, 8 August 2017.

survive a no-confidence motion, they needed to get more than half of the votes in the parliament or 264 votes. The ruling government already had the support of the 225 appointed senators; it needed only 39 votes from the elected MPs to survive a no-confidence motion and have political stability.

The Kriangsak government was the ‘minority government’, relying on support from the Senate. Since its formation, Kriangsak became a prime minister, with a majority of votes coming from the senators he had appointed. Among the 42 ministers in his cabinet, only eight were elected MPs. On the other hand, 19 ministers were active civil servants and military officers, including the army, navy, and air force chief. Fifteen ministers who were not MPs were ‘outsiders’ (Siam Archives, 1979). It seemed to be understood that Kriangsak was confident in his support in the Senate and neglected the support from the House of Representatives. However, the Kriangsak government faced a significant challenge following the opposition party leaders and MPs¹⁵ calling for a censure debate in October 1978. The no-confidence motion occurred over four days (10-12, 15 October), and no senators joined a discussion. However, all the ministers that were debated survived the no-confidence motion. It was not revealed in the official document how many votes of support the ministers obtained from the senators as it shows only the total number of votes (The Secretariat of the House of Representatives, 1978h). But what can be said is that the senators undoubtedly played a vital role in saving all the ministers with the coalition parties' MPs.

Although the Kriangsak government survived the no-confidence motion, the people's discontent with the administration's performance still existed. The turning point was the oil crisis, prompting many senators to withdraw their support from Kriangsak. Knowing he no longer had support from the Senate, Kriangsak quit on 13 March 1980. Prem Tinsulanonda, the army chief and defence minister in the Kriangsak government, was overwhelmingly voted as the new prime minister with 395 votes. Among these votes, 200 were from senators, while the other 195 were from MPs (Siam Archives, 1980). After the opposition called for a censure debate in 1982, the Prem government faced challenges. This time, all the debated cabinet ministers survived the no-confidence motion. The official document

¹⁵ Including MR Kukrit Pramoj (Social Action Party), Major General Pramarn Adireksarn (Thai Nation Party), and Samak Sundaravej (Thai Citizen Party)

did not reveal how the senators voted. Still, it was known that the senators played a vital role in keeping Prem's government ministers alive through the no-confidence motions (The Secretariat of the House of Representatives 1978i).

Apart from providing political stability to the government, the Senate also played an essential legislative role. Significantly, during the first four years under the transitory provision, the Senate considered one hundred and forty-nine bills and decrees introduced by the government. Among these bills, 147 were passed (100 acts and 21 decrees). On the other hand, the MPs introduced 410 bills, of which only 59 were passed to the Senate's consideration, and only 51 were passed as laws. Among 351 bills the Senate vetoed, 38 were rejected because the PM did not sign a confirmation, and 268 were dropped because the commission on bill consideration did not sign a confirmation (The Secretariat of the House of Representatives 1978j). Mostly, the senators ignored debates on the bills proposed by the government. The senators typically voted to pass their first reading quickly without any opposition (Tweepong, 1987: 204) and never submitted questions for the cabinet ministers to answer. In contrast, the MPs had raised 712 questions for the cabinet ministers to answer (The Secretariat of the House of Representatives, 1978j).

It was revealed that during this period, a 'senators' whip' was chaired by Deputy Prime Minister Prachuab Suntrangkun consisting of 28 members, including ministers and senior officials (especially the army the prime minister trusted). This whip determined the senator's practice in the Senate and the National Assembly meetings. A sub-whip made a 'checklist' and distributed it in hand to each senator's line (civilian, army, navy, air force, police). The senators were obliged to obey and follow the whip's checklist because there was a head in the line of each senator who controlled and monitored the voting. If the senators don't follow the list, the line head would report it to a prime minister, and there would be punishment. In other words, the checklist would no longer be given, and they might not be appointed senators. Former senator Krachang Banthumnavin also revealed that the senators at that time were 'tame' as they just followed the government's orders (Tweepong, 1987: 223-224).

Table 3.16 The Senate of Thailand, 1979 – 1991)

Parliamentary Form	Period	Acquisition	Number of Senators
Bicameral	1979 – 1985 (served 6-year term)	Appointed	1979: 225 (193 or 85.7% military reserve domain); 1981: 225 (176 or 78.2% military reserve domain) 1983: 243 (145 or 59.6% military reserve domain)
Bicameral	1985 – 1991 (terminated by the 1991 Coup)	Appointed	1985: 260 (161 or 61.9% military reserve domain); 1987: 267 (156 or 58.4% military reserve domain); 1989: 267 (161 or 60.2% military reserve domain)

Source: (Chambers, 2009: 10)

3.5 The Black May and Political Reform (1991-2000)

3.5.1 Setting the Rules of the Game: The 1991 Coup, the 1991 Provisional Constitution, and the 1991 Constitution

The era of “semi-democracy” with Prem Tinsulanonda as Prime Minister lasted eight years until the 1988 Election when Prem announced his retirement from politics. Chatichai Choonhavan,¹⁶ a party leader, was the first elected individual to the post in over a decade; however, his government faced an uneasy relationship with the military. On 23 February 1991, Chatichai was ousted in a coup led by the National Peace Keeping Council (NPKC), Sunthorn Kongsompong and military commanders (Puli, 2020: 514-515). The junta revoked the 1978 Constitution and promulgated the 1991 provisional constitution, which included a clause providing absolute power to the prime minister jointly exercised with the chairman of NPKC (Royal Thai Government Gazette 1991a). The NPKC installed Anand Panyarachun, a former Thai Ambassador to the U.S. and permanent secretary of the Ministry of Foreign Affairs, as interim prime minister. In addition, the NPKC installed the National Legislative Assembly (NLA) to act as a parliament. One of the first tasks that NLA quickly performed was to appoint the constitution drafting committee to draft a new constitution.

Table 3.17 The National Legislative Assembly, 1991 – 1992

Parliamentary Form	Period	Acquisition	Number of Members
Unicameral	1991 - 1992	Appointed	292 (152 or 52% military reserve domain)

Source: (Chambers, 2009: 10)

On 4 April 1991, the National Legislative Assembly unanimously approved the appointment of the constitution drafting committee (The Secretariat of the House of Representatives 1991a). This committee comprised 20 persons and was chaired by Deputy Prime Minister Meechai Ruchuphan. This appointment was made following a list created by the NLA whip from an army clique, kept in an envelope, and distributed to all NLA members before the meeting (Matichon Weekly, 1991b). However, despite the appointment seeming to be pre-determined, Suchit Bunbongkarn

¹⁶ Chatichai was a son of Phin Choonhavan, a junta leader who seized power from Thawan Thamrongnawasawat on 8 November 1947. Chatichai, at that time, held the rank of Major and also participated in that coup. But when the influence of the ‘Soi Ratchakru’ clique declined, and Phibun was ousted by the coup in 1957, Chatichai’s military career ended, and he was transferred to diplomatic service. He was a Thai Ambassador to Argentina and Austria. See Sathien Chantimathorn (2005).

revealed that he did not know beforehand that he would be appointed.¹⁷ On the other hand, another drafting commissioner, Suwat Liptapallop, a former MP and deputy transport minister in the Chatichai government, surprised many when he was appointed to a drafting commission. He revealed that he was told by his party leader, General Arthit Kamlang-Ek, that if he was asked to ‘help the country, go for it no matter who asked him (Matichon Weekly, 1991a).

3.5.2 The Senate under the 1991 Constitution

Designing the Senate

The Constitution Drafting Commission submitted the first draft constitution to the National Legislative Assembly on 26 August 1991. When submitting it, Meechai Ruchuphan, deputy prime minister and the chairman of the Constitution Drafting Commission admitted that the commission ‘*used the 1978 Constitution as a model*’ to draft a new constitution (The Secretariat of the House of Representatives 1991b: 291). In this first draft, the parliament was bicameral and consisted of the Senate and the House of Representatives. There was an innovation in selecting the senators in this draft by which a new organisation, known as the “*Constitutional Commission*”, would be set up to choose the senators. It would consist of eight persons: two nominated by the judiciary, two nominated by the House of Representatives, two nominated by the Senate, and two nominated by the government. This commission was heavily criticised for having extensive power as it could ‘supervise’ the election by preventing electoral fraud and setting a list of potential senators. The future government was likely to dominate this commission. The Senate was to consist of 270 senators. The Constitutional Commission proposed a list of likely senators no less than five times the total number of senators, equivalent to 1,350 candidates.¹⁸ The Chairman of the Constitutional Commission countersigned the royal

¹⁷ Suchit Bunbongkarn, personal communication, 21 June 2017

¹⁸ On the method of senator selection, Sompob Hotarakit, the drafting commissioner, stated that this method was similar to the method of selection of members of the National People’s Assembly of Thailand in 1974, which later led to the National Legislative Assembly and drafting of 1974 Constitution. Therefore, the commission employed this method and led to the Constitutional Commission. See The Secretariat of the House of Representatives 1991c: 477-484)

senatorial appointment. The term of senators was six years, but after an initial three years, half of the senators must be drawn by lots.

Moreover, the transitory provision allowed the junta (the National Peace Keeping Council: NPKC) to act as the Senate and the military-installed National Legislative Assembly to act as the House of Representatives. As such, during the initial period, the junta could appoint six out of eight members of the Constitutional Commission. In terms of legislative power, the first draft specified that the Senate could not introduce bills but could veto them. The cabinet could state its policy positions before assuming the administration to the National Assembly without a vote of confidence of the parliament. The Senate could call for a general debate but could not call for a censure debate. The House of Representatives Speaker was to be the National Assembly President. At the same time, the President of the Senate would serve as Vice-President of the National Assembly (The Secretariat of the House of Representatives 1991b: 185-286).

The National Legislative Assembly voted to support this draft on its first reading and set up a special commission to consider it for the second reading. The commission submitted the second draft of the constitution on 19 November 1991. In the second draft, the parliament was bicameral and had the same legislative powers as the first draft, but the provision on the Constitutional Commission was removed. The key highlight was the transitory provision, as it had been rewritten. During the first four years of promulgation, the transitory provision would appoint the senators, and the junta leader would countersign the royal senatorial appointment. Significantly, the transitory provision empowers the Senate to be a powerful institution and ‘stronghold’ for the junta to retain power after the election. For example, the selection of the Prime Minister had to be voted on in a parliamentary session, meaning that the junta-appointed senators could choose the prime minister.

Senators could also debate and vote on the annual budget bill, other bills marked as crucial by the government, royal decrees and the votes of confidence on the government during the no-confidence motion with the MPs. In addition, this second draft changed the provision allowing the Senate President to be the president of parliament, which meant the Senate President would also play a vital role in determining the prime minister (as with the 1968 and 1978 Constitutions).

The total number of senators was 360 (The Secretariat of the House of Representatives 1991d), which was later reduced to 270 after facing a massive protest. The empowered Senate had sparked an outrage among the people as it was seen as an institution to retain the junta's power. Seven major political parties, the New Aspiration Party (NAP), the Democrat Party, the Solidarity Party, the Palang Dharma Party, the Social Democratic Party, the Thai Citizen Party, and the People's Nation Party, had jointly opposed this draft constitution (Siam Rat, 1991e). The Labour Federation of Thailand, consisting of ten labour organisations and 102 labour unions with around 85,000 members, released a statement to oppose this draft constitution and call for the people and every organisation member to oppose it (Siam Rath, 1991b). The Student Federation of Thailand, the Thammasat University Student Union, and 15 other student organisations also opposed this draft constitution (Aujcharaporn, 1991: 82-83).

The National Legislative Assembly, ignoring broad opposition, passed the second draft of the constitution on its second reading. However, even Prime Minister Anand Panyarachun, when interviewed, disagreed with the empowerment of the Senate. Anand said, his face wearing a severe expression, "*I am disappointed*" (Siam Rath, 1991d). The junta's deputy spokesperson, Bunchon Chawansilp, speaking at a seminar at Thammasat University after the second reading, stated that the junta was not involved in the constitution drafting process. He admitted, though, that the power of the Senate was a big issue, but that it was like the 'strainer', making it necessary to retain in the transitory provision (Siam Rath 3 December 1991). A deputy defence minister, Wimol Wongwanich, said that the power of the Senate under the transitory provision would last temporarily for the 'stability' of the administration during the initial period. He even admitted that the empowered Senate is a solution 'to prevent a future coup' (Siam Rath, 1991a).

After facing massive opposition, the commission removed some Senate power, including the power to vote of confidence of government with the MPs in the no-confidence motion and the power to approve a royal decree. Eventually, the National Legislative Assembly voted to pass the new constitution on its third reading on 7 December 1991 (The Secretariat of the House of Representatives 1991e). The 1991 Constitution was officially promulgated on 9 December 1991 (The Royal Thai Government Gazette

1991b). It immediately faced a crisis as it had no legitimacy and ignored the people's voice. Even Anand said again after promulgating a new constitution that he was disappointed because he disagreed on many provisions. During the second reading, the commission did not review the issues many disagreed with, even though they could have. As such, he was disappointed with the commission's reaction (Siam Rath, 1991h).

Composition and Power

According to the 1991 Constitution, the Prime Minister shall appoint the Senate. But during the first four years of the promulgation of this constitution, the senators shall be appointed by the National Peace Keeping Council (NPKC) Chairman on the day of election of the House of Representatives (22 March 1992). A junta leader, Sunthorn Kongsompong, confirmed that the military would have more appointed senators than civilians two months before the appointment. He was annoyed by the persons who, wanting to be selected, had been lobbying him. These persons were from all sides (retired military officials and civil servants) (Siam Rath, 1992d). Sunthorn informed all commanders (army, navy, and air force) to submit a proposed list of appointed senators in the nomination process. He confirmed again that the military would have the most senators (Siam Rath, 1992c).

Much like the 1978 Constitution, the new charter did not require that the Prime Minister be drawn from the ranks of elected representatives. Moreover, the junta was given the power to appoint a 270-member Senate with similar prerogatives to those of the 360-member House. Most importantly, in keeping with the transitory provisions in the 1978 Constitution, which the military had failed to make permanent in 1983, no-confidence motions and constitutional reforms would be voted on in joint sittings of the two chambers. That meant the House's Senate and 46 members (17 per cent) could remove any government and defeat any effort to amend the constitution (Ferrara, 2015: 207).

In his memoir, when working with the cabinet, Wissanu Krea-ngam wrote that the government was not involved in appointing senators in 1991. Some people lobbied PM Anand, too, but he rejected all. That's how 'all roads lead to NPKC'. During the appointment process, Wissanu explained that there were around 1,800 potential candidates for 270 senator slots. First,

400-500 candidates were selected. These were submitted to the NPKC meeting, which consisted of all critical leaders. The candidates who got 2 out of 3 in the ‘Big Five’ meeting advanced until there were only 270 senators (Wissanu, 2014: 113-115).

The appointment of the senators on 22 March 1991 was no surprise as the military, police, and civil servants dominated most of the appointed senators.

Table 3.18 The Appointment of Senators in March 1991

Occupation	Number
Military officer (active)	130
Military officer (retired)	16
Police	3
Police (retired)	2
Businessmen	56
Civil Servant	22
Retired Civil Servants	12
State Enterprise Officer	6
Academics	8
Media	3
Labour Leader	4
Independent	8

Source: Matichon (23 March 1992)

Table 3.19 Appointed senators from the military clique

Affiliation	Rank				
	General / Admiral / Air Chief Marshal	Lit. Gen / Vice Admiral / Air Marshal	Maj. Gen. / Rear Admiral/ Air Vice Marshal	Others	Total
Office of the Permanent Secretary of the Ministry of Defense	5	-	-	-	5

Royal Thai Armed Forces Headquarters	11	14	1	-	26
Royal Thai Army	6	22	17	-	45
Royal Thai Navy	8	10	11	-	29
Royal Thai Air Force	7	10	8	-	25
Retired	11	3	-	2	16
Total	49	59	38	2	146

Source : Matichon (23 March 1992)

Most appointed senators were expected from the military, like the past senates. A junta spokesman said these people could "communicate better among themselves than with others." The junta leader, Sunthorn Kongsompong, stated, "We have shared the moment of life and death." It can also be seen that many seats were allocated to the economic elite of Thailand. In the number of senators appointed this time, 155 people have been members of the National Legislative Assembly. Therefore, it is foreseeable that the Senate would become the political powerhouse of the military (Murray, 1996: 119-120).

3.5.3 The Black May 1992

In the March 1992 election, the pro-military Samakkhitam Party won the most seats. The party leader, Narong Wongwan, was supposed then to become the new prime minister. However, it was suddenly revealed that Narong was denied entry to the United States in July 1991 as he was suspected of dealing drugs. With this, the party began to search for a new candidate. Suchinda Kraprayoon, a former army chief and junta's deputy leader, stepped into the role. Suchinda's rise to premiership sparked outrage among the people, especially the middle class because he once said he did not want any political post. Protests began on the first day he became premier and lasted until May. One such protest led to the so-called "Black May" incident. King Bhumibol intervened by calling Suchinda and the protest leader Chamlong Srimuang to talk before him in a nationwide telecast. Later, Suchinda quit his post, and the protests ended (Tamada, 2009: 37-39).

Following the Black May event were four urgent constitutional amendments related to the legislative institution in June. The first amended the role of the Speaker of the House of Representatives, making this individual the parliament president and the Senate President the Vice-President of the parliament—the second amendment regarded parliamentary sessions. The third amendment reduced the power of the Senate to only legislative power, and the fourth amendment required that the prime minister be an MP (The Secretariat of the House of Representatives 1992). All four amendments were passed unanimously, and no leading military figures attended the meeting (Siam Rath, 1992b).

Another significant move after the 1992 Black May incident was that the Senate President, Ukrit Mongkolnavin¹⁹, suddenly quit his post (Siam Rath, 1992a). However, it was reported that there was a movement by the leading military figures to determine a new Senate President because the Senate would consider the amnesty decree. Moreover, the Senate President was the ex-officio President of the Constitutional Tribunal. That meant the new Senate President would determine many leading military figures after the 1992 Black May incident. In addition, the military wanted the new Senate President to be Meechai Ruchuphan, the 1978 and 1991 Constitution drafter and Deputy PM in the Anand and Suchinda governments, as they had a good relationship with the military (Siam Rath Weekly, 1992). Eventually, Meechai was elected the new Senate President.

3.5.4 The Civilian's Turn: The 1996 Senatorial Appointment

The terms of the appointed senators in 1992 were due to expire in 1996. Therefore, Banharn Silpa-archa, a veteran politician from Suphan Buri who was a prime minister then, needed to appoint new senators. In his memoir, Wissanu Krea-Ngam, secretary-general of the cabinet, revealed that Banharn believed this would be the last appointed chamber, and he wanted to make this appointment of senators a positive one. He asked Wissanu to consult with several people. Wissanu believed that Banharn was impressed with the selection method of the National Legislative Assembly in 1973, in which he began his political career, and wanted to return to that

¹⁹ Ukrit was the President of the National Legislative Assembly (1984-1988, 1991-1992), and it could be seen that he had worked with the military for a long time.

method. However, following his consultations, he saw that this method had many disadvantages and proposed to Banharn various alternatives (Wissanu, 2014: 196-199).

Banharn's method was to announce publicly and call the associations, foundations, government agencies, universities, ministries, and departments to nominate two or three senatorial candidates and submit them to the Secretariat of the Cabinet. Wissanu revealed that around 3,000 candidates were nominated. All nominated candidates were reviewed by the first committee consisting of:

- Wissanu Krea-Ngam (Secretary-General of the Cabinet)
- Jaran Kunlawanit (Secretary-General of the National Security Council)
- Sumet Tantivejkul (Secretary-General of the National Economic and Social Development Board)

This committee primarily reviewed candidate profiles and only eliminated candidates if they were qualified. Then, the list of all candidates was passed to the final committee for selection. Banharn chaired this committee, with Wissanu, Jaran, and Sumet as secretaries. The other committee members were:

- Phaen Wannamethee (Secretary-General of the Thai Red Cross Society)
- Bunyat Soocheewa (former President of the Supreme Court, whom Banharn had known as he sat next to him when they were both members of the National People's Assembly of Thailand in 1974),
- Boonchana Atthakorn (former Commerce Minister in the Thanom government, 1969-1971)
- Pratureang Keeratibutr (former Interior Minister in the Prem Government, 1981).

Wissanu explained that all committee members would be given a list of proposed persons. In the first round, if two out of five members disagreed on any candidates, such candidates would be eliminated when the first round ended—around 1,000 out of 3,000 candidates qualified for the next round. In the second round, two candidates would be picked up simultaneously. This time, there was more scrutiny on personal backgrounds. Again, if any committee member opposed, that candidate would be eliminated. When the

second round ended, around 500 candidates remained. Then, in the third round, all remaining candidates were categorised into occupational groups, and the committee reviewed each group until they reached the appropriate number of senators. About ten senators were missing, so the committee further reviewed the candidates' qualifications before having PM Banharn decide. Eventually, the list of all 260 senators was finalised. (Wissanu 2014: 196-199).

The process took three days to complete at the Phitsanulok House, the official residence of the Thai Prime Minister. Wissanu further revealed that Banharn said he did not know 'more than a half of the appointed senators'. On the day Banharn presented this list for King Bhumibol to sign the royal command for a senatorial appointment, according to Wissanu, when King Bhumibol saw that list, he told Banharn, "Well done" (Wissanu, 2014: 196-199).

The appointed senators in 1996 saw a diverse set of occupational groups, in which the military and bureaucracy were not a majority, a shift in power reflecting more significant civilian rule.

Table 3.20 Appointed Senators in 1996

Occupation	Number
Civil Servant	36
Retired Civil Servant	41
Military Officials	39
Retired Military Officials	12
Businessmen	61
Academics	4
Former MPs	4
Others	63
Total	260

Source: Matichon Weekly (26 March 1996)

The method that Banharn employed to select the senators was highly praised. Suchit Bunbongkarn, the drafter of the 1991 and 1997 constitutions, commented that it was an intelligent move by Banharn. He did what many people had never expected by calling the professional associations and

organisations to nominate a list of persons appointed as senators. A relevant committee reviewed this, a method not specified in the 1991 Constitution.²⁰

The appointed senators in 1996 lasted in office just one year. However, a turning point in Thai politics was about to begin. Following the Black May 1992 incident, a campaign called for ‘political reform’ led to the amendment of the 1991 Constitution to establish the Constitution Drafting Assembly to draft a new constitution.

Table 3.21 The Senate, 1992 – 2000

Parliamentary form	Period	Acquisition	Number of Senators
Bicameral	1992 – 1996 (served 4-year term)	Appointed	270 (with 154 or 55.2% military reserve domain)
Bicameral	1996 – 2000 (served 4-year term)	Appointed	260 (with 48 or 18.4% military reserve domain)

Source: (Chambers, 2009: 10)

3.6 Conclusion: The Senate as the Guardian of the Status Quo

After the Siamese Revolution of 1932, the 1932 constitution established a unicameral chamber, the House of Representatives, of two member types: elected and appointed. The appointed MPs were to be *Phi Liang* at the beginning of the new regime, and this *Phi Liang* grew into the concept of a guardian of the status quo.

The 1946 constitution established a bicameral legislature for the first time. The Senate was designed to be a political support base for the Pridi Banomyong faction. In the early stages, MPs selected senators in office before the Constitution's promulgation. At that time, Pridi had majority support in the House of Representatives. Here, the reality of the Senate election result reflects how the Senate was designed to be the guardian of the status quo of Pridi Banomyong during the political transition after World War II.

²⁰ Suchit Bunbongkarn, personal communication, 21 June 2017

The 1947 coup was a reaction from royalists and the military, who had lost their political status and influence. As soon as the coup was successful, the 1947 Provisional Constitution was promulgated, and the Senate was appointed to serve as an interim parliament. The King appointed the senators. Most of those selected were royalists and members of the junta. More importantly, while there is no House of Representatives, the Senate became a key political institution during a transition to rewrite the game's rules by setting up the Constitution Drafting Assembly to draft a new constitution. And, of course, most members of the Constitution Drafting Assembly were royalists. However, the Royalists and the Army alliance could have run better. After the 1948 election, Khuang Aphaiwong returned as Prime Minister but was forced to step down in April and replaced by Phibun. This discrepancy demonstrates the reaction. Most of the previously appointed senators were royalists. They were dissatisfied with the return of Phibun and tried to create trouble for Phibun many times, for example, by overturning the budget bill in 1948 and 1949 until finally, Phibun staged the 1951 Radio Coup.

After the 1951 Radio Coup, Phibun gradually eliminated his political enemies from the royalists, navy, and Pridi allies. Phibun brought the 1932 constitution back into use with the amendments in 1952. Bicameralism was abolished and replaced with the unicameral House of Representatives with two types of membership: elected and appointed. Even though bicameralism was abolished, it still reflected the old concept of *Phi Liang*. Later, Phibun was ousted by the Revolutionary Council led by Sarit Thanarat in the 1957 Coup. The junta revoked the 1932 Constitution (1952 amendments) and later enacted the 1958 Charter, establishing the military-dominated Constitution Drafting Assembly to draft a new constitution and perform as parliament. The junta tried to delay the drafting of the constitution for more than nine years before it was eventually completed and promulgated in 1968.

The 1968 Constitution was designed to sustain the junta's power, led by Thanom Kittikachorn, who succeeded Sarit after he died. Under this constitution, the parliament was bicameral and consisted of the House of Representatives and the Senate. As expected, the senators are appointed by the junta leader Thanom. The Senate again served as *Phi Liang* to safeguard the junta's power after the election. Also, the Senate was granted enormous

power. For example, the Senate President is the president of parliament who nominates candidates for prime minister, and the appointed senators can vote of no confidence. Therefore, it is unsurprising that Thanom became Prime Minister again, given that the Senate was designed to be the political base for the post-election coup junta and that most senators were military officers. In this sense, the Senate was the guardian of the status quo for Thanom Kittikachorn's junta side.

However, Thanom staged a self-coup in 1971 until the uprising of 14 October 1973. After that event, Thanom stepped down and fled the country. On a nationally televised program, King Bhumibol announced the appointment of Sanya Dharmasakti as the new prime minister. A new constitution was drafted and enacted in 1974. Under this constitution, we can find Phi Liang's idea again. The Senate was appointed royally by allowing the President of the Privy Council to countersign the senatorial appointment before revising it to make the prime minister do so. Following the appointment, it can be seen that those appointed senators were close to Sanya and connected to the network of the Thai elite, especially the royal courts. In this sense, the Senate was also the guardian of the status quo.

The 1974 Constitution was effective for only two more years before the Massacre of 6 October 1976 and the coup by Sa-ngad Chaloryu. The junta revoked the 1974 Constitution and replaced it with the 1976 constitution. The unicameral National Administrative Council was installed, and the far-right Thanin Kraivichien was appointed a new prime minister. However, another coup took place in October 1977 by the same junta that had staged a coup previously. Again, the 1976 Constitution was revoked and replaced with the 1977 Charter. The unicameral chamber of the National Legislative Assembly was installed, and Kriangsak Chomanan was appointed prime minister.

A new constitution was drafted and enacted in 1978. Under this constitution, the parliament was bicameral, consisting of the House of Representatives and the Senate. During the drafting of this constitution, the military leaders, the junta leader Sa-ngad Chaloryu and the prime minister Kriangsak Chomanan struggled for power in nominating senators. In the end, Kriangsak won, and the prime minister appointed the senators. Like the 1968 Constitution, the Senate was designed to be a political support base for the junta, and military leaders had much power. For example, the Senate

President was the president of parliament who nominated candidates for prime minister; senators could join the MPs in votes of no confidence. After the 1979 Election, Kriangsak retained his premiership with the help of the senators he appointed. However, he was in office for only a year when the powerful military clique, the Young Turks, who also had a hand in appointing senators, withdrew its support. Later, Kriangsak resigned and was replaced by Prem Tinsulanonda.

Prem was in power for eight years. After the 1988 Election, the Chart Thai Party won, making Chatichai Choonhavan the new prime minister. However, the Chaticha government was only in office for three years before another coup was staged by the National Peacekeeping Council (NPKC), headed by Sonthorn Kongsompong. The junta repealed the 1978 constitution and promulgated the 1991 Charter, appointing the National Legislative Assembly to act as parliament and appointed Anand Panyarachun as Prime Minister. Later, a new constitution drafting committee was created to promulgate a draft in late 1991.

The 1991 constitution was designed to sustain the junta's power. Here, the junta leaders appointed the senators with the extraordinary power of no-confidence votes. However, a crucial turning point came when Suchinda Kraprayoon, the former army chief and key junta leader who had repeatedly announced that he would not assume any political office, became prime minister after the March 1992 election. His inauguration became a trigger for mass demonstrations and was suppressed by the army in an event now called 'Black May'. Later, Suchinda announced his resignation. An urgent constitutional amendment was proposed by which the Speaker of the House of Representatives would be the Speaker of the National Assembly, and the extraordinary powers of the Senate would be eliminated. In this way, Black May prompted calls for political reform, which led to the drafting of the 1997 constitution, the topic of the next chapter.

The political development of Thailand before 1997, when the parliament was bicameral, demonstrates how the Senate was a wholly appointed chamber whose appointees have always held significant political power. The Senate was designed to be the political support base of the faction in power to safeguard that power.

Considering five partial regimes of embedded democracy: electoral regime, political rights, civil rights, horizontal accountability, and the effective power to govern, it can be analysed that Thailand before 1997 was not an embedded but defective democracy. To be more precise, it was a domain democracy in which the Senate was reserved domain for ‘veto power’ like the military.

Chapter 4

Towards Political Reform: The Elected Senate under the 1997 Constitution (2000-2006)

The promulgation of the 1997 constitution was a significant turning point in Thai politics in the 1990s. This constitution was drafted based on "political reform" emerging after the Black May 1992. The central concept of political reform was to tackle the past failures of the Thai political system, including money politics, political instability, and a lack of checks and balances and appropriate mechanisms to deal with corruption issues. This constitution is known as the "people's constitution" because it was drafted by a constituent assembly of elected members from all provinces of Thailand and appointed legal and political science experts. Moreover, the public participated extensively throughout the constitution drafting process. The 1997 constitution provided new hope for reformers who wanted to reform Thai politics by restructuring various political institutions and the Senate. The most significant change to the Senate under this constitution was the method of senatorial appointment: Senators were directly elected by the people. The Senate was also given the power of impeachment and the ability to select and approve nominations to the 'independent agencies' established under this constitution.

The Senate seems to have become a "new hope" in reforming Thai politics from the beginning. So, how did it instead become another "failure" in Thai political development? This chapter analyses the Senate under the 1997 constitution, starting from the constitution drafting process. It then seeks to answer why the Senate eventually became the guardian of the status quo. In addition, it will also argue that the 1997 Constitution was initially designed to establish embedded democracy, and the Senate was a key institution in a system of checks and balances that would strengthen horizontal accountability. However, it eventually led to a defective democracy.

4.1 Setting the Rule of the Game: The 1997 Constitution

4.1.1 Context

The journey to a new constitution

After the Black May event in 1992, the junta's deputy leader who staged the 1991 coup and prime minister, Suchinda Kraprayoon, quit his

post following a massive protest. In June, Anand Panyarachun, the interim prime minister appointed after the 1991 coup, was again appointed to the same position. Anand promised to hold a general election as soon as possible, dissolving the parliament after just three months in office and calling for a fresh election. The second election of 1992 was held in September. The Democrat Party won the most votes and seats in the House of Representatives and made its leader, Chuan Leekpai, the new prime minister (Ferrara, F., 2015: 213).

Political transition in this period could not stop the winds of change. A campaign for ‘political reform’ to improve the political system started during this time. On 9 June 1994, House Speaker Marut Bunnag appointed the so-called “Democracy Development Committee” (DDC) consisting of 58 members and chaired by Prawase Wasi, a former royal doctor and prominent social activist (McCargo, 2005: 511). Its vital mission was to research methods to draft a new constitution, a process which took ten months and resulted in the submission of a final report to the House Speaker. One of its most important recommendations was the amendment of the 1991 Constitution to set up a new constitution drafting body (The Democracy Development Committee, 1995: 95-106.). However, the Democrat government did not follow the DDC’s recommendation until Chuan dissolved the House in 1995. Another election was held on 2 July 1995, which saw the Chart Thai Party win most votes and seats. The party made its leader Banharn Silpa-Archa—whose background as an influential politician from Suphanburi was well-known—the new prime minister (Ferrara, F., 2015: 214). Despite a change in government from a Democrat-led government to a Chart Thai-led government, the ‘political reform’ campaign did not disappear from the public mind.

During his 1995 election campaign, Banharn promised to push for ‘political reform’. When the Chart Thai Party won the election, and Banharn successfully formed a new coalition government as the prime minister, he delineated the government’s policy to the parliament on 26 July 1995. One of his statements was that they would “*support the amendment of Article 211²¹ of the current constitution (1991 Constitution) based on the Democracy Development Committee’s proposal*” (The Secretariat of the Senate, 1996).

²¹ Article 211 of the 1991 Constitution

A month later, on 8 August 1996, Banharn appointed a new “Political Reform Committee”, chaired by his brother, Chumphol Silpa-archa. to study the political reform process.²² It worked for three months and submitted a final report to the Banharn government on 15 November 1995 (Chumphol, 2013: 287-290, 305). The key proposals that the Political Reform Committee proposed were:

1. A constitution drafting commission, consisting of professionals and academics, shall be set up to draft a new constitution.
2. The political structure shall be adjusted for more stability and effectiveness.
3. People should have a voice in approving the draft constitution by referendum.
4. The democratic regime with the king as head of state shall be maintained forever (Chumphol, 2013: 286)

After the Banharn government received the final report, it proposed to amend Article 211 of the 1991 Constitution, paving the way for the instalment of the “Constitution Drafting Assembly” to draft a new constitution. This amendment was promulgated on 27 September 1996 (Royal Thai Government Gazette 1996).

The push to amend the 1991 constitution by the Banharn government to allow for the establishment of the Constitution Drafting Assembly presented a key policy for political reform. Nikorn Chamnong, the key member of the Chart Thai Party close to Banharn, recounted the situation. The ruling coalition opposed this effort because they thought it would create a “weapon” to destroy themselves. However, Banharn confirmed that political reform was needed as he had already promised it to the people.

“The first thing discussed in the government formation is the request for political reform policy amending Article 211 of the constitution. Initially, coalition parties directly protested, seeing it as too difficult to

²² Chumphol was a former Deputy House Speaker (1986-1988) and education minister in the Chuan Leekpai government (1996-1997). Before entering politics, Chumphol taught political science at Thammasat University. He was later elected as a senator in 2000. When the Constitutional Court dissolved the Chart Thai Party in 2008, and Banharn was banned from politics for five years, Chumphol was named a party leader of Chart Thai’s successful party (Chart Thai Pattana). He later served as minister of tourism and sports in the Democrat-led coalition government (2008-2011) and deputy prime minister in the Yingluck government (2011-2013) before passing away in January 2013.

accomplish. Some parties saw that doing so was equivalent to inventing a self-destructing weapon and tried to protest against this policy. However, Banharn stood firm by telling the ruling coalition, 'I already said I would do this. If the government does not have such a policy, how can I stand for what I have said to the people?'' (Nikorn, 2000: 27).

Anand Panyarachun also insists that Banharn was crucial in pushing for constitutional amendments to establish the Constitution Drafting Assembly. Although he wasn't sure if Banharn did it for personal reasons or by being forced, in the end, Banharn is behind the story. *"One has to give credit to Banharn, the prime minister at that time. Being a traditionalist, one would have assumed he would resist any attempts to change the constitution or widen its context. I don't know whether it was for his reasons or whether he was persuaded by the force of arguments by the more liberal wing of the establishment, but he was instrumental in amending one provision to create a constituent assembly to draft a new constitution"* (Faulder, 2018: 376)

4.1.2 Key Problems of Thai Politics Before 1997

A person who played an essential role in the drafting of the 1997 constitution was Borwornsak Uwanno, a prominent royalist lawyer who was later appointed secretary of the Constitution Drafting Commission. Borwornsak once wrote on the pre-1997 problems of the Thai political system before the 1997 constitution. Analysing Borwornsak's idea provides a picture of "political reform" from the reformers' view, ultimately allowing a greater understanding of the drafting of the 1997 constitution. In Borwornsak's view, the three major problems of the Thai political system are the lack of transparency in government, the instability of civilian government, and the efficiency of political institutions.

The first significant problem is the lack of transparency in government, or more precisely, corruption. Issues that the reformers focused on include:

- Vote-buying and electoral fraud
- The lack of legal measures to prevent corruption
- The inefficiency of the political and legal process in punishing corrupt politicians

The second major problem is the instability of civilian government and the inefficiency of political institutions occurring for two main reasons:

- Coalition governments lead to political instability
- The unproductiveness of the legislative process in which elected MPs often contrast with appointed legislators who have little incentive to grapple with the new law (Borwornsak & Burns, 1998).

In the opinions of Borwornsak and the reformers, the main problem in the Thai political system before the 1997 constitution was corrupt politicians and a lack of adequate legal and political mechanisms to punish those politicians. Therefore, designing the 1997 constitution began with how to prevent corruption among politicians, as it led to political problems and, ultimately, political instability.

4.1.3 The Idea of ‘Political Reform.’

An attempt to draft a new constitution between 1995-1996 was primarily based on ‘political reform’. So, what is political reform? It must be analysed by discussing two relevant committees: The Democracy Development Committee (chaired by Prawase Wasi) and the Political Reform Committee (chaired by Chumphol Silpa-archa).

In the view of the Democracy Development Committee, ‘political reform’ was defined as “the improvement and problem-solving of an entire political system to make the politician in the design, to be honest, solve the problem, as well as truly and effectively protect the people’s rights and freedoms” (The Democracy Development Committee, 1995: 28). The features of political reform were:

- To solve the problems of the entire political system, not just within a single issue
- To create “political integrity and effectiveness”, eliminate corruption, create political stability, and promote effectiveness in the political organisation.
- To draft a new constitution and organic laws to reform politics, simultaneously solving the system as a ‘package’ and creating integrity and effectiveness in the political system.
- To adhere to the democratic regime with the king as head of state as a principal framework, aiming at revising from an obsolete

parliamentary system to a rationalised one (The Democracy Development Committee, 1995: 29).

Interestingly, the model of a ‘rationalised parliamentary system’ that the Democracy Development Committee proposed was a tricameral parliamentary system consisting of three chambers, including:

1. The House of Representatives is a chamber of the people’s representatives from a single constituency in urban and rural areas employed by the ‘simply majority vote’ electoral system.
2. The Senate is a chamber of mature representatives. Its primary function is to review the legislation. A senator must not assume other political posts and use ‘wisdom’ to draft a law and consider essential affairs. The Senate is the ‘very least’ politicised body. It consists of no fewer than 100 senators, who must not be political party members, hold a bachelor’s degree and be nominated by a party in a single national constituency.
3. The Council of State is an advisory chamber for the government and both houses, which approves essential affairs. Furthermore, the most important power of this chamber is to veto any government actions or either house with a two-thirds vote.

The idea of ‘political reform’ in the view of the Political Reform Committee is similar to that of the Democracy Development Committee. Political reform aims to “*solve the fundamental problems of the Thai political system as a whole, make the system processes more transparent, check and respond to problems in society effectively, and ensure that the democratic principle protects the rights and freedom of the people.* (The Political Reform Committee, 1996: 5)”

To achieve such goals, the Political Reform Committee set a framework for reform within four key issues:

1. Assuming the power of MPs, senators, ministers and judges
2. Greater scrutiny of power
3. Protect and expand rights and freedoms in political participation
4. Political culture reform that facilitates the democratic regime with the King as head of state

The Political Reform Committee also released a framework for urgent political reform:

1. Political development reform by drafting a political reform blueprint and setting up the Office of Political Development Committee
2. Constitutional reform by allowing people to participate in the constitution drafting process
3. Bureaucratic and scrutiny reform on high-level officials
4. Political party reform by amending organic law on a political party, which makes the mass and democratic party
5. Electoral reform, including an entity to organise elections at every level
6. People's participation reform by drafting a public hearing law on crucial public policy, prompting people and communities to assemble to protect their interests, and requiring those in authority to listen to public opinion (The Political Reform Committee, 1996: 1-4).

From the reports of both the Democratic Development Committee chaired by Prawase and the Political Reform Committee chaired by Chumphol, we see an attempt to initiate necessary reforms within Thai politics. The Democratic Development Committee's ideas lie on moral grounds and tend to be idealistic and elitist, as seen in a proposal to have three chambers. On the other hand, the Political Reform Committee's recommendations seem more pragmatic, detailed in every step, and not too abstract concerning goodness and morality. Still, it emphasises improving and making the political system more effective. Despite differences in emphasis, one common point between these two committees was the failure of the Thai political system and the urgent need for reform. The proposals of these two committees were the base for establishing the Constitution Drafting Assembly to draft a new constitution.

4.1.4 Drafting the 1997 Constitution

The Creation of the Constitution Drafting Assembly

The 6th amendment of the 1991 Constitution, promulgated on 22 October 1996, paved the way for establishing the Constitution Drafting

Assembly (CDA). According to this amendment, the CDA consists of 99 members with two membership types:

- Type-1: 76 members were indirectly elected nationwide from each province and Bangkok, where the candidate first announced their intent to run. The process was then one of self-selection among the candidates: each could vote for the other three candidates in that province. After the top 10 candidates who received the highest votes had been shortlisted, the governor then submitted that list to the President of the Parliament, who selected one candidate per province in the parliament to be a CDA member.
- Type-2: 23 members were nominated by higher education institutions that award degrees in law, political science, and public administration. The process started within the councils of these institutions, and a list of up to five persons was selected from three categories: public law, political science, and public administration, as well as politics, state affairs administration, or constitution drafting. After nomination, the institution submitted a list of candidates to the President of the Parliament to elect eight experts on public law, eight experts on political science and public administration, and seven experienced experts on politics, state affairs administration, or constitution drafting (The Royal Thai Government Gazette, 1996).

Therefore, The Constitution Drafting Assembly consisted of 99 members whose critical task was to draft a new constitution. But when the draft constitution was finalised, it had to be submitted to the parliament for approval. If the parliament approved, the President of the Parliament could advance to the King to sign and officially promulgate a new constitution. However, if the parliament rejected the draft constitution, a referendum would be held for its approval (Thaemsuk, 2002: 2-4).

However, while establishing the Constitution Drafting Assembly, Banharn dissolved the House, and a new election was held on 17 November 1996. This time, the New Aspiration Party, led by General Chavalit Yongchaiyuth, won the election and formed a new coalition government. Chavalit, a former army chief, became the new prime minister. He announced that his government would support the continuation of 'political reform' and that the election of the Constitution Drafting Assembly could

proceed. Calls for CDA candidates occurred between 3-13 December 1996, resulting in 19,335 candidates nationwide. Bangkok saw the most candidates (1,148), while Mae Hong Son saw the fewest (13). Elections at the provincial level were held nationwide on 15 December 1996, and eventually, a list of 760 candidates was submitted to the parliament (Thaemsuk, 2002: 6-7).

The 760 CDA candidates nationwide can be categorised into occupation groups, as shown in the table below.

Table 4.1 Candidates for the Constitution Drafting Assembly

Occupation	Number
Lawyer	270
Merchant-Businessman	174
Former civil servant	148
Employee	88
Farmer	35
Politician	9
Others	36
Total	760

Source: (Thaemsuk, 2002: 6)

One of the elected provincial CDA members, Panat Tasneeyanond²³ from Tak,²⁴ described the atmosphere of the CDA election as ‘active’ and ‘hopeful’, as the people, especially the middle class, believed that it would be a positive change leading to full democracy and put an end to the recurrent coups. The 1997 Constitution was a hope to suppress corruption. Panat, who had been interested in politics for a long time, had decided to run for the CDA after talking to his friends in Tak and finding their full support. However, he did not expect to be elected, as the favourite had been Udon Tantisunthorn, a well-known and long-time MP for Tak and the older brother of Democrat Party MP Rak Tantisunthorn. Nevertheless, he was elected to the 10-candidate shortlist in the end. Panat also revealed that he was elected as the number 1 candidate of Tak because the candidates from Pha Daeng Industry Company, which has the largest smelter in Thailand,

²³ Before running for the CDA, Panat was a former prosecutor and Dean of the Faculty of Law at Thammasat University (1986-1988). He later ran for the Senate Election in 2000 in Tak and was also elected.

²⁴ A province of the west of Thailand which borders Myanmar.

knew him from his time as a company advisor and thus gave him their votes.²⁵

For the type-2 CDA membership, 30 higher education institutions submitted a list of 279 candidates to the parliament for final selection. Most candidates were well-known public figures. However, it was also reported that there was a lobby among these 30 higher education institutions to select 23 candidates and submit them to the parliament, which excises the parliamentary process. However, this attempt was unsuccessful because the power to nominate the candidates does not belong to the Council of the University Presidents of Thailand. Instead, it belongs to the university council in each institution (Thaemsuk, 2002: 7).

The next step was the parliament's final selection, which took place on 26 December 1996. 630 out of the total members of parliament (653) were present to vote. The result of the CDA selection was criticised as there was a 'guided' list, one made by the government and the other by the "Young Turks" senators²⁶. Ultimately, 12 candidates on the government's list were not elected. Furthermore, on the type-2 CDA membership, six selected candidates were not on the government's list. They were mainly prominent figures, including Anand Panyarachun (former prime minister), Uthai Pimjaichon (former President of the Parliament), Thongbai Thongpao (lawyer and recipient of Ramon Magsaysay award), Khien Teeravit (professor of political science), Borwornsak Uwanno²⁷ (law professor), and Kasem Sirisamphan (former education minister) (Thaemsuk, 2002: 8-13). It was reported that the government-guided list was made by Sanoh Thienthong²⁸, the Interior Minister and Secretary-General of the New Aspiration Party, and distributed to the members of parliament by Senator

²⁵ Panat Tasneeyanond, personal communication, 6 July 2017.

²⁶ "Young Turks" senators do not refer to a group of senators from the military clique, but a group of senators who called themselves 'new blood' senators.

²⁷ Borwornsak then served as Dean of the Faculty of Law at Chulalongkorn University. He later served as the Secretary-General of the Cabinet (2003-2006) during the Thaksin government but quit before the 2006 coup. When the coup took place, he was called by the junta to draft a provisional constitution. Eight years later, in 2014, when another coup took place, Borwornsak was appointed to chair the constitution drafting commission from 2014 to 2015. However, that draft constitution was rejected by the military-appointed National Reform Council.

²⁸ Sanoh is an influential and well-known politician from Sa-Kaeo. When Thaksin Shinawatra formed the Thai Rak Thai Party in 1998, Sanoh quit the New Aspiration Party and joined the Thai Rak Thai Party.

Suchon Chaleekrua a day before the final selection took place. For their part, the 'Young Turks' senators also made a list of 113 candidates, while a group of '14 October 1973 friends' also made a list of 16 candidates. The main difference between the lists is that the government intentionally selects 99 CDA members. The selection process results show that 80 elected CDA members can be found on the government list, while 28 CDA members can be found on the Young Turks' senators' list. Only three from the 14 October 1973 friends list (Prachachat Turakij, 1997: 22). Various groups' attempts to determine the selection of CDA members clearly show that all groups want to be involved in writing the new 'rules of the game'.

Interestingly, one candidate was not successfully elected then, but a few years later, he became a crucial figure in Thai politics. That person is Thaksin Shinawatra, a former deputy prime minister and a leader of the Palang Dharma Party at that time. Thaksin ran for the CDA election in Chiang Mai and was on the 10-candidate shortlist submitted to the parliament for final selection. However, he then lost to Sawat Amornwiwat, a former police chief and the older brother of well-known Chiang Mai politician Sompong Amornwiwat, in the final selection. Previously, Thaksin had also been nominated by the Royal Police Cadet Academy for the type-2 CDA membership but withdrew because he wanted to run only for a CDA provincial election (Thaemsuk, 2002: 8-13).

During the final selection of CDA members, Panat Tasneeyanond, the former CDA member from Tak, revealed that he was almost the last CDA member approved by the parliament due to pushes to recount the votes. However, no matter how many times the votes were counted, he still received the highest tallies for Tak. Eventually, the acting President of the Parliament, Meechai Ruchuphan,²⁹ announced that Panat was elected as the CDA member from Tak. Panat also revealed that he had not expected to win, as with the CDA election at the provincial level, and that others had held the exact expectations, believing that the favourite candidate for Tak province was Udon Tantisunthorn. Panat thought the votes that elected him might have come from the New Aspiration Party, Chart Thai Party, and the Senate.³⁰

²⁹ Meechai was the President of the Senate who was a Deputy President of the Parliament. However, he chaired the parliamentary session at that time.

³⁰ Panat Tasneeyanond, personal communication, 6 July 2017

When the final selection of the 99 CDA members was finalised, the next competition was a battle for the President of the Constitution Drafting Assembly, which is vital in directing the constitution drafting process. Three favourite candidates for this post were Uthai Pimjaichon, Ukrit Mongkolnavin, and Anand Panyarachun. Uthai was a veteran politician who had been viewed as a pro-democracy and ‘progressive’ politician when he sued Thanom Kittikachorn after the self-coup in 1971 and was subsequently jailed. Uthai was a former MP from Chon Buri and once served as the Speaker of the House of Representatives in 1976 and various other ministerial posts. Anand was a former prime minister twice by the junta after the 1991 coup in February 1991 and the Black May event of 1992. Even though Anand was once a junta-appointed prime minister, he had been viewed by the Thai public as an ‘honest’ and ‘righteous’ leader. Ukrit was a law professor who had been Senate President between 1984 and 1989 and President of the National Legislative Assembly between 1991 and 1992, appointed after the 1991 coup. Ukrit had a good relationship with the conservative senators, especially those from the military and bureaucratic cliques, and Chavalit Yongchaiyuth, the prime minister then (Siam Rath, 1997: 6).

At first, it seemed that Ukrit was likely to become the CDA President, as it was reported that the New Aspiration Party fully supported him (Thansettakij, 1997: 16). However, Ukrit was vehemently opposed by the 19 pro-democracy movement groups, who saw numerous faults throughout his political career; he had never worked for the people but had served an unelected government. In particular, he was condemned as having served the ‘dictator’ when he was the President of the junta-appointed parliament. As having a role in helping the Suchinda government during the Black May event of 1992 (Phujatkan, 1997b: 12). When the pressure grew, Ukrit quit the CDA membership just a day before the first session (Matichon, 1997e: 2). As a result, the first CDA session was held on 7 January 1997 to select the President and Vice-President of the CDA. Eventually, Uthai was voted in as the CDA President after two rounds of voting (The Constitution Drafting Assembly, 1997a).

The Constitution Drafting Committee: the key commissions

After selecting the President and the Vice President of the CDA, the next step was to set up the CDA standing committee. In the second CDA

session on 14 January, the CDA members agreed to set up five CDA standing committees (The Constitution Drafting Assembly, 1997b):

1. The Constitution Drafting Committee
2. The Public Hearing Committee
3. The Academic and Information Committee
4. The Public Relations Committee
5. The Archives, Minutes Check, and the Assembly Affairs Committee

Among these five standing committees, the most important was the Constitution Drafting Committee (CDC), the main body involved in drafting a new constitution before submitting it to the rest of the CDA for consideration. The chairman of this committee was also in a crucial position. Anand Panyarachun was a favourite candidate for this position after he lost to Uthai Pimjaichon after the two rounds of CDA President selection (Khaosod, 1997c: 1, 10-11). However, Anand declared that he did not expect this post (Krungthep Thurakij, 1997c: 1-2.). There was also a movement among the lawyers contingent on the CDA to support Borwornsak Uwanno as Chairman of the drafting committee (Krungthep Thurakij, 1997d: 15-16). The committee members were selected in the second CDA session on 14 January. Ultimately, the CDC took on 17 members, with both Anand and Borwornsak among their numbers (The Constitution Drafting Assembly, 1997b). In the first CDC session, Anand was selected as the CDC chairman, and Borwornsak was chosen as the CDC secretary (The Constitution Drafting Assembly, 1997a). Notably, 12 of 17 drafting committee members were type-2 CDA members, known as the ‘academic clique’, while the remaining 5 were the type-1 CDA members, known as the ‘provincial clique’ (Matichon, 1997f: 1, 10-12.). This composition shows that a group of ‘experts’ on law and political science took a more crucial role in guiding the direction of the draft than provincial CDA members.

However, there was a movement among the CDA members from the provincial clique demanding a more significant role in the drafting process. As Panat Tasneeyanond revealed in an interview (6 July 2017), the provincial CDA members felt that they had only a minor role in the constitution drafting process as the leading role was almost totally in the

hands of the academics.³¹ That led to the appointment of an additional eight drafting committee members from the provincial clique on 18 February 1997 (The Constitution Drafting Assembly, 1997).

4.1.5 The 1997 Constitution: Key Features

The parliament, according to the 1997 constitution, was to be bicameral. It consisted of the House of Representatives and the Senate. The House of Representatives had 500 MPs, 400 elected by people in a single constituency and 100 from party lists (Borwornsak and Burns, 1998: 242). The people directly elected the Senate's 200 senators. In addition, the 1997 constitution established the innovative "independent agencies", which have the power of checks and balances over various fields. These agencies are given in Table 4.2.

Table 4.2 The newly established independent agencies and institutions under the 1997 Constitution

Institution	Key Functions
The Election Commission (EC)	Conducting elections and regulating political parties; investigating all allegations and controversies of electoral fraud; or a new referendum in any polling station or all polling stations
The National Anti-Corruption Commission (NACC)	Disclosure of assets and liabilities of political office holders and high-ranking government officials; investigating and adjudicating cases of "unusual wealth", fraud, or making false of assets and liabilities and submit to the Constitutional Court for a decision
The State Audit Commission	Examining state expenditure under the leadership of an impartial auditor-general
The Constitutional Court	Ruling on the constitutionality of laws and actions
The Administrative Court	Adjudicating administrative cases between government agencies or public officials with private agencies or individuals or between government agencies
The Ombudsman	Overseeing the administrative issues when government agencies are accused of non-compliance with the law,

³¹ Panat Tasneeyanond, personal communication, 6 July 2017

	exercising their powers beyond their authority, or failing to comply with their duties and can submit the case to the Constitutional Court or Administrative Court for further actions
The National Human Rights Commission	Protecting human rights and reporting human rights violations to the National Assembly.

Source: (Mutebi, Alex M., 2008: 147-171).

Borwornsak Uwanoo dubbed this version the “anti-corruption constitution” because it created a “comprehensive national integrity system.” (Borwornsak, 2013: 177–203). In this respect, the Senate was an important political institution, as it held two crucial powers that the House of Representatives did not:

- The power to approve the nominations in the independent bodies, including judges of the Constitutional Court and the Supreme Administrative Court, as well as those for the Ombudsmen, the National Anti-Corruption Commission, the State Audit Commission, the Election Commission, and the National Human Rights Commission.
- The power to impeach political office holders such as the prime minister, ministers, MPs, senators, independent body holders, and high-ranking government officials (Borwornsak, 2013: 177–203).

4.2 The Senate under the 1997 Constitution

4.2.1 Designing the Senate

The constitution drafting committee began its work by setting up three key frameworks, including those regarding:

1. Rights, freedoms, and civic participation
2. Checks and balances
3. Political institutions and the relationships between them

According to the draft proposed by the drafting committee, the parliament would be bicameral. The House of Representatives would consist of 400 MPs elected by the people, coming from single constituencies nationwide and 100 selected from the party list. The Senate consisted of 200

senators indirectly elected by the ‘expert’. The drafting committee proposed abolishing the PM's then-current appointment of senators. Instead, the senators were to be indirectly elected by the people from every province nominated by the local council and professional legal organisations, with the former House Speaker and the Senate President having the final say. Senators could not be active civil servants. The critical function of the Senate was legislation review and the impeachment of political officeholders and government officials (Thaemsuk, 2002: 25, 31-34).

Initially, the Senate was considered a necessary institution within the Thai political system. Borwornsak Uwanno, who served as the secretary of the drafting commission, explained the Senate was essential in reviewing legislation and, as the most crucial advantage, could balance the power of the political parties in the House of Representatives, particularly concerning the impeachment and appointment in the independent agencies. Without a second chamber, impeachment would be a matter of party affiliation and unlikely to be successful. Therefore, to acquire senators more legitimately, the drafting commission proposed to abolish the senatorial appointment by the prime minister and replace it with the self-selecting “assembly of experts” who were to be elected by a local council in the province (The Constitution Drafting Commission, 1997b).

Suchit Bunbongkarn, one of the drafting members, revealed that the fundamental problem that the committee discussed was how to get “good people” to become senators. At first, the drafting members viewed the appointment of senators as ‘acceptable’, but the question was how to appoint them. He gave the example of the House of Lords in the United Kingdom but acknowledged that it had evolved through history and, therefore, could not be employed in Thailand similarly. Another example was that of Japan, in which senators are elected directly and affiliated with a party. If Thailand used the Japanese model, the senators would not be different from the MPs. As such, the committee arrived at an indirect election, which, according to Suchit, was borrowed from the Constitution.³²

CDA’s proposal: direct election of senators

The Constitution Drafting Assembly began to debate the constitution drafting framework in three rounds of meetings in February and early March

³² Suchit Bunbongkarn, personal communication, 21 June 2017.

1997. After a long debate, they approved all the frameworks proposed by the CDC. However, the CDA offered to change some details regarding the scrutiny of power, political institutions, and the relationship between political institutions. On the subject of scrutiny of power, the CDA proposed to include the Administrative Court and the Ombudsman for consideration. In terms of political institutions, CDA suggested reducing the total number of MPs (from 400 to 500: 400 MPs from a single constituency and 100 MPs from a party list), a review of an electoral constituency (every five years by the Election Commission), and altering the acquisition of senators from indirect election to the direct election by the people (Thaemsuk, 2002: 37-38; The Constitution Drafting Assembly, 1997d). The latter was the most crucial change. Although, in this stage, ideas were just an initial framework, it clearly showed a difference from the beginning in the institutional design of the 1997 Constitution between the academics-dominated CDC and the provincial-dominated CDA members. After the CDA finalised and approved all frameworks proposed by the CDC, the next step was a public hearing.

Compromising way: Half appointed and elected Senate

A public opinion survey process took place between January and March 1997. According to the survey of 608,735 persons, which received more than 20,000 letters, 71.54% of the respondents agreed to have the Senate, and 56.10% agreed that the people should directly elect the senators by using the province as a constituency (Thaemsuk Numnon, 2002: 41). This survey shows public support for the idea of the direct election of senators.

After the public opinion survey ended, the CDC began working on the first draft of a new constitution in April 1997. They set up three sub-committees to draft a constitutional provision based on three outlined frameworks. The meeting atmosphere was severe throughout the day and night after a heated debate on various issues. One of the fundamental changes introduced by the CDC at this stage was the acquisition of senators. Initially, the sub-committee appointed by the CDC proposed the acquisition of senators in two ways:

1. Selection of 76 senators by ‘experts’ who will list the professional organisations (no less than 38 organisations) that have the power to nominate senatorial candidates
2. Direct election by the people from every province in Thailand, with one senator from each province
3. The maximum number of senators is 200 (Thaemsuk Numnon, 2002: 44-45)

The CDC later changed the details of the acquisition of senators, agreeing to two types of senatorial membership. For directly elected senators, the CDC changed the numbers from 1 senator per province to an amount based on the population of a province, where one senator would be chosen per 1 million people. If a province has an extra portion of less than 1 million but no less than 500,000, then that province would receive one additional senator. In addition, the CDC changed the number of appointed senators to three-fourths of the total number of directly elected senators. Appointed senators are divided into two groups:

1. Persons from the occupational groups were selected by calling ten legal professional organisations to nominate senatorial candidates. The ‘selection panel’ shall consist of the former House Speaker, Deputy House Speaker, the Senate President and the Vice President to determine which organisation can nominate candidates.
2. Experienced persons in state affairs administration, academics, and law. These candidates must be a former civil servant or military officer (holding the rank of director-general or an equivalent), a former judge (holding the position of chief justice of the supreme court or equivalent), a former prosecutor (holding a rank of deputy attorney-general or equivalent), a former President of the Supreme Administrative Court, a former public university president, or a former president of the lawyers' council (Thaemsuk Numnon, 2002: 44-45)

CDA’s consideration: The first draft constitution

After the first draft of a new constitution proposed by the CDC was finalised, it was submitted to the CDA for consideration and approval on its first reading. However, on the 12th CDA session on 7 May, Decho

Sawananon, the Archives, Minutes' Checks, and Assembly Affairs chairman, proposed to change from 'agree on principle' to 'agree to consider the draft constitution on its first reading', and CDA voted to support this proposition (The Constitution Drafting Assembly, 1997e). In the next session on 8 May, the CDA began to consider and debate the draft constitution proposed by the CDC.

According to the first draft, the Senate would consist of elected and appointed senators, who would be 40 years old or over and serve a 6-year term. The Senate would have only the power of legislation review and would not introduce a bill. The Senate would also have the power of interpellation, calling for a general debate without voting. Apart from legislative power, the Senate also has two additional powers: appointing independent agencies and impeachment. However, it is noteworthy that such authority belongs to the Senate and parliament. *The Senate and the House of Representatives will jointly exercise the power of the independent agencies' appointment and impeachment as parliament.* The independent agencies were the National Anti-Corruption Commission, the Electoral Commission, the Constitutional Court, the Ombudsman, the State Audit Commission, and the National Human Rights Commission. The first draft stated that these agencies were to be appointed by the parliament's recommendations, with the House of Representatives and the Senate jointly selecting and approving nominations to these agencies. For impeachment, one-fourth of the total number of MPs, one-fourth of the total number of senators, or 50,000 eligible voters could sign off. Those in favour would then ask the President of the National Assembly to proceed with an impeachment process of political officeholders or government officials presupposed to have extraordinary wealth or have abused their power. An impeachment resolution would require no less than two-thirds of the total number of members of parliament (The Public Relations Commission, 1997). The first draft's fundamental principle on the power of appointing independent agencies and impeachment belonged to the parliament.

The CDA members debated on the first draft in every section for two days. On 8 May 1997, 91 out of 99 CDA members voted to 'agree to consider' this draft constitution (The Constitution Drafting Assembly, 1997e). Following the CDA resolution, the CDC was automatically dissolved. The CDA then set up the draft constitution scrutiny committee of

33 members to revise the draft constitution on the second reading. However, there was a movement among the elected provincial CDA members to demand a more significant role in drafting the constitution by supporting Chalerm Phromlert³³, a CDA member from Surat Thani, to compete for a chair of the constitution scrutiny committee with Anand Panyarachun. In addition, the provincial CDA members also demand more than 20 committee members. However, after the situation grew tense, Chalerm withdrew. The resolution was made when the CDA agreed to increase the number of constitution scrutiny committee members from 29 to 33. After a heated debate, Anand was selected as the committee chairman. One condition by which Anand accepted this post was that the same persons must hold the key positions in this committee. One of those was Borwornsak, who served as committee secretary once again. Among the 33 members, 11 were from the ‘expert’ clique, and 22 were from the ‘provincial’ clique. However, 17 were former constitution drafting committee members (Thaemsuk, 2002: 58-59).

Provincial CDA members’ victory: The change to fully elected Senate during the second reading

After the draft constitution was passed on its first reading by the CDA, the next step was a public hearing. Three were held at the provincial, regional, and national levels for a month. During the public hearings, conflict arose around the concept of social forces in society. For example, regarding the issue of the Senate, the most active group that greatly opposed the idea of mixed acquisition of senators (appointed and elected) was the incumbent appointed senators at that time. They reasoned that the purpose of having the Senate would be distorted, and if there is an elected senator, there is ‘no guarantee’ that senators will be ‘competent’, which might cause a conflict within the Senate (Thaemsuk, 2002: 54-57).

In June, following the public hearing, the second reading of the draft started. Before the CDA began to debate and amend the draft, the constitution scrutiny committee released 40 amended articles, one dealing with the acquisition of senators. The committee changed this point to an ‘indirect election’ for all senators by a committee consisting of House representatives, Senators, and Supreme Court justices. Key CDA figures

³³ Chalerm later run for the Senate election and elected as senator from Surat Thani.

like Anand or even Uthai himself attempted to persuade CDA members to amend the draft constitution to reduce the number of amendments. However, this attempt was resisted, as those members reserved their rights to amend the draft constitution in the second reading. In addition, they were not pleased with the scrutiny committee as it did not amend the constitutional provision regarding public hearings. One of the critical issues was the acquisition of senators. CDA members claimed that the survey results showed that 88.96% of respondents wanted a direct election of senators. But the scrutiny committee nevertheless changed to an indirect election (Thaemsuk, 2002: 68).

This stage clearly shows a conflict among the CDA members between the 'expert' clique and the 'provincial' clique on the constitutional provision based on their idealism and interests. Although the tension had been lowered in the constitution scrutiny committee, many demands from the provincial CDA members still had not yet been solved, as doing so would affect the politicians' powers. The next opportunity to amend the draft constitution occurred at the second reading in the CDA. One of the controversial issues that had not yet been solved was the acquisition of senators, which the constitution scrutiny committee changed from a mixed method—appointment and direct election—to an indirect election. Among the issues was that the CDA members from the provincial clique were not satisfied as they wanted a direct election of senators. The constitution scrutiny committee argued that the appointed senators had always been criticised as government nominees. The other reason was this method would increase the possibility that the parliament would approve this draft constitution (Thaemsuk, 2002: 72). However, when the second reading began, the minority in the scrutiny committee, mostly the provincial CDA members, proposed changing the acquisition of senators to a direct election. This proposal caused a heated debate in the CDA. Eventually, this issue was solved by a resolution; the CDA members voted 42-30 to support the proposal to make the Senate fully elected, amid the extreme delight of provincial CDA members (Krungthep Turakij, 1997b: 3).

Panat Tasneeyanond, a CDA member from Tak and former constitution drafting committee member, explained that the change to a direct election was an 'unexpected' outcome and an 'accident'. Because the constitution scrutiny committee was confident that their proposal of an

indirect election would win, according to Panat, they had gone with the ‘assembly of the experts’ model. However, the provincial CDA members were not satisfied, reasoning that to become an entire democratic country, the Senate, too, should be fully elected. As a result of their disapproval, provincial CDA members pushed to amend this provision in the second reading.³⁴ Suchit Bunbongkarn, another CDA member who was also a member of the constitution scrutiny committee, revealed a dispute on the method of indirect election of senators, which could not be solved. In the meantime, one group of members proposed a direct election of senators, and eventually, this proposal was supported. Suchit also revealed that he voted to support the direct election proposal because he thinks the indirect election won’t work.³⁵

With the senators to be directly elected, the powers and functions of the Senate also had to be changed. On the first draft, the Senate had been granted the joint exercise of the power of impeachment and the appointment of independent agencies as parliament. After the Senate was made a fully elected chamber, the Senate became the only institution that exercised these powers. Panat Tasneeyanond stated that when the Senate’s structure was changed, the Senate should have been empowered. Still, the problem is that, apart from power on legislation review, which authority should the Senate have? At that time, it was also being decided that independent agencies would be established, and there was an attempt to find a link with the people to ‘justify’ the appointment process. Here, it was argued that when the people directly elect the senators, the Senate should have the power to approve the appointment of independent agencies and the power of impeachment. In Panat’s view, these two powers attempted to find a ‘meaningful’ role for the Senate in the new constitution.³⁶ Another CDA member, Suchit Bunbongkarn, also said that the Senate under the 1997 Constitution has more power on checks and balances, impeachment, and appointment of independent agencies because the people directly elect them.³⁷

³⁴ Panat Tasneeyanond, personal communication, 6 July 2017.

³⁵ Suchit Bunbongkarn, personal communication, 21 June 2017.

³⁶ Panat Tasneeyanond, personal communication, 6 July 2017.

³⁷ Suchit Bunbongkarn, personal communication, 21 June 2017.

The Final Reading and a parliament approval

The CDA voted to approve the draft constitution in its second reading on 30 July 1997 (The Constitution Drafting Assembly, 1997f). The final reading was then set to take place sixteen days later, on 15 August 1997, where after only 15 minutes, the CDA overwhelmingly approved this draft constitution: 92 approved, no one disapproved, four abstained, and 2 were absent (The Constitution Drafting Assembly, 1997f). The next and most crucial step was to submit it for parliament approval.

That proved to be no easy task. There was a clear signal from politicians that they did not want this draft constitution to become effective as it would curb their power. An indication of ‘reluctance’ among politicians, especially the ruling New Aspiration Party, was readily seen. Before the CDA final reading, Chavalit Yongchaiyuth, the prime minister and leader of the New Aspiration Party at that time, showed his support for the draft constitution, saying, *"I have told many times that I encourage and wish to push forward for approval"* (Matichon, 1997e: 1, 15). But four days before the final reading, Chavalit hinted, *"I have only one vote when asked if he still confirmed his support. To approve or disapprove (the draft constitution) is a matter of MPs and senators"* (Matichon, 1997c: 1, 4.). The prime minister's unclear words caused public doubt. However, the staunchest opposition to this draft constitution came from Sanoh Thienthong, a powerful politician from Sa Kaeo³⁸ who served as the Interior Minister and the New Aspiration Party's secretary-general then. On Kamnan³⁹ and Phu Yai Ban⁴⁰ Day, Sanoh heavily criticised and labelled it a ‘dictator’ constitution, which would cause disunity in the country. Sanoh also aroused Kamnan and Phu Yai Ban nationwide to rally against this draft constitution (Matichon, 1997d: 1, 4.). Pramarn Adireksarn, a veteran politician who was also a CDA member, disagreed with the draft as it seemed to ‘disdain’ politicians. Pramarn cited a provision on asset declaration three times as ‘unfair’ as it appeared to treat politicians as ‘corrupted’ (Sue Turakij, 1997: 15-16).

The battle between supporters and opponents of the draft was one of the symbols, with supporters rallying enthusiasm using ‘the green colour as

³⁸ A province in the east of Thailand

³⁹ In Thai administrative structure, Kamnan is an official who oversees Tambon (sub-district)

⁴⁰ Phu Yai Ban means a ‘village head’.

the movement's symbol: either a green ribbon or green flag' (Khaosod, 1997b: 1, 12), and the opposition using 'yellow' (Krungthep Turakij, 1997a: 15-16). However, the public's reaction differed from those of the politicians. After Sanoh voiced his opposition, The President of Ramkhamhaeng University Student Union called on university students nationwide to rally in support of the draft (Matichon, 1997b: 1, 4). In addition, the leading CDA figure, Anand Panyarachun, also put pressure on the parliament to approve the draft by marching with the people of Bangkok and calling for public support, claiming that this constitution will 'get rid of corrupted politicians' (Phujatkarn, 1997a: 4). However, when the parliamentary session took place, Chavalit made a shock move by proposing to amend first before voting on the draft in the parliament (Matichon, 1997b: 2).

The standpoint of the military is also enjoyable. Army chief Chettha Thanajaro, who supported the new constitution, had a private talk with Chavalit at his residence following his shock move to amend Article 211, where he urged Chavalit to support the draft. It was reported that Chettha told Chavalit that 'trouble' was unavoidable if the parliament turned down the draft constitution. It was also reported that earlier, Chettha had also had lunch with Deputy Prime Minister Virabongsa Ramangkura and a group of businessmen to discuss the economic outlook and the constitutional conflict (Bangkok Post, 1997g: 1-2). The military's standpoint was clearly in support of the draft, as can be seen from the statement by Chettha Thanajaro and Defence Permanent Secretary Yutthasak Sasiprapa: *"The military would not support the formation of a joint committee to rewrite the draft. We want to see it passes"*. The armed forces supreme commander Mongkol Amphonphisit, a senator, said that senators in the military clique had informed Chavalit that they wanted the draft passed and amendments made later, citing the economic crisis in Thailand. In addition, House Speaker Wan Mohammad Noor Matha, a leading figure of the 'Wada' faction of the New Aspiration Party, also told Chavalit that he would resign if the draft constitution were not passed (The Nation, 1997: A1, A6). On the day the constitutional debate took place in the parliamentary session, more than 200 pro-democracy activists gathered in front of parliament to show their support (Bangkok Post, 1997g: 1-2).

Boonlert Kachayutdech, a member of the Constitution Drafting Assembly and prominent columnist, also describes the ruling government's reaction of disapproval.

“Prime Minister Chavalit Yongchaiyudh is hesitant, unclear, uncertain, vague, and still the same.

Sanoh Thienthong, the Secretary-General of the New Aspiration Party and Minister of the Interior is still the same; he disapproves and is seemingly more aggressive.

The Thai Citizen Party leader Samak Sundaravej says daily that the draft constitution is invalid. How is it good? I don't support it. - I disapprove.” (Boonlert, 2000: 204-205)

Just after Chavalit made a shock move, he was ‘under siege’ and pressured by various groups: the military, the CDA, and even within his party. Eventually, Chavalit surrendered by showing his support to pass this draft constitution with the coalition parties. It was reported that the critical reason behind his change of heart was that he was ‘forced’ to step down from the post (Khaosod, 1997a: 1, 6.). Another report suggested that Chartchai Choonhavan, a leader of Chart Patthana Party, went to see Chavalit with the party's leading figures, saying that all parties, coalition or opposition, wanted the New Aspiration Party to support and pass this draft constitution (Thairath, 1997: 1, 3, 16-19). Eventually, the parliament passed the draft constitution on 27 September 1997 (The Secretariat of the Senate, 1997), officially promulgated on 11 October 1997 (The Royal Thai Government Gazette, 1997). It was the 16th constitution of Thailand since 1932.

The idea of a fully-elected Senate had not yet been proposed as of the beginning of the drafting process but was brought forth during the CDA reading. The initial idea was to have an indirect election, which jointly exercised the power of impeachment and selecting independent agencies with the House of Representatives as parliament. The change in composition and power of the Senate was seen as a battle between two camps of the Constitution Drafting Assembly: academic and provincial members. The change to a fully-elected Senate for the first time was a victory of the provincial CDA members. It proved a crucial turning point for the Senate as it had been granted two additional powers to be exercised without

intervention: impeachment and appointment of independent agencies. Thus, the Senate had become a crucial institution under the 1997 Constitution.

4.2.2 The Composition and Power

According to the 1997 Constitution, the Senate shall consist of 200 senators. The senators must have Thai nationality by birth, be no less than 40, and have a bachelor's degree or equivalent. Furthermore, the senators must not be members of any political party and must not be MPs, ministers or other political officials. The term of senators is six years, and elected senators cannot run for re-election (The Royal Thai Government Gazette, 1997). These provisions aimed to make the Senate a 'non-partisan' chamber, as the Senate in 1997 had more power in selecting and appointing independent agencies and impeachment. Ideally, therefore, the senators must be 'neutral'. However, former Tak CDA member and elected senator Panat Tasneeyanond believed that having elected senators but not allowing the senator to be a politician or party member is 'too ideal' and 'unnatural'. The senators might not be affiliated with a party because it is a constitutional prohibition, but practically all senators were 'sympathisers' with one party or another. He explained that this idea was based on the view that politicians who buy votes and cheat in elections are evil. In Panat's opinion, generally, to run for office requires a 'network'. However, in the context of 'political reform', Panat also explained that the 1997 Constitution provided 'hope' for eliminating corrupt politicians.⁴¹

4.2.3 The Significance of the Senate

The Senate, under the 1997 Constitution, had been empowered. Apart from its legislative power, the Senate had two additional powers: selection and approval of a nomination in the independent agencies and an impeachment (The Royal Thai Government Gazette, 1997). These two powers were crucial, making the Senate a significant institution under the 1997 Constitution. It was designed to perform more roles on checks and balances and make politics more transparent based on the idea of 'political reform' as it has the power to 'punish' politicians. But on the other hand,

⁴¹ Panat Tasneeyanond, personal communication, 6 July 2017.

because the Senate has such power, politicians also have the incentive to have a role in appointing independent agencies and impeachment.

Borwornsak Uwanno, the key drafter behind the 1997 constitution, explained that the constitutional drafters decided that senators must be directly elected. However, the senatorial election would be different from the election to the House because the senatorial candidates must not be affiliated with a political party, or if affiliated with a party; they must resign from that party at least one year before the election. This provision was meant to depoliticise and make the Senate non-partisan. It also banned candidates from campaigning, only allowing them to introduce themselves to the public with posters and leaflets. Instead, the Senate election employed a provincial multi-member constituency. Senators had a six-year term and could not run for a second term. A senator could not be a minister or hold other political positions. The Senate was designed to be the central political institution in the fight against corruption with two key powers: the power to vote for nomination in the independent bodies and impeach those holding political positions and high-ranking government officials. In the view of Borwornsak, this depoliticisation *"theoretically guarantees impartiality and neutrality of the Senate in its quasi-judicial function."* (Borwornsak, 2013: 177–203)

4.3 Expectation versus Reality

4.3.1 The 2000 Senate Election

Senate election was held for the first time on March 4, 2000. This election saw a historic voter turnout (71.89%), with 30,593,259 out of 42,557,583 eligible voters casting their votes (Election Commission of Thailand 2000: 1). This high voter turnout was a product of the buzz among voters. Gotham Arya, a former election commissioner between 1997 and 2001, revealed that the high voter turnout was the result of the people's 'alertness', the promulgation of the new constitution and that it was the first time in history that a direct election of the Senate was held. More than alertness alone, what counted was that people came out to vote.

However, the election did not provide all 200 senators, as the Election Commission disqualified 78 elected senators for suspicion of electoral fraud. Among the 78 disqualified senators, some were well-known candidates with close relationships with politicians, for example:

- Chaweewan Kachornprasart (wife of Interior Minister Sanan Kachornprasart)
- Manoonkrit Roopkachorn (former member of "Young Turks" that staged a failed coup in 1981)
- Chatchawan Khongudom (gambling advocate and newspaper-owner)
- Veera Rodruang (former Samut Prakan governor)
- Intarat Yodbangtoei (influential military figure from Chiang Mai)
- Usanee Chidchob (sister of Deputy Agriculture Minister Newin Chidchob)
- Maliwan Ngernmuen (wife of Suthas Ngernmuen)
- Sawat Amornwiwat (former police chief and older brother of long-serving Chiang Mai MP Somphong Amornwiwat)

The announcement made by the Election Commission meant that only 122 elected senators declared clear winners. However, the disqualification of the 78 elected senators affected 35 provinces where by-elections needed to be held. Among these 35 affected provinces, 13 had every winner disqualified, equivalent to 24 seats, while in the 22 other provinces, 54 elected senators were written off (The Nation, 2000b: A1).

With only 122 elected senators approved by the Election Commission, the question of whether the Senate could call a first meeting arose. While the constitution required a quorum of half the 200 senators, allowing a meeting, some argued that the Senate needed to be filled with a total of 200. Wan Muhammad Noor Matha, the President of the parliament, then submitted the case to the Constitutional Court, where, by a vote of 10-3, it ruled that the newly elected Senate can only assume office when all 200 seats are filled. The majority opinion of 10 judges was based on the constitutional provision, which stated that the Senate must consist of 200 members before inauguration (The Nation, 2000a: A2). The court verdict meant the existing 122 elected senators still could not act as the Senate (The Constitutional Court of Thailand).

To fill the 200 seats, the Election Commission had to call five by-elections from May to July. Notably, following the historic voter turnout in

the first Senate election in March, numbers significantly dropped every time a new by-election was held, as seen in Table 4.3.

Table 4.3 Voters' Turnout in the Thai Senate Election 2000

N o	Date	Seat s	Approve d Senators	Eligible Voters	Voter Turnout (Number)	Voter Turnout (Percentag e)
1	4 March 2000 (Nationwid e)	200	122	42,557,58 3	30,593,25 9	71.89%
2	29 April 2000 (35 provinces)	78	66	26,877,07 4	14,473,31 0	53.85%
3	4 June 2000 (9 provinces)	12	8	8,001,264	3,303,106	41.28%
4	24 June 2000 (1 province) Ubon Ratchathani	1	-	1,178,222	392,504	33.31%
	9 July 2000 (3 provinces) Maha Sarakhm, Nong Khai, Udonthani	3	3	2,301,578	679,381	29.52%
5	22 July 2000 (1 province) Ubon Ratchathani	1	1	1,177,323	369,651	31.40%

Source: (The Election Commission of Thailand, 2000)

Spouses House?

A dominant discourse used to explain the elected senators in the 2000 Senate Election was *Sapha Phua Mia* or the ‘Spouses House’. It was meant to denote the family relationships common between elected members and MPs or ministers (e.g., husband, wife, child, cousin, or other relatives) and subsequent links with the political parties. According to two newspapers that reported the result of the Senate election, it is true that some elected senators had a close link to a party, as seen in the table below.

Table 4.4 Elected senators close to a political party (1)

Party	Number
Democrat Party	21
Chart Thai Party	10
Chart Pattana Party	10
Social Action Party	4
New Aspiration Party	7
Thai Rak Thai	3
Solidarity Party	1
Ratsadon Party	2
Total	200

Source: (Thaipost, 2000d: 2,3)

Table 4.5 Elected senators, relationship to party (2)

Party	Number
Democrat Party	41
Thai Rak Thai Party	29
New Aspiration Party	17
Chart Thai Party	12
Chart Pattana Party	10
Seri Dhamma Party	4
Solidarity Party	4
Total	117

Source: (Phujatkarn, 2000b: 1, 15)

Thaipost reported that all 200 senators had links with a party, while Phujatkarn said that 117 senators were close to a party. It might be challenging to prove the exact number of elected senators with links to a party. Still, from what these two newspapers reported, it tends to be believed

that most elected senators connected with the party somehow. As such, the Constitution Drafting Assembly's aim to create a 'non-partisan' Senate seemed 'too ideal' and impossible from the beginning. On the other hand, considering the elected senators in the occupational group, it shows that most senators were former public officials, military officers, and even policemen. For a comparative perspective, see the dataset below from official sources, academic works, and newspapers, confirming that most elected senators were former bureaucrats.

Table 4.6 Elected senators: data from official sources

Occupation		Number	Percentage
1	Farmer	9	4.5 %
2	Teacher	6	3.0 %
3	Soldier/Policeman	4	2.0 %
4	Retired government official	56	28.0 %
5	Merchant/businessman	37	18.5 %
6	Lawyer	25	12.5 %
7	Politician	16	8.0 %
8	Executive	3	1.5 %
9	Social worker/developer/salaried worker	10	5.0 %
10	State enterprise officer	3	1.5 %
11	Doctor	7	3.5 %
12	Public official	16	8.0 %
13	Media	3	1.5 %
14	Others	5	2.5 %
Total		200	100

Source: (The Secretariat of the Senate, 2000a)

Table 4.7 Elected senators by occupation: data from academic works

Occupation	Election Commission Data		Tamada's data	
	Number	Percentage	Number	Percentage
Public official	73	36.5 %	111	55.5 %
Political official	1	0.5 %	-	-

Agriculture	10	5.0 %	1	0.5 %
Law	25	12.5 %	14	7.0 %
Medical	5	2.5 %	-	-
Professional	4	2.0 %	-	-
Self-employed	35	17.5 %	26	13.0 %
Commerce	14	7.0 %	26	13.0 %
Salaried worker	8	4.0 %	-	-
Politician	6	3.0 %	-	-
Unemployed	10	5.0 %	-	-
Other	9	4.5 %	48	24.0 %
Total	200	100.0 %	200	100.0 %

Source: (Tamada, Yoshifumi, 2009: 189)

Table 4.8 Political families in the elected Senate 2000-2004

Type of MPs	Total number of MPs (A)	Number of those who come from political families (B)	Extent of political family dominance (B/A)	Those in (B) who have served as constituency MPs (C)	The extent of overlap with constituency MPs (C/B)
Senators	518	220	42.5%	59	26.8%
Party-list MPs	361	177	49.0%	114	64.4%

Source: (Nishizaki, 2022: 148).

The elected senators indeed had a link with the party in some ways. But it is also true that from the beginning, the first ever elected Senate was not regarded as a spouse's house but a house of the public official. The discourse of spouse house came after these elected senators had been in office.

Table 4.9 The Senate of Thailand, 2000 – 2006

Parliamentary Form	Period	Acquisition	Number of Senators
Bicameral	2000 – 2006 (served 6-year term)	Directly Elected	200 (2% ex-military)

Source: (Chambers, 2009: 10)

4.3.2 Non-partisan chamber?

The Race for the Senate President

Despite the 200 Senate seats still not being filled, leading to by-elections being held four more times, the battle for the post of the President of the Senate started just a few days after the Senate election on March 4. It was reported that within the Democrat Party, the dominant party when the Senate election was held, there were two divided opinions on the candidate for this post. The first was Chirmsak Pinthong, the elected senator from Bangkok (Krungthep Turakij, 2000c: 1,3). It was also revealed that Chirmsak had a good relationship with the Democrats and helped Supatra Masdit (the prime minister's office minister) in public relations. Chuan Leekpai also supported him. The other was Manoonkrit Roobkachorn, a former key leader of the 'Young Turks' group that failed to seize power from Prem Tinsulanonda in 1981 and 1985, who was elected Saraburi senator. Manoonkrit was supported by Sanan Kachornprasart, the Deputy PM and Interior Minister and Democrats secretary-general, who has been his friend for many years (Phujatkarn, 2000c: 1-2).

The situation was intensified when Sanit Vorapanya, the elected senator from Lopburi, declared his intention to run for this position (Matichon, 2000g: 1, 19.). Sanit is Niyom Vorapanya's younger brother, a Lop Buri MP from the Chart Thai Party. Before entering politics, Sanit was a former civil servant who worked at the Ministry of Commerce. His last position was Director-General of the Department of Export Promotion (Thaipost, 2000c: 2). On the other side, Manoonkrit's clique also made a move. It was reported that a group of senators supporting Manoonkrit invited many senators to the seminar at Khao Yai, a holiday park in northeast Thailand, amid the rumour that it was an attempt to lobby for votes to support Manoonkrit (Matichon, 2000f: 1, 18). It was also reported that

Sanan Kachornprasart, as the Interior Minister, had asked elected senators who were former government officials to meet him and ask for support for Manoonkrit (Phujatkarn, 2000a: 14-15).

While the lobbying continued and the 200 Senate seats had not yet been filled, the existing 196 elected senators called an unofficial meeting where they deliberated on the critical issue of limiting the term for the President of the Senate to 2 years (Krungthep Turakij, 2000b: 15-16), an exciting move as it had not been specified in the constitution, only by a ‘gentlemen’s promise’. In July 2000, by which time the total number of elected senators was 199, there were three candidates for the Senate President (Krungthep Turakij, 2000a: 13-14), including:

1. Sanit Vorapanya, Lopburi senator. The key lobbyist was Suchon Chaleekrua⁴², the elected senator from Chaiyaphum who had a close relationship with Sanoh Thienthong.
2. Manoonkrit Roopkachorn, Saraburi senator. The key lobbyist was Phichet Phatthanachode⁴³, the senator from Nakhon Ratchasima who was Manoonkrit’s lawyer
3. Chumphol Silpa-Archa⁴⁴, Bangkok senator. Chumphol mainly gained support from the Bangkok senators and the senators who were former NGOs.

A battle for this post intensified after many distributed leaflets discrediting and criticising each candidate (Thaipost, 2000b: 3). The first Senate session was scheduled on 1 August 1997. The night before the session, it was reported that each faction attempted to gather votes to support their candidate in a hotel, hospital, or seafood restaurant (Matichon, 2000e: 1, 20). When the first session occurred, Sanit was selected as the Senate President (The Secretariat of the Senate, 2000b). However, Sanit’s victory was also accompanied by accusations of ‘vote-buying’ involving a vast amount of money totalling, according to one rumour, up to 2 million baht. Sanit denied all claims and insisted he was not involved with any party.

⁴² Suchon later became the First Vice President of the Senate between 2003 and 2004 and the President of the Senate (2004-2006).

⁴³ Pichet later became the First Vice President of the Senate between 2001 and 2003. He later quit by the ‘gentlemen’ promise after two years in office. Suchon Chaleekrua was later selected to replace his post.

⁴⁴ Chumphol is a younger brother of Banharn Silpa-Archa, a former prime minister and Chart Thai party leader from Suphanburi.

Sanit also made the ‘gentleman’s’ promise to be in charge for only two years even though his brother was an MP from the Chart Thai Party (Matichon, 2000d: 1, 23).

An uneasy relationship between the Senate and the Democrat-led coalition government

The first elected senators came to office at two critical junctures: promulgating the 1997 Constitution and the Democrat-led coalition government. However, the relationship between the Senate and the government did not go smoothly. The first test of this ‘bad blood’ was the passage of the 2001 annual budget bill. In the third reading, voting had to be cast three times, the last time of which the result was 69-69. It was reported that the senators close to the deputy prime minister and minister of interior, Sanan Kachornprasart, and senators from the NGOs clique voted to reject this bill. However, when the result was a draw, Senate President Sanit voted twice to decide the bill's fate and eventually passed the annual bill. Sanit was heavily criticised for his ‘manner’ and ‘appropriateness’ as the Senate President chairing a meeting that voted to help the Chuan government pass the budget bill (Matichon, 2000c: 1, 20). This incident sparked dissatisfaction among senators, and there was even a movement to impeach Sanit from the post. However, Sanit clearly showed that he did not care about such a movement and challenged his opposition by saying he would vote again on the electoral bill (Thaipost, 2000a: 1, 14). As expected, the other test of the uneasy relationship was deliberation and voting on the electoral bill. The Senate amended the original draft proposed by the government on the cost of holding a by-election. However, the MPs later voted to pass the revised bill (Matichon, 2000b: 2, 19). These incidents were examples of the uneasy relationship between the Senate and the government.

In another story, in early 2001, with a fresh election looming, there was a critical incident involving later prime minister, Thaksin Shinawatra, a telecommunication tycoon and founder of the Thai Rak Thai Party who aimed to run in the next general election. However, Thaksin was charged by the newly established National Anti-Corruption Commission (NACC) with intentionally concealing his assets by transferring them to his maids. Thaksin’s case was submitted later to the Constitutional Court. If found guilty, Thaksin would be banned from politics for five years (Matichon,

2000a: 1, 27). It was a critical move as Thaksin was eyeing the new prime minister position, and the stakes in this case were high.

Losing faith from the beginning? A scandal in the Senate

The Senate did not have an excellent public image from the beginning. The battle for Senate president and standing committee chairman did not impress the public. The Senate was viewed as no different from the House of Representatives, where politicians will try any trick to get power. A subsequent scandal occurred in January 2001 when the First Senate Vice-President and Surat Thani senator Chalerm Phromlert was accused of having sexual relations with four young girls. Several senators pushed to remove him from the post (The Nation, 2001h: A1, A6; Krungthep Turakij, 2001d: 17-18), but in the end, Chalerm's case would draw heavy criticism from the public after the Senate voted to 'shield' Chalerm from a court trial until the parliamentary session ended. The Senate's decision had caused outrage among the public, who saw that the Senate was trying to help Chalerm. His four accusers were reportedly 'speechless' (The Nation, 2001g: A1).

Chalerm's case was not the end of the scandal surrounding the Senate. The third scandal came with the selection of the National Telecommunication Commission (NTC), when Apipol Kongchanakul, the advisor of the transport committee in the Senate, revealed that there had been bribery in the selection process by seeking money from the candidates (Thairath, 2001c: 1, 16-17). Apipol, who once served as Sanit's advisor, also linked this case to the Senate President, indicating that he was also involved in this incident (Bangkok Post, 2001g: 1). Sanit denied any involvement, but it did not silence the public. Sanit became the talk of the town again after it was found that he had shares in a company with links with Wa Daeng⁴⁵ (Thairath, 2001b: 1, 14-19). Again, Sanit denied involvement with Wa Daeng (Matichon, 2001e: 5). The final straw for Sanit came in mid-March 2001 after the Election Commission expelled ten senators from 7 provinces, including Sanit, after being found guilty of electoral fraud. Sanit's allegations were *"buying votes, making unlawful promises, making donations to temples and holding a competition as the*

⁴⁵ Wa is an unrecognised independent state in Myanmar which borders China and Thailand. Wa Daeng is the common name in Thai for the United Wa State Army (UWSA), the large narcotics trafficking group.

president of the Jetski Association, holding banquets (The Nation, 2001f: A1, A6)." Sanit was dismissed from the post immediately, and a new battle for the Senate President began.

4.2.4 Game-Changing: a search for a new President of the Senate

When Chalerm resigned, the post of Senate Vice President was left vacant, and the race for a new Senate Vice President resumed. This time, it was a battle between Pichet Pattanachote and Suchon Chaleekrua, who were critical lobbyists in the race. Pichet was a Nakhon Ratchasima senator and Manoonkrit's lawyer. Suchon was a Chaiyaphum senator with a close relationship with Sanoh Thienthong and a leading canvasser who gathered senators' votes for Sanit Vorapanya. As such, this time, the search for a new First Senate Vice President was also a 'test' of support between Manoonkrit and Sanit's camps. Ultimately, it was a victory for Manoonkrit's camp when Pichet was selected as the new First Senate Vice President (Maticchon, 2001e: 1, 23). In an interview published after he was elected, Phichet admitted to being Manoonkrit's lawyer (Khaosod, 2001c: 3).

After Pichet became the First Vice President of the Senate, the real battle appeared: the race for the new Senate President. As with the selection of the Senate Vice President, the race for the Senate President was even more intense. This time, Manoonkrit emerged as the top candidate for the post among the senators affiliated with the Democrats, former government officials and provincial governors (The Nation, 2001e: A2). As expected, Manoonkrit was voted in as the new Senate President with 114 votes out of the 173 senators in attendance (The Nation, 2001e: A1; The Secretariat of the Senate, 2001b). As a result, the power and influence of Manoonkrit's camp in the Senate strengthened, with Manoonkrit and Phichet now occupying the Senate's top jobs.

Manoonkrit was also a controversial figure. Formerly known as "Manoon", he was a former army officer in the Young Turks group that staged a failed coup to topple Prem Tinsulanonda government in 1981 and 1985. In addition, he was a suspect in the assassination of Prem. However, after being voted as the new Senate President, Manoonkrit defended his past actions, saying, *"The coups were staged for the benefit of the people. I never sought to bring down people who were elected"* (Bangkok Post, 2001f: 1). Manoonkrit took a top job in the Senate's leadership just after Thai Rak Thai

won the 2001 election and Thaksin Shinawatra became the new prime minister. Another 'uneasy' relationship between the Senate and the government then began once again

4.3.3 Thai Rak Thai Dominance

An uneasy relationship between the Senate and the Thaksin government

Manoonkrit had been known for his long-time friendship with Sanan Kachornprasart, a veteran Democrat, party secretary-general, Deputy PM and Interior Minister. Manoonkrit was a former advisor to Sanan when he was a deputy prime minister and minister of interior (Matichon, 2001c: 6). The close relationship between Manoonkrit Roopkachorn and Sanan Kachornprasart was repeated after Manoonkrit was selected as the new Senate President; Sanan opened his residence to celebrate Manoonkrit's victory (Khaosod, 2001b: 10). Initially, this close relationship between Manoonkrit and Sanan did not concern Thaksin. However, just after Manoonkrit became the new Senate President, Thaksin said that he did not regard Manoonkrit as having a close relationship with the Democrats and that it would be difficult for the government to work with them (Matichon, 2001d: 17). Then, however, an uneasy relationship between the Senate and Thaksin government began quicker than expected.

The first incident that marked an 'uneasy' relationship between the Senate and the Thaksin Shinawatra government occurred in May 2001, when the Senate voted to reject the selection committee of the National Telecommunication Commission proposed by the government. Therefore, the selection process had to be repeated (Thairath, 2001a: 1, 17). The second incident occurred after Thaksin survived the allegations that he concealed his assets after the Constitutional Court ruled that Thaksin's case did not violate the constitution; Sanan's reaction was furious. He wanted the impeachment of the Constitutional Court judges who, in Sanan's words, had acquitted Thaksin '*under dubious circumstances*' (The Nation, 2001c: 1A). Manoonkrit's reaction seems to follow Sanan's move, saying that it could end in the impeachment of the Constitutional Court judges. In addition, Manoonkrit claimed that he had found evidence that the judges violated the constitution in Thaksin's case (Bangkok Post, 2001e: 1). In this case, the process was long. Seven months later, Sanan gathered 60,000 signatures to

support a motion to seek impeachment of the Constitutional Court judges because they had abused their authority (The Nation, 2002d: 7A). Manoonkrit then submitted this petition amid heavy criticism and condemnation by many senators for not being neutral as the Senate President (Matichon, 2002e: 8).

A significant clash that clearly shows an uneasy relationship between the Senate and Thaksin government was on the Thai Assets Management Corporation (TAMC) amendment bill. At first, this bill was not included in the Senate session on 24 August 2001, despite it being an 'urgent' bill introduced by the government. It was reported that several senators were surprised that this bill was not taken up for deliberation. One senator revealed that the Senate President had a particular problem with the government (The Nation, 2001b: 1A, 2A). However, Pichet Pattanachote, the First Senate Vice President, explained that because the government had submitted this bill for deliberation later than 5 pm on the previous day, it could not be included in the meeting's agenda (Krungthep Turakij, 2001c: 11). But it seemed too that perhaps it was a political tactic employed by the Senate to delay this proposed bill. Sanoh Thienthong⁴⁶, who was serving as the government whip chief then, had called for the Senate 'not to play a political game' and cooperate to pass the TAMC amendment bill in three readings at once (Phujatkarn, 2001: 15-16). However, the Thaksin government clearly showed that it wanted this bill passed as quickly as possible to put TAMC, which would buy billions of baht in non-performing real estate from banks and financial firms, to work. Manoonkrit denied accusations of 'playing a political game' to delay the bill. Although the bill was amended to just a few paragraphs, each word was too 'significant' to be overlooked (Bangkok Post, 2001d: 3).

When the TAMC amendment bill was included in the meeting a week later, the Thaksin government suffered a minor defeat after senators rejected a full Senate reading. Although the government asked for 'urgency' and pushed for a straight three readings, senators voted 171-8 to approve 'in principle' and set up a panel (Bangkok Post, 2001c: 3). Two weeks later, the Senate voted 135-15 to support the TAMC bill in the third reading. Crucially, though, the Senate approved the bill that the panel had amended,

⁴⁶ Sanoh moved from New Aspiration Party to Thai Rak Thai Party just before the 2001 Election.

not the one the government proposed (Krungthep Turakij, 2001b: 13, 20). However, even though the Senate passed the bill after a long 7-hour debate, Buriram senator Karoon Sai-Ngam alleged that the debt-ridden firms run by people connected to the Thaksin government, including Thaksin Shinawatra himself, would benefit from this bill (Bangkok Post, 2001b: 3).

After the TAMC bill, another clash between the government and the Senate occurred regarding the banning of chemical weapons bill. This bill, introduced by the government and approved by the lower house, was rejected in the Senate because *'it had been drafted as general legislation even though it counted as a finance-related law'*. The two chambers then set up a joint committee to amend the bill. However, the Senate contended that it had never received a revised bill and that the House had unilaterally dropped this version before enacting the original draft approved by the House into law. The senator then filed this case to the Constitutional Court. Thaksin Shinawatra blamed senators for clashing with MPs (The Nation, 2001a: 2A).

The relationship between the Senate and the government became tenser when Manoonkrit criticised the merger between the New Aspiration Party and Thai Rak Thai, saying that this merger to strengthen Thai Rak Thai by using money as a weapon would cause the 'fall of the nation' (Krungthep Turakij, 2002e: 8, 12), another controversial Manoonkrit statement. Thai Rak Thai Party then reacted aggressively by threatening to collect votes to impeach Manoonkrit (Krungthep Turakij, 2002d: 13, 16). In addition, the Thai Rak Thai Party also petitioned the Ombudsman to review Manoonkrit's actions (Krungthep Turakij, 2002c: 13, 16).

Under Manoonkrit's leadership, the Senate proved to be a significant hurdle for the Thaksin government in passing bills. In 2002, these included two critical bills related to local administration and bureaucracy. Here, the 'uneasy' relationship was repeated with the first bill: a subdistrict council and subdistrict administration organisation bill. The Senate passed this bill but changed critical content that the House of Representatives had approved. One of these fundamental changes was that the mayor was to be directly elected by the people instead of indirectly elected by the council (Krungthep Turakij, 2002b: 9). A conflict on this bill was seen after the Senate amended the bill, making the mayor directly elected by the people, then returned it to

the House of Representatives. The lower house later rejected the revised bill, causing discontent among senators (Siamrath, 2002: 1, 13).

The second was a bureaucratic reform bill. After this bill was approved by the House of Representatives and submitted to the Senate, signs indicated that the Senate might delay this bill. Ang Thong senator Nipon Wisityutthasat, a Senate whip chief, hinted after submitting this bill to the Senate that he was 'not sure this bill will be approved by October 1' (Thairath, 2002: 1, 16, 19). It was seen again in August after the Senate voted to extend the bill deliberation to 30 more days. Senate President Manoonkrit explained that it was a 'careful' deliberation purpose amid the Senate delaying the bill (Phujatkarn, 2002: 11-12). Formerly, there were 14 ministries. The original bill, proposed by the government and passed by the House of Representatives, consisted of 20 ministries. However, the special Senate Committee, chaired by Nakhon Ratchasima senator Sawai Prammanee, voted to dismiss the Information and Communication Technology (ICT) Ministry as it believed the new ICT Ministry should be a part of the Science and Technology Ministry. It was reported that Thaksin Shinawatra tried to lobby the Senate to establish the ICT Ministry (The Nation, 2002b: 3A). Eventually, the Senate agreed on Thaksin's proposal to establish the ministry, and the number of ministries increased to 20 amid a rumour of 'heavy lobbying' in the Senate (Thaipost, 2002: 1, 12).

Another round of conflict between Manoonkrit and the government concerned selecting a new Ombudsman on May 17, 2002. However, at a Senate meeting on 30 May, it was reported that Manoonkrit did not allow the Maha Sarakham senator, Srimueang Charoensiri, to speak. Srimueang was unhappy and told the senators in the meeting that Manoonkrit pointed a finger and scolded him for a 'betrayal' in not selecting Yanyong (Matichon, 2002c: 1, 15). However, it was widely known that Srimueang had been close to the Thai Rak Thai Party. At the heart of the conflict in the selection for a vacant Ombudsman was the favourite candidate, Yanyong Thanompichai, a former director-general of the Department of Forestry who had a close relationship with Sanan Kachornprasart, and Manoonkrit's clique in the Senate also supported him. However, Yanyong then lost to Poolsap Piyanan, a former Budget Bureau director supported by the Thai Rak Thai Party. This incident displeased Manoonkrit (Krungthep Turakij, 2002a: 15-16), who had allegedly lobbied openly for Yanyong, asking every senator

for support. After the loss, Manoonkrit reportedly showed his anger at several senators.

Further, Manoonkrit's influence was apparently on the wane after he submitted a petition from Sanan to the NACC without consultation. He was slammed for saying impolite words to Srimuang Charoensiri, reportedly part of a group of 60-70 pro-government senators. The government allegedly pushed Poonsap Piya-Anand as its candidate for the post only to avoid criticism for transferring the underperforming Budget Bureau director. It was reported that the prime minister's office minister, Chaturon Chaisaeng, held talks with him in which he pledged to help secure the ombudsman post if he agreed to resign from the Budget Bureau (Bangkok Post, 2002: 3).

In the first year of the Thaksin administration, it was apparent that the government had a bittersweet relationship with the Senate, which caused trouble for the government in passing the law. However, this uneasy relationship between the government and the Senate did not last long as the Thai Rak Thai dominated the Senate more and more.

Thai Rak Thai's clique in the Senate

Thaksin and Thai Rak Thai Party appeared to be gradually attempting to dominate the Senate in late 2001 when the new Election Commission (EC) was selected. Just before the selection process by the Senate took place, leaflets with what was apparent Thaksin's signature were sent to the senators' homes to 'ask for cooperation' in selecting the four new election commissioners by 'bloc voting' the candidates on the list (Thaipost, 2001: 3). Thaksin denied involvement and asked the Senate President to investigate the leaflet's origin (Krungthep Turakij, 2001a: 9, 12). However, based on a report produced by the Senate special committee on screening the EC candidate, the committee questioned the constitutionality of the selection process⁴⁷, with some shortlisted candidates without positive repute

⁴⁷The 1997 Constitution states that the Election Commission selection committee must vote in numbers of no less than three-fourths to approve a candidate. At that time there were 55 candidates qualified for the final selection. From the first to third rounds of voting, three candidates were voted at three-fourths (Wassana Permlarp, Weerachai Naewboonnian, and Jaran Buranapansri). However, during the fourth and fifth round of voting, no candidates obtained three-fourths of the vote. The selection committee then changed the method of selection by choosing the three candidates who received the highest number of votes, which was dubious in its constitutionality.

in this regard (Matichon, 2001b: 1, 19). Lobbying for the EC jobs also intensified. It was reported that apart from hosting dinner or offering something, some EC candidates offered to 'facilitate' senators who wanted to run for MP in the next term (Matichon, 2001a: 1, 19).

The selection of the new Election Commission took place on 4 October 2001 and saw General Sirin Thoopklam⁴⁸, Wassana Permlarp, Veerachai Naewboonnian, Jaran Buranapansri, and Parinya Nakchattree receiving sufficient votes (The Secretariat of the Senate, 2001a). However, despite controversy on the constitutionality of the selection process and candidate qualifications, the Senate quickly pushed to select the new Election Commission. Senate President Manoonkrit was also accused of rushing the selection process in the senatorial session, which he denied (Bangkok Post, 2001a: 3). After the selection process, rumours were widely circulated that this selection was a 'settled' benefit between the Senate and the government. The government wanted Wassana and Veerachai, while the Senate wanted Parinya and Jaran to be election commissioners (Khaosod, 2001a: 1, 9-10). However, Sirin was dismissed after the Constitutional Court ruled that his selection had been unconstitutional. The Senate then selected Charupat Ruengsuwan to replace Sirin. It was reported that Charupat had close ties with many former military chiefs in the government and gained support because of those relationships (The Nation, 2002a: 3A).

Furthermore, the new election commissioners were criticised for their profile and relationship with parties and politicians. Sirin was close to the New Aspiration Party and was appointed an advisor when Chavalit Yongchaiyuth was prime minister in 1997. Sirin was given a 'yellow card' after he was elected as Lopburi senator. Veerachai was a deputy permanent secretary of the Ministry of Interior who had been close to Pramarn Adireksarn, a leading figure of the 'Soi Ratchakru' clique and former Interior Minister. Veerachai was appointed as Pramarn's secretary when he was the Interior Minister. Jaran was a former Director-General of the Department of Probation who had a close relationship with Sanan Kachornprasart and was even given a 'special made' ring from Sanan. His staff had also made complaints about him before his resignation. Parinya, though, had received

⁴⁸ Sirin was elected as Lop Buri senator later but he was disqualified by the Election Commission following a speculation on electoral fraud. The by-election was held in April, but this time Sirin was not elected.

the most complaints as a senior official in the Interior Ministry and an appointed board member in various state enterprises with a party affiliation.

Furthermore, Parinya was accused of overprinting ballots, mainly in the southern constituencies. He had also complained about 'unusual wealth' as the Director-General of the Department of Land and Provincial Administration. Only Wassana had no complaints filed against him (Khaosod, 2001a: 1, 9-10).

Another clear sign that Thai Rak Thai attempted to dominate the Senate appeared when Bunthan Dokthaisong vacated the Second Senate Vice President post. It was reported that the senators pressured Bunthan to keep his gentleman's promise that he would be in office for two years by showing a resignation (Matichon, 2002d: 1, 3). However, Bunthan confirmed his resignation again in July (Komchadluek, 2002: 1, 14). As a result, a little-known senator, Sahad Phinthusene, was elected as the new Second Senate President. Sahad had been known for his long relationship with Sanoh Thienthong when he was district chief of Sanoh's hometown, Sa Kaew district in Prachin Buri, before being granted provincial status (The Nation, 2002c: 3A). Sanoh was a 'key person' in the district as he owned many businesses there. Therefore, for Sahad, as a district chief, it was 'inevitable' that the two would be acquainted. He explained that he had been elected as a Sa Kaeo senator because he had worked there for almost seven years (Matichon, 2002c: 13). Sahad's selection as the Second Vice President of the Senate was the first step by the Thai Rak Thai Party toward senatorial leadership⁴⁹. It also showed that Manoonkrit's power and influence gradually declined with the pro-government senators' bloc coming to dominate the Senate.

The selection of the new four Constitutional Court judges was also subjected to doubt, given Thai Rak Thai's influence in the Senate. Three of the four judges, Manit Wityatem, Suwan Suwanwecho, and Suthee Suthisomboon, were alleged to have a connection to the government. Manit was a former director-general of the Customs Department who confirmed that Shin Satellite Plc, owned by Thaksin Shinawatra's family, had abided

⁴⁹ Sahat Pintuseni later stepped down from the Second Senate Vice President on 30 August 2004. However, Sahat had been re-elected his post, amid the report that several senators said pro-government lobbied other senators for Sahat during the 15-minute break before the second round. (The Nation, 1 September 2004)

by the law amid accusations that the company had avoided tax payments on imported telecommunication equipment. Suwan was a former police general who resigned from service to work for the prime minister's office after Thaksin came to power. Suwan was also a key figure who campaigned to gather signatures to support Thaksin during the court's inquiry on his alleged concealment of assets. Suthee was a deputy secretary-general to the prime minister and had strong ties with the Thai Rak Thai Party. These three new judges were seen as joining eight other judges favouring Thaksin in the previous case (The Nation, 2003g: 1A, 2A).

A clear sign that Thai Rak Thai sought to dominate the Senate was seen in the selection of the new First Senate President. Again, Phichet Pattanachote announced that his resignation would become effective on 1 March 2003 after being pressured to keep a 'gentleman's' promise that he would remain in office for only two years. This time, Suchon Chaleekrua also prepared to compete for the post. Surprisingly, Phichet announced his intention to run for the position once again (Phujatkarn, 2003: 14-15.), though he later withdrew. Without Phichet was in the running, and Suchon was a favourite candidate for the post. The other candidates were Kanchanaburi senator Banthit Malaiarison and Bangkok senator Sak Korsangruang, who was known to be supported by Senate President Manoonkrit, along with the NGOs and former military officer senators (The Nation, 2003f: 3A). The election took place on 6 March 2003. Suchon easily won with 123 votes, beating Banthit (47 votes) and Sak (25 votes) to become the new First Vice President of the Senate. Suchon was widely known to have strong ties with Sanoh Thienthong, who was then a chief advisor to Thaksin Shinawatra and the Thai Rak Thai Party. Suchon regularly appeared at Sanoh's house for parties and meetings (The Nation, 2003e: 4A).

Another sign emphasising a solid tie between Suchon and Thai Rak Thai came in July 2003, when Suchon appointed his 33 advisors. Most of Suchon's advisors were senior officials and executives from state enterprises who were also his classmates at the National Defense College. Notably, only one person who was not Suchon's classmate, Preawphan Damaphong, was appointed. Preawphan was a Police Lieutenant General and a younger brother of Thaksin's wife, Potjaman Shinawatra (Daily News, 2003: 3).

The change in Senate leadership for the post of the First and Second Senate Vice President significantly showed an attempt by the Thai Rak Thai

Party to dominate the Senate. The change in these posts inevitably affected Manoonkrit's position. Soon after Suchon was selected as the new First Senate Vice President, it was reported that the pro-government senators planned to lobby support to force Manoonkrit out of office to enforce the 'gentlemen's promise' after two years in charge (Bangkok Post, 2003c: 3). After being pressured by his 'opposition' senators, Manoonkrit agreed to step down on 4 January 2004. Manoonkrit's decision satisfied his opposition, and his critics ceased (Matichon, 2003b: 1, 15).

Another sign that the Senate was gradually being politicised was a new round of Senate standing committee selection after two years in office. It started from the public participation committee led by NGO senators opposing Thaksin Shinawatra.⁵⁰ The Senate committee on public participation became a target of pro-government senators seeking to take control. Pratheep Ungsongtham Hata accused Roi Et senator Prakiat Nasimma of campaigning to replace the public participation committee members. Prakiat reportedly lobbied a committee on candidate scrutiny to extend the registration deadline and convinced five senators to apply (Bangkok Post, 2003b: 3).

Moreover, Khon Kaen senator Klaew Norapati revealed that a fellow senator offered him 70,000 baht to withdraw his candidacy for this committee. Klaew did not name the senator who tried to bribe him; however, he referred to a "Mr P", who came to be understood as Prakiat Nasimma⁵¹ (The Nation, 2003d: 3A). After nearly two months of conflict, the Senate public participation committee came under the control of pro-government senators after 8 NGO senators pulled out. Their seats were taken by nine pro-government senators (The Nation, 2003c: p. 4A).

During an interview, former Bangkok senator and NGO Jon Ungphakorn revealed that the public participation committee was not a popular panel for most senators. For this reason, NGO senators saw few obstacles in joining this committee. However, Jon also confirmed that he and his colleagues were 'blocked' from being committee members.⁵² After

⁵⁰ The key senators in this group were Chirmsak Pinthong, Jon Ungphakorn, Thongbai Thongpao, Prateep Ungsongtham, Niran Phitakwatchara.

⁵¹ Prakiat later ran for the MP election under Thaksin's second successive party, the People's Power Party, in the 2007 general election.

⁵² Jon Ungphakorn, personal communication, 21 June 2017.

nearly two months of conflict, the Senate public participation committee was under the control of pro-government senators (The Nation, 2003c: 4A). A month later, it was reported that pro-government senators had been tipped to chair most Senate standing committees, including the public participation committee, which has been highly critical of the government (The Nation, 2003b: 4A).

Another independent agency whose members were in cahoots with the government was the new National Anti-Corruption Commission (NACC) after the terms of eight out of the nine NACC members expired, and close associates of Thaksin were chosen to replace them. The first selected member was Wichienchote Sukchotirat⁵³, a deputy permanent secretary of the Ministry of Justice and Thaksin's senior at the Police Cadet Academy. He was also awarded a scholarship to study criminology at the same university as Thaksin in the United States (Bangkok Post, 2003a: 6). In an interview with the press, Wichienchote did not deny that he had a close relationship with Thaksin but claimed that he does not take any 'orders' and that he was not a part of Thaksin's clique (Matichon, 2003a: 8). In addition, Wichienchote was a classmate of Somchai Wongsawat, the permanent secretary of the Justice Ministry and Thaksin's brother-in-law at the National Defense College (The Nation, 2003a: 4A).

On the same day that Wichienchote was selected as a new NACC member, a new Ombudsman, Teeradej Meepian, a former permanent secretary general of the Ministry of Defense, was also chosen in the Senate. He beat three other candidates, including the secretary general to the Ombudsman, Pramote Chotemongkol, the former Ramkhamhaeng University rector Assadang Panikabutr, and the former ombudsman Pichet Suntornpipit. Teeradej gained support from NGOs and former military senators. It was reported that pro-government senators had attempted to lobby and gather votes for Pramote and Phichet. Teeradej's ultimate selection surprised the senators in the meeting room (Thaipost, 2003: 1, 12).

⁵³ Wichienchote came to study one year before Thaksin at Eastern Kentucky University. Wichienchote was also a senior of Purachai Piemsomboon, the Interior Minister in the Thaksin government, at the Police Cadet Academy and was also awarded a scholarship to study in the US. Wichienchote (24th class), Purachai (25th class), and Thaksin (26th class) were the highest-scoring students at the Police Cadet Academy in their class, so they were awarded a scholarship to study in the United States. (See The Nation, 4 November 2003)

In this period, it became evident that the Thaksin government was coming to dominate the Senate, as seen mainly from selections to the independent agencies. However, the saga was not finished, as shown by the appointment of the ombudsman. The domination of Thai Rak Thai would become more apparent when Manoonkrit stepped down as Senate President, paving the way for a new Senate President.

Manoonkrit's resignation, the rise of Suchon and pro-Thai Rak Thai senators

Manoonkrit Roopkachorn resigned as Senate President on January 4, 2004, in keeping with the 'gentleman's' promise. His resignation led to the selection of a new Senate President, though Manoonkrit had vowed to run for another term (Krungthep Turakij, 2004: 10, 12). Before the new selection could be held, a leading candidate and Acting Senate President, Suchon Chaleekrua, called an urgent meeting to select the new 7 National Anti-Corruption Commission (NACC) members. Suchon's move surprised many senators, especially the Senate sub-committee on NACC candidate scrutiny, which argued that some candidates were pending a Constitutional Court ruling on their qualifications (Matichon, 2004d: 13). Nevertheless, the selection of new NACC members was included in the Senate agenda a day later. It was reported that many senators were not happy with this urgency, but there was an 'order' from the government to push it through. In the end, 6 out of the seven new members were on the list distributed among senators, heavily criticising the push as a government order. Moreover, it was reported that a vast amount of money was distributed among senators to gain votes 'according to the proposed list'. Notably, around 50-60 senators were simultaneously seen going to the toilet (Matichon, 2004c: 1, 15-16).

Soon after the selection of the new 7 NACC members was completed, the choice of the new Senate President began amid more reports of heavy lobbying. Chanthaburi senator Wicha Sritham revealed that a 'would-be' candidate had asked him to withdraw from the contest in exchange for the post of Senate Vice President (The Nation, 2004c: 3A). At that time, there were allegations that a candidate had offered to buy votes at 500,000 baht, and another candidate had been paid millions of baht to withdraw (The Nation, 2004b: 4A). As had been expected, Suchon won the race and became the new Senate President. The close relationship between Suchon and the Thai Rak Thai Party was again realised publicly. After being elected,

Suchon went to play golf with Wiwattanachai Na Kalasin, a Thai Rak Thai party-list MP, who came to be known as a significant lobbyist gathering votes from senators to support Suchon during the race, and Chonburi senator Surachai Danaitangtrakoon (Komchadluek, 2004: 5).

Before Suchon was elected Senate President, there was speculation regarding the other senators in the race, including Ang Thong senator Nipon Wisityuthasart, another favourite candidate for Senate President, who suddenly withdrew from the race, prompting rumours that his withdrawal was an exchange for the First Senate Vice President instead. During an interview with the author, Tak senator Panat Tasneeyanond, who also ran for the race of Senate President at that time, revealed that he had known that he would not be elected to the post. However, he wanted to know how many ‘neutral’ senators would vote for him. Ultimately, he received 22 votes, which he saw as impartial. When asked about the withdrawal of one candidate, Panat revealed that he had no proof. Still, the rumour was widely known among the senators and potentially valid or just a rumour spread for political purposes.⁵⁴

A significant sign that the Senate was a political support base for the Thaksin government from 2004 was the selection and appointments to independent agencies. The selection of the National Telecommunication Communication Commission was alleged to be pre-determined by a bloc vote of senators amid a rumour that the candidates were involved with the large mobile phone operator (Matichon, 2004b: 1, 14). The selection of a vacant constitutional court judge was also cast into doubt. In this case, there were two candidates: Noppadol Hengcharoen and Suchit Bunbongkarn. Noppadol was selected as a new constitutional court judge amid suggestions that the pro-government senators would vote for him instead of Suchit because Suchit was one of the minority judges who ruled to disqualify Thaksin in the case of concealing assets in 2001 (Lokwannee, 2004: 8). Even Senate President Suchon Chaleekrua himself later admitted the candidate selection for the independent agency appointments had a lobby in every line and for every candidate (Komchadluek, 2005c: 3).

As it became evident that the influence of pro-government senators was growing in the Senate, tensions between the majority and minority in

⁵⁴ Panat Tasneeyanond, personal communication, 6 July 2017.

the Senate grew. In other words, conflict arose between the pro-government and anti-Thaksin government senators. This tension peaked in November 2004 when Bangkok senator and former police chief Prathin Santiprapob punched Mae Hong Son senator Adul Wanchaithanawong during a session in which Bangkok senator Chirmsak Pinthong while giving an address on the Tak Bai incident,⁵⁵ was disrupted by a horde of pro-government senators. Prathin, a chairman of the Senate special committee on the Tak Bai incident, was angered by the proceedings and became aggressive (The Nation, 2004a: 2A, 4A). Apart from contributing to the poor reputation of the Senate, this fight also reflected the grievances of the minority, as the Senate was seen as dominated by the pro-government senators. The situation would soon become unmanageable.

4.3.4 The Trouble with the Independent Agencies

The Saga of the Auditor-General

One of the most controversial selections of candidates to the independent agencies during the first fully elected Senate under the 1997 Constitution was that of the Auditor-General. The saga began in 2003 after Buriram senator Surapong Painual filed a petition to the Constitutional Court after the Senate selected Khunying Jaruvan Maintaka as the auditor-general over two other candidates. The Constitutional Court ruled to invalidate the appointment of Jaruvan as unconstitutional. In 1999, as the Board of State Audit Commission searched for an auditor general, eight commissioners voted to nominate Prathan Dabphetch with five votes, Jaruvan Maintaka with three votes, and Nanthapol Nimsomboon as the backup candidate. The constitution states that the board must submit the nominee with the highest votes from a simple majority. Still, the State Audit Commission chairman, Panya Tantiyavarong, submitted all three candidates to the Senate for selection. However, this ruling does not retroactively affect the work carried out by Jaruvan as the auditor-general (Bangkok Post, 2004: 1).

Following the Constitutional Court's ruling, the selection process of Jaruvan as the auditor-general was deemed unconstitutional; the next problem was whether the Senate should wait for a royal command to dismiss

⁵⁵ The dispersal and arrest of the demonstrators in Tak Bai district, Narathiwat, left 85 deaths on 25 October 2004.

her. Amid the still unresolved issue of Jaruvan's status, the Senate immediately began searching for a new auditor general. The favourite candidate was Wisut Montriwat, a deputy permanent secretary of the Ministry of Finance. It was reported that Wisut was a classmate of the Suriya Jeungroongruangkit, a transport minister and secretary-general of the Thai Rak Thai Party at the National Defence College of Thailand. The immediate attempt to find a replacement, despite the looming questions surrounding Jaruvan's status, was seen by anti-Thaksin government senators as a move to oust Jaruvan because of her reputation and personality. Jaruvan was publicly regarded as critical of the Thaksin government for investigating corruption, especially surrounding the new Bangkok International Airport (known as the Suvarnabhumi Airport today) (Komchadluek, 2005a: 1, 14). Although Jaruvan's reaction to this issue was obvious, she insisted that she would not resign as auditor general, indicating that she was legally selected and had done nothing wrong (Matichon, 2004a: 1, 15). However, on 10 May 2005, the Senate chose a new auditor-general, rejecting the call for the Constitutional Court to rule on the status of Jaruvan. As expected, Wisut Montriwat was selected as the new auditor-general amid a report of heavy 'six-digit' money lobbying (Komchadluek, 2005b: 1, 14).

At this stage, two issues overlapped: Jaruvan's status and the appointment of Wisut as the new auditor general. From the beginning, the Constitutional Court's verdict only indicated that Jaruvan's appointment as the auditor-general was unconstitutional but did not rule on Jaruvan's status. This legal controversy was confirmed after the President of the Constitutional Court, Kramol Tongthammachart, submitted a letter to the King's principal private secretary for comment on Jaruvan's case. The latter replied that the Constitutional Court's ruling remained controversial because it had not ruled on Jaruvan's status or whether she was still in office. However, the Constitutional Court argued that the petition submitted by the President of parliament did not include an issue of Jaruvan's status (Khaosod, 2005: 1, 10-11). As a result, the Senate President Suchon Chaleekrua was confident enough to push the nomination of Wisut ahead, insisting that the King's principal private secretary had already been informed of Jaruvan's ouster and that the nomination of the new auditor-general for a royal endorsement would not be called off (Bangkok Post, 2005g: 3). However, Suchon's move did not stop an attempt by 16 senators, led by Bangkok senator Seri Suwannapanont, to block Wisut's nomination,

citing the regulation under the Office of the Auditor-General for selection of the auditor-general as illegitimate given that it had not been published in the Royal Thai Government Gazette. Worachet Pakeerut, a law professor at Thammasat University, reasoned that if this regulation was not published in the Gazette, the Senate had no choice but to scrap Wisut's nomination (Bangkok Post, 2005f: 1). However, this move ultimately did little to stop the appointment.

Amid the saga of the auditor-general, it was reported that Thaksin had invited Jaruvan for lunch, but she had refused. Thaksin later denied any attempt to ask Jaruvan to quit. However, according to a high-ranking source from the Office of the Auditor-General, it was also said that various government members and senators had been attempting to intimidate Jaruvan and calling for her to resign because it would otherwise be technically impossible for Wisut to take up the position. Moreover, Jaruvan was offered an influential political role in return for her resignation, which she refused (Bangkok Post, 2005e: 3). Simultaneously, Jaruvan was still legally the chief, barring a royal command to the contrary.

After three months, Wisut's nomination had not received a royal endorsement, leaving the candidate to withdraw on 19 September 2005 (Siamrath, 2005: 1, 9). Heavy pressure was also growing for Suchon's resignation, as he had been criticised for pushing Wisut's nomination. However, Suchon refused to resign and insisted that he had already shown responsibility by asking for a reversal on Wisut's nomination (Bangkok Post, 2005d: 3). The State Audit Commission then pushed for yet another replacement, though Jaruvan's status was still unclear (The Nation, 2005l: 1A, 2A). Two senators close to Suchon, Sawai Phrammani and Prakiat Nasimma, called Jaruvan to resign to end the auditor-general controversy (Bangkok Post, 2005c: 4).

Meanwhile, there was an attempt by a group of 22 senators to demand the Senate reaffirm Jaruvan's status and pave the way for her reinstatement (The Nation, 2005k: 4A). However, this attempt was unsuccessful after the Senate Committee on screening motions disapproved, citing that the current parliamentary session was a legislative session (The Nation, 2005j: 4A). Moreover, Suchon worsened the situation by closing the Senate session after only an hour when 22 senators called for a debate on Jaruvan's status (The Nation, 2005i: 3A). A week later, this move was included in the Senate

session's agenda but rejected after the Senate voted 91-47 with nine abstentions to turn down an offer to reconfirm Jaruvan's status (Bangkok Post, 2005b: 3).

The State Audit Commission's reaction seemed to seek a solution to the issue of Jaruvan's status first by voting to submit Jaruvan's case to the Constitutional Court once again (Matichon, 2005c: 1, 13). On the other hand, Suchon was not afraid to repeat his fault and wanted to push a new nomination of the auditor-general, regardless of Jaruvan's status, by supporting the State Audit Commission in selecting a new auditor-general. He insisted that the Senate was ready to vote for a fresh nomination (Post Today, 2005b: A6). On 16 November 2005, after a heated debate, the State Audit Commission, by a 5-4 vote, insisted on selecting a new auditor-general, informing the Senate of this resolution (Siamrath, 2005b: 1, 10). The four commissioners comprising the minority, however, were reportedly not involved in a selection process (Thaipost, 2005: 1, 8).

In sum, Jaruvan's case was a hot-button issue for which the Senate and the State Audit Commission did not want to take full responsibility. Senate President Suchon Chaleekrua repeatedly threw this case to the State Audit Commission for a decision. At the same time, the State Audit Commission sought to have the Senate take joint responsibility. In any case, Jaruvan continued to insist that she was the auditor-general, claiming that only the King could dismiss her from the post (Phujatkarn, 2005: 11). Suchon made another move in early January 2006 by sending a 'personal' letter to the State Audit Commission to rule on the restoration of Jaruvan's status as an auditor-general (The Nation, 2006f: 3A). However, the State Audit Commission refused to follow Suchon's letter, citing it as Suchon's 'personal' letter with no legal status and asking Suchon to proceed with this case through the Senate (Matichon, 2006b: 1, 16).

The saga of the auditor-general was, as such, an unresolved issue between 2005 and 2006, but became irrelevant following the military coup on 19 September 2006 when the junta announced the dismissal of the board of the State Audit Commission and appointed Jaruvan as an auditor-general to exercise the power of the State Audit Commission. Jaruvan was allowed to exercise such control until September 2006 (The Royal Thai Government Gazette, 2006a; The Royal Thai Government Gazette, 2006c).

The National Anti-Corruption Commission

Coincident with the auditor-general saga, the new National Anti-Corruption Commission (NACC) selection process presented another trouble for the Senate and Suchon. Following the court's ruling to sentence nine former NACC members to two years in jail for an illegal increase in salary (Matichon, 2005a: 1, 15), new members had to be selected in early 2005. However, the selection process took place in August 2005, simultaneously with Suchon's meddling in the Jaruvan issue and amid the rumour that, once again, the new NACC members are 'pre-determined'. From a total of 80 candidates, the Senate then shortlisted 18 candidates for the final selection as the organic law on NACC states that there must be two times the number of candidates as there are NACC members (9), equivalent to 18 (Matichon, 2005b: 14).

The selection of the new NACC members was scheduled to be held on 1 November 2005. However, before the Senate proceeded, one of the favourite candidates, Prawit Wongsuwan, an army chief, withdrew from the nomination. Prawit's withdrawal concerned some senators. It would be unconstitutional if the Senate continued to vote given the required number of candidates. It would repeat the auditor-general's saga. However, most senators proceeded with the selection (Bangkok Post, 2005a: 1). As many speculated that it had been pre-determined, 7 out of 9 selected members were reported close to the government (The Nation, 2005h: 1A, 4A). In particular, two candidates had been mentioned to have a close relationship with Thaksin Shinawatra: assistant police chief Wanchai Srinualnad, who received the highest number of votes, was Thaksin's classmate at the police cadet academy. The other was Darun Sothibandhu, a former Prime Minister's office adviser and Thaksin's former instructor (Post Today, 2005a: A6).

A group of minority senators did not stop blocking the newly selected NACC members before submitting for royal endorsement by filing a complaint to the Ombudsman. However, the Ombudsman rejected this complaint (The Nation, 2005g: 4A). Suchon then presented the new NACC nomination for royal endorsement on December 23 (Siamrath, 2005a: 1, 10). However, like the Jaruvan saga, the nomination of the 9 NACC members was not quickly resolved. The King rejected the nomination of 9 NACC members after Suchon admitted that the list was returned by the

Office of His Majesty's Principal Private Secretary *"because the nominees had been picked from 17 shortlisted candidates, instead of 18 as required by the constitution"*. Suchon was then heavily criticised and pressured to resign and accept responsibility following two consecutive failures: the selection of auditor-general and NACC members (Bangkok Post, 2006f: 1).

Amid the chaos within the Senate, the government whip chief, Pongthep Thepkanchana, voiced support for selecting an additional member in an extraordinary session (The Nation, 2006e: 3A). However, this matter became more complicated after the Senate voted unanimously in a special session to restart the selection process of NACC members (Bangkok Post, 2006e: 2) after it had been temporarily paused due to a political deadlock from April to July 2006, including the general election on April 2 and the Senate Election on April 19. However, after the annulment of the 2 April election, the election commissioners were sentenced to jail, and a new selection of the election commission was made. The selection process of NACC began again in August 2006 and was processed simultaneously with the passage of the election commission. Once again, speculation that the selection of NACC members had been pre-determined kicked off just before the Senate proceeded with the selection. Former Senate Vice President Niphon Wisityutthasat revealed there would be a bloc vote for NACC selection. Niphon did not explain how a bloc vote was determined but confirmed that approximately 60 senators had received money from government figures (Post Today, 2006b: A1). Surprisingly, the Senate voted 104 to 68 on 17 August 2006 to seek a Constitutional Court ruling on the 5 NACC nominees' qualifications, thus resulting in selection postponement (The Nation, 2006c: 1A).

The protracted dispute and failure to select the new NACC members by the Senate ended when the military seized power on 19 September 2006. The junta announced the appointment of the new 9 NACC members on 22 September 2006 (The Royal Thai Government Gazette, 2006c). These newly appointed NACC members were dubbed by the media as a 'dream team' to chase and tackle Thaksin's corruption (Thairath, 2006: 1, 12, 16, 19). However, the selection of NACC was another clear example of politicisation over the Senate.

The Election Commission

Aside from the constitutional court's annulment of the election on April 2, the Election Commission also presented troubles. On 25 July 2006, the criminal court sentenced three election commissioners, namely Wassana Permlarp, Prinya Nakchudtree, and Virachai Naewboonnien, to four years in jail and had their voting rights revoked for ten years. This case began when Democrat Party deputy secretary-general and Songkhla MP Thaworn Senneam filed a lawsuit in which he alleged that the election commissioners arranged a by-election on April 23 without a royal decree. It was held in constituencies where lone candidates could not receive a minimum of 20 per cent of the total votes required by the law to claim victory. In addition, Thaworn accused the Election Commission of allowing some lone candidates who failed to achieve the minimum to switch to other constituencies for the by-election on April 23 (The Nation, 2006d: 1A, 2A, 4A).

The selection process of the new Election Commission began immediately after the court's verdict. Senate President Suchon Chaleekrua sent a letter to the President of the Supreme Court, Charnchai Likhitjittha, requesting the nomination of 10 EC candidates to replace the former commissioners (Bangkok Post, 2006d: 1). On 10 August, the Supreme Court shortlisted ten candidates. Among these candidates, eight were judges (Wicha Mahakhun, Wasan Soipisut, Apichart Sukhakkanon, Udom Fuangfung, Somchai Jungprasert, Sodsri Satayatham, Sumet Oupanisakorn, and Nam Yimyaem), one was an attorney (Prapan Naikowit). One was a Bangkok senator and law professor (Kaewsan Atibhodi) (Matichon, 2006a: 1, 14).

Similar to the Senate's selection of the other independent agencies, a list of preferred candidates for the Election Commission had been predetermined. It was reported that the pro-government senators would vote for Aprichart Sukhakkanon, Sumet Oupanisakorn, Somchai Jungprasert, Sodsri Satayatham, and Prapan Naikowit as the new Election Commission because they regarded these candidates as more 'compromising' than the other five candidates (Post Today, 2006a: A5). The recent election commissioners were selected after the Senate failed to choose the new National Anti-Corruption Commission on 8 September. As expected by many, the five candidates above were selected. The bloc vote was seen when 68 senators voted for the same candidates (Komchadluek, 2006: 1, 15). However, the

future of these newly elected Election Commission was cast in doubt after the military coup on 19 September 2006. Nevertheless, two days after the power seizure, the junta announced that the organic law on the Election Commission was still effective and appointed the new Election Commission, selected by the Senate before the coup (The Royal Thai Government Gazette, 2006b).

4.3.5 The 2006 Senate Election

After the term of the first elected senators ended in March 2006, a new Election was held on 19 April 2006. It was the second election in April, after the general election on April 2. This time, the relationship between the elected senators and the political parties became even more evident. As the table shows, almost three-fourths of the elected senators in the 2006 Senate Election had links to a party, especially Thai Rak Thai. In addition, about 35 elected senators were family members of MPs (wives, husbands, brothers, sisters, and relatives).

Table 4.10 The Elected Senators in 2006 and Party Links

Region	Thai Rak Thai	Opposition	Local Politician	Civil Society	Former Bureaucrats	Total
Bangkok	2	2	3	9	2	18
South	3	18	4	2	-	27
Central	15	9	25	-	2	51
Northeast	68	1	-	-	-	69
North	18	5	6	2	4	35
Total	106	35	38	13	8	200

Source: (Krungthep Turakij, 2006: 2)

Table 4.11 Relationships between Elected Senators and Relatives in the 2006 Senate Election

Province	Senator	Relationship	Political Party
Chai Nat	Pornthiwa Nakhasai	Wife of Anucha Nakhasai, Chai Nat MP	Thai Rak Thai
Chachoengsao	Panee Charusombat	Sister of Phinij Jarusombat, Deputy PM in the Thaksin government	Thai Rak Thai
	Chalermchai Tancharoen	Brother of Suchart Tancharoen, eight-time Chachoengsao MP and Deputy House Speaker	Thai Rak Thai
Prachin Buri	Sunthorn Vilawan	Former eight-time Prachin Buri MP	Thai Rak Thai
Lop Buri	Prasert Vorapanya	Son of Niyom Vorapanya, Lop Buri MP	Thai Rak Thai
Nakhon Pathom	Panida Pathummarak	Relative of Chanchai Pathummarak (Nakhon Pathom MP) and Prasit Pathummarak (Nakhon Pathom senator)	Thai Rak Thai
	Anucha Sasomsub	Brother of long-time politicians Padermchai, Chaiyos, Chaiya Sasomsub	Thai Rak Thai
Suphan Buri	Prasit Pothasuthon	Brother of Praphat Pothasuthon, long-serving Suphanburi MP	Chart Thai

Nakhon Nayok	Dej Boonlong	Former Nakhon Nayok MP and Labour Minister in the Thaksin government	Chart Thai
Sa Kaeo	Witthaya Thienthong	Son of Sanoh Thienthong, the Thai Rak Thai chief advisor and influential Sa Kaeo politician	Thai Rak Thai
	Kwanruen Thienthong	Daughter-in-law of Sanoh Thienthong, the Thai Rak Thai chief advisor and influential Sa Kaeo politician	Thai Rak Thai
Samut Songkhram	Nukul Thanikul	Former Samut Songkhram MP and a son of well-known godfather Klaeo Thanikul	New Aspiration Party (later merged with Thai Rak Thai)
Samut Prakan	Man Pattanothai	Former Samut Prakan MP and close confidant to a well-known godfather Watthana Asavahem	Ratsadon
Khon Kaen	Duangkae Annopporn	Wife of Pongsakorn Annopporn, Khon Kaen MP	Thai Rak Thai
Chaiyaphum	Putthipong Sanguanwongchai	Brother of Wutthichai Sanguanwongchai, Chaiyaphum MP	Thai Rak Thai
Nakhon Ratchasima	Ranongrak Suwanchawee	Wife of Pairoj Suwanchawee, Nakhon Ratchasima MP	Thai Rak Thai

Buriram	Chai Chidchob	Father of Newin Chidchob, former Buriram MP and PM's Office Minister in the Thaksin government	Thai Rak Thai
Maha Sarakham	Rangsim Charoensiri	Wife of Srimueng Charoensiri, Maha Sarakham senator who is close to Thaksin Shinawatra	Thai Rak Thai
Nong Bua Lumphu	Jureelak Ratanapratcheporn	Wife of Samart Ratanapratcheporn, Nong Bua Lumphu MP	Thai Rak Thai
Loei	Prengmanee Lengsomboonsuk	Wife of Preecha Lengsomboonsuk, Loei MP	Thai Rak Thai
Ubon Ratchathani	Nitha Thiamsuwan	Sister of Kittipong Thiamsuwan, Ubon Ratchathani MP	Thai Rak Thai
	Karn Kantinun	Brother of Kriang Kantinun, Ubon Ratchathani MP	Thai Rak Thai
Chiang Rai	Salakchit Tiypairat	Wife of Yongyuth Tiypairat, long-serving Chiang Rai MP and Natural Resources Minister in the Thaksin government	Thai Rak Thai
Lamphun	Songchai Wongsawat	A relative of Somchai Wongsawat, Thaksin's brother-in-law	
Phayao	Suwit Wongsriwong	Husband of Ladawan	Thai Rak Thai

		Wongsriwong, Phayao MP	
Mae Hong Son	Arnant Wanchaithanawong	Brother of Adul Wanchaithanawong, Mae Hong Son MP	Thai Rak Thai
Chiang Mai	Praphan Buranupakorn	Brother of Pakorn Buranupakorn, Chiang Mai MP and former mayor	Thai Rak Thai
Narathiwat	Hareemoh Utrasin	Wife of Aripin Utrasin, Narathiwat MP	Thai Rak Thai
Chumphon	Chatchai Palung	Brother of Suwarot Palung, Chumphon MP	Democrat
Trang	Sukit Atthopakorn	Former Trang MP	Democrat
Nakhon Si Thammarat	Pichai Boonyakiat	Brother of Chinnawon Boonyakiat, Nakhon Si Thammarat MP	Democrat
	Tripol Johjit	Former Nakhon Si Thammarat MP	Democrat
	Huwaiyadiya Pitsuwan useng	Sister of Surin Pitsuwan, long- serving Nakhon Si Thammarat MP and former Foreign Minister	Democrat
Songkhla	Anant Thongkaew	Close confidant to Nippon Boonyamanee, Songkhla MP	Democrat
	Tippawan Patthano	Wife of Prai Patthano, Songkhla mayor and former MP	Democrat

Source: (Krungthep Thurakij, 2006: 2)

Table 4.12 The Senate of Thailand, 2006

Parliamentary Form	Period	Acquisition	Number of Senators
Bicameral	2006 - 2006	Directly Elected	200 (0% ex-military)

Source: (Chambers, 2009: 10)

Despite being elected in April, the newly elected senators had practically never worked in the parliament for three reasons. Firstly, the newly elected senators could not officially open their first session as they were required to have 200 seats filled first, and the Election Commission had not yet formally declared and certified all 200 senators. Second, things became more complicated when the Election Commission was sentenced to four years in jail by the criminal court in July. That meant the process to declare elected senators and elected MPs officially had to be stopped until the selection and appointment of the new Election Commission was complete. Thirdly, since the House of Representatives was dissolved and the new Senate could not be set up, the incumbent Senate at that time had to perform duties as both interim parliament and acting Senate. Eventually, when the 2006 Coup took place, the Senate was dissolved, and these newly elected senators never had a chance to assume office.

4.4 Conclusion: The Senate as the Guardian of the Status Quo

After Black May 1992, pushes were made to draft a new constitution, which later led to an amendment to the 1991 constitution and paved the way for the election of members of the Constitution Drafting Assembly. The 1997 constitution was dubbed the "people's constitution" due to the widespread participation of the public in the constitution drafting process, including the election of members to the Constituent Assembly and the public hearing process on the draft constitution. Therefore, on the one hand, it can be said that this constitution is a victory for the masses in defining the game's rules. Still, on the other hand, it should also be noted that the 1997 constitution was not a unilateral mass-imposed rule. Without the support of the elite, this constitution would never have been enacted.

A concrete example is the determination of the composition of the Constitution Drafting Assembly as being of both elected provincial

members and appointed experts. Especially when looking at the constitution drafting committee, it can be seen that there were elites who determined the direction of drafting this constitution. For example, former Prime Minister Anand Panyarachun was known for being close to the royal court and prominent royalist legal expert Borwonsak Uwan. Even the original idea of political reform came from Prawet Wasi, King Bhumibol's physician.

The 1997 constitution designed the Senate based on the idea of a non-partisan chamber. At first, the constitution drafting committee created an indirectly elected Senate with powers of checks and balances with the House of Representatives as the parliament, including removing persons holding political positions and appointing new independent agencies established by this constitution. Then, the Constitution Drafting Assembly changed the senatorial recruitment method from indirect to direct election. After that, the constitution drafting committee staged a public hearing and later proposed a compromise approach by having senators who were indirectly elected and directly elected. Eventually, with a movement of provincial elected members, the Constitution Drafting Assembly overturned the final resolution to change the method of senatorial acquisition, and it later became an official provision under the 1997 constitution requiring the 200 senators to be directly elected from every province across the country.

The direct election of senators resulted from a struggle within the Constitution Drafting Assembly between the appointed expert and provincial elected drafters. When the method of recruiting senators was changed to direct election, the Senate gained more control. The former powers shared with the House of Representatives as a parliament, such as the removal of political office holders and the selection and appointment of persons in the independent agencies, became the exclusive powers of the Senate. Therefore, under the 1997 constitution, the Senate was a potent political institution.

Although the 1997 constitution intended to make the Senate a non-partisan chamber, this was not so. Later, following Thailand's first Senate elections in 2000, the Senate became the guardian of the status quo of the political parties, no different from the previous appointed generation. At the time, the Senate can be said to have maintained the Democrat government, as seen from Manoonkrit Rupkajon's ascension to the Senate President. Manoonkrit was a longtime friend of Sanan Khajornprasart, the deputy

prime minister, interior minister, and secretary general of the Democrat Party at that time.

However, the victory of Thaksin and the Thai Rak Thai Party in the 2001 general election changed the Thai political landscape, and the guardian role of the Senate began to be challenged. It was evidenced by the conflicts between the Senate and the Thaksin government when Manoonkrit was the Senate President. Until Manoonkrit was forced to step down, the Thaksin government was slowly trying to overwhelm the Senate. The most obvious example is the appointment of Suchon Chaleekrua as the Senate Vice President and later Senate President. Suchon was an apprentice of Sanoh Thienthong, a godfather of Sa Kaeo who was with the Thai Rak Thai Party then.

From late 2003 until 2006, the Senate became the *de facto* arm of the Thaksin government, as reflected in the appointment and approval of those holding positions in various independent agencies, often those connected to the Thaksin government in some way. An obvious example was the appointment of the National Anti-Corruption Commission. It was unofficially referred to as a group of senators affiliated with the Thai Rak Thai Party. Though the constitution legally prohibited senators from being affiliated with political parties, it can be seen that senators were also affiliated with the party.

Therefore, efforts to reform politics according to the 1997 constitution failed. As design allowed for a wholly elected Senate, aspiring to a non-partisan chamber was possible. However, the additional powers of the Senate—the power of impeachment and the power to choose and appoint persons in independent agencies—have become a significant motive for the executive branch to dominate and influence the Senate. Controlling the Senate means managing impeachments and the independent agencies and, ultimately, controlling the system of checks and balances. In this sense, the Senate has become the guardian of the status quo of the power holders. Although they may not have played a direct role in drafting this constitution, dominating the Senate directly benefits them. Ultimately, the elected Senate under the 1997 constitution was no different from the former appointed Senate, as it was used as a political support base for the power holders.

When considering five partial regimes of embedded democracy: electoral regime, political rights, civil rights, horizontal accountability, and the effective power to govern, it can be said that the 1997 Constitution aimed to create embedded democracy.

- Electoral regime: an introduction of a new electoral system (Mixed-Member Majoritarianism)
- Political rights: the constitutional provisions guaranteed civil liberties.
- Civil rights: the constitutional provisions guaranteed civil liberties.
- Horizontal accountability: Creating more effective checks and balances by establishing independent agencies (which the Senate had the power to select and approve the nominations)
- The effective power to govern: a prime minister must be an MP. Power lay in the hands of elected officials.

The Senate was designed to have more of a role in creating more effective checks and balances as it was a ‘gatekeeper’ in selecting and approving the nomination in the newly established independent agencies. However, During Thaksin Shinawatra, it was proved that the Senate was just another branch of the Thai Rak Thai government. The system of checks and balances did not work effectively as expected. Eventually, it gradually turned Thai politics into a defective democracy again. More precisely, under the 1997 Constitution, it gradually became a delegative democracy in which checks and balances were undermined.

Chapter 5

‘A New Political Arrangement’:

The Half-Elected and Half-Appointed Senate

under the 2007 Constitution (2008-2014)

Thailand experienced another coup on 19 September 2006, when the junta known as the 'Council for Democratic Reform' led by the army chief Sonthi Boonyaratglin seized power from the Thaksin Shinawatra government while Thaksin was about to give a speech at the United Nations General Assembly in New York. The junta repealed the 1997 constitution, promulgated the 2006 Provisional Constitution, and later appointed privy councillor Surayud Chulanont as interim prime minister. The junta appointed the Constitution Drafting Assembly to draft a new constitution, and a referendum was held in August 2007, by which the draft was approved. Amid accusations that many parts of Thailand were still under martial law during the referendum, the 2007 Constitution was finally promulgated as Thailand's 18th constitution since 1932. This constitution laid out a new political arrangement and designed political institutions different from those of the 1997 constitution. Also, this constitution called for senatorial acquisition in two ways: by direct election by the people and by appointment by a selection panel comprising the chairman of the independent agencies and the judiciary. In other words, the Senate under the 2007 constitution consisted of elected senators and non-elected senators. The constitutional Senate retains the power of impeachment and approves nominations to independent agencies.

Under the 2007 Constitution, the Senate was perceived as a compromise between elected and unelected forces. On the one hand, it saw the need for legitimacy and that it was necessary to have elected senators. But at the same time, the unelected forces wanted to have their place in politics after the promulgation of this constitution. This combination would potentially solve the transitional period that could stabilise Thai politics. In the end, it led to another wave of political conflict. This chapter will analyse the Senate under the 2007 constitution, from the constitution drafting process and institutional design to the reality after the promulgation of this constitution. It seeks to explain how and why the Senate became the guardian of the status quo. Moreover, it will also argue that the 2007

Constitution was designed to create a defective democracy in which the junta could still influence politics through the Senate.

5.1 Setting the Rule of the Game: The 2007 Constitution

5.1.1 Context: The 2006 Coup

On the night of 19 September 2006, while Thaksin Shinawatra was in New York and about to address the United Nations General Assembly, the military junta known as the ‘Council for Democratic Reform’, consisting of all commanders of the Thai military led by the army chief Sonthi Boonyaratglin, seized control of the government. It was the first military coup in fifteen years. The junta then revoked the 1997 Constitution and ruled the country through orders and announcements for eleven days. The junta then promulgated a provisional constitution on 1 October 2006 (The Royal Thai Government Gazette, 2006e). Surayud Chulanont, the privy councillor and former army commander, was appointed interim prime minister (Ockey, 2007: 133-140).

5.1.2 Drafting the 2007 Constitution

The 2006 provisional constitution outlined the drafting of a new constitution. According to the interim constitution, there were three critical institutions in the drafting process: the National People’s Assembly, The Constitution Drafting Assembly (CDA), and the Constitution Drafting Committee (CDC). The first step was to select members of the National People’s Assembly of no more than 2,000 persons. Then, the Assembly members would select three other NPA members from within the Assembly until it arrived at two hundred shortlisted candidates for the Constitution Drafting Assembly (CDA). After that, however, the junta would determine the final one hundred CDA members. Once the CDA members are selected, the next step is to choose the Constitution Drafting Commission (CDC). The CDC consisted of thirty-five commissioners. Twenty-five commissioners were chosen among the CDA members, while the junta nominated the other ten. They were tasked with drafting a new constitution within six months. In addition, the draft had also to be voted on by referendum. If it were approved, it would then be enacted. On the other hand, if it was rejected, the provisional constitution allowed the junta to select any past constitution to

revise and promulgate as a new constitution instead (The Royal Thai Government Gazette, 2006e).

The National People's Assembly (NPA)

The selection of the National People's Assembly (NPA) was chaired by Chalit Pukpasuk, an air force chief and deputy junta leader (Bangkok Post, 2006c: 3). The selection process began in early November 2006 and ended with 1,989 NPA members (Bangkok Post, 2006b: 2), which were later endorsed by the King on 11 December 2006 (The Nation, 2006b). The next step was to shortlist 200 candidates from among the NPA members to be chosen by the junta as the Constitution Drafting Assembly (CDA). The transparency of this process was speculated on from the beginning. It was reported that some NPA members were contacted by persons in power in the military regime to vote for 'preferred' candidates. One NPA member even revealed that an army general asked him to vote for another NPA member representing the military (Bangkok Post, 2006a: 3). As expected, the selection of the CDA ended with irregularities and controversies. It was reported that many NPA members were given ballots before the designated voting time and were allowed to walk around with the votes, talk to each other, and even reveal the content of their ballot. Some NPA members indicated that they "*compromised the selection process and enabled bloc-voting to occur unchecked*" (The Nation, 2006a: 4A). Finally, the 200 shortlisted NPA members were submitted to the junta to make a final selection for the CDA⁵⁶.

The Constitution Drafting Assembly (CDA)

The appointment of 100 members of the Constitution Drafting Assembly (CDA) was made on 1 January 2007 (Matichon, 2007f: 1, 13). Noranit Setabutr, the former rector of Thammasat University, was tipped to be the CDA chairman (Bangkok Post, 2007i). As expected, Noranit was overwhelmingly voted Chairman of the Constitution Drafting Assembly

⁵⁶ During an interview with the author, one of the CDC members, Nakharin Mektrairat, revealed that he was nominated by Thammasat University as an NPA member, and he did not know in advance that he would be selected as the drafting commissioner, arguing that it was a four-step process (NPA selection, 200 shortlisted NPA candidates, final 100 CDA members, and the CDC appointment) so it was really difficult to know in advance that he would be chosen (Nakharin Mektrairat, personal communication, 4 July 2017)

(CDA) without an opponent. The other two candidates, Sawat Chotepanich and Jaran Pakdithanakul withdrew their bids (The Nation, 2007k: 4A).

The other key element was the Constitution Drafting Commission. First, the Constitution Drafting Assembly members nominated twenty-five commissioners, while the junta appointed ten. The CDA selected the 25 drafting commissioners on 16 January. In these numbers were notable figures such as Jaran Pakdithanakul, Somkid Lertpaitoon, and Nakharin Mektrairat (Bangkok Post, 2007h: 1). The junta nominated the other ten drafting commissioners three days later, featuring the critical figure Prasong Soonsiri, who was also tipped to chair the Constitution Drafting Commission. The next step is to choose the CDC chairman, a vital post to direct the drafting process. There were two favourite candidates: Jaran Pakdithanakul and Prasong Soonsiri. It was reported that Jaran received support from most drafting commissioners, who believed that the drafting body might be seen as a 'proxy' if the junta-nominated commissioner was selected as the chairman of the drafting committee (Post Today, 2007d: 4). However, the junta signalled that it wanted to install Prasong as the chairman of the drafting committee (Bangkok Post, 2007g: 3). The Constitution Drafting Assembly even voted to allow only the commissioners nominated by the CDA to chair the drafting commission, aiming at preventing Prasong from becoming the CDC chairman. After the CDA voted, a growing rumour spread that key junta figures had lobbied the CDA members to review its resolution. The CDA then voted again to allow the drafting commissioners nominated by the junta to chair the drafting commission (Matichon, 2007e: 1, 12). Another clear signal which confirmed that Prasong would be the CDC chairman was the growing rumour that the junta had lobbied Jaran to withdraw from the race (Matichon, 2007d: 1,5). It was later realised when Jaran's name disappeared from the race and was replaced by Akaravit Sumawong, the vice president of the Supreme Administrative Court. As a result, Prasong was selected as the CDC chairman with a close margin of 18-17 (The Nation, 2007j: 3A). The selection of Prasong clearly shows that the junta had influence over the drafting process of a new constitution from the beginning and wanted to have a say in drafting a new constitution.

5.1.3 The 2007 Constitutional Referendum

A movement against the drafting process started in May 2007, when eighty academics across the country, including well-known figures like Charnvit Kasetsiri, Nidhi Eowseewong, Rangsun Thanapornpun, and Kasian Tejapira, launched the 'green' campaign to reject the draft constitution. They believed this draft would not be better after being revised by the Constitution Drafting Assembly (Bangkok Post, 2007d: 1). Later, the Thai Rak Thai Party, which the Constitutional Tribunal dissolved in May 2007, launched a campaign to defeat the draft, stating, *"We view the draft constitution as undemocratic and call on people to reject it at a referendum,"* said Chaturon Chaisaeng (The Nation, 2007a: 3A). On the other hand, despite voicing concern about the draft earlier, Democrat Party voted to approve this draft constitution as its structure was not much different from the 1997 Constitution, despite having some weaknesses (a half elected-appointed Senate, detailed foundation state policy). For them, it was an 'acceptable' constitution (Post Today, 2007a: A5).

Signals from top figures in the government that the draft should be passed to avoid political uncertainty were apparent. On 8 July 2007, Prime Minister Surayud Chulanont said in a press conference, *"From what I saw when I travelled to the provinces, everyone wants an election. Hence, to hold an election, the draft constitution must be approved in a referendum first"*. Defense Minister Boonrod Somtas commented on PM Surayud's desire to hold an election either on 16 or 23 December: *"I think it (the draft constitution) should be approved in a referendum, so the country will eventually be peaceful. If it is not approved, I don't know what will happen...postpone an election and don't know which constitution will be picked up (for promulgation). Thus, it is an endless matter"* (Naewna, 2007).

The NGO's stance on the draft constitution was split. The People's Assembly for Political Reform (PAPR) pledged to accept this draft because the constitutional amendment was made on the clauses that are the obstacles to political reform. Meanwhile, the NGO Coordinating Committee on Development (NGO-Cod) rejected the draft because it lacked a mechanism for political reform. In addition, the network chairman, Jon Ungphakorn, said the draft excluded people's fundamental rights and granted the judiciary the power to select members of independent agencies (Bangkok Post, 2007c: 1).

The junta made every effort to ensure this draft constitution would be passed in a referendum. It was reported that the junta chief Sonthi Boonyaratglin had “*instructed around 400,000 armed forces members and police officers and their families, through their commanders who sit on the Council for National Security, to endorse the draft constitution*”. The officers were expected to be 'constitution ambassadors'. In addition, more than 120 military-controlled radio stations had been told to publicise the draft constitution. Also, Sonthi ordered the Internal Security Operations Command (ISCO), which has approximately 700,000 staff members nationwide, to promote a proper understanding of the draft constitution among rural people.

On the other hand, the anti-charter movement led by the United Front of Democracy against Dictatorship (UDD) and former Thai Rak Thai party members made every effort to defeat the draft. Surapong Suebwonglee from the Thai Rak Thai group said around 300,000 copies of anti-charter booklets, 600,000 leaflets and 10,000 T-shirts had been prepared for distribution. The Red Shirts also said that 100 small groups had been dispatched to campaign in Bangkok while relying on political canvassers in the provinces. Meanwhile, former premier Thaksin Shinawatra, who lived in exile, criticised this draft by calling it “*the fruit of the poisonous tree*” and a “*step back for democracy*” during an interview with the Financial Times (Bangkok Post, 2007b: 1).

As the referendum date was approaching and it seemed that the 2007 draft would be rejected, the junta had to consider which constitution to revise and promulgate as the new constitution, if necessary. When asked about the possibility of choosing the 1997 Constitution, the junta leader Sonthi Boonyaratglin hinted, “*I cannot say if we will select the 1997 Constitution for amendment. It is not the time [to choose]*” (Bangkok Post, 2007a: 2). Following the government's view, prime minister Surayud Chulanont refused to answer which constitution would be picked for amendment and promulgation (Matichon, 2007a: 1, 14).

The constitutional referendum was held on 19 August 2007. It was the first-ever referendum held in Thailand, allowing Thai voters to approve or reject a draft constitution. The official result showed that most Thai voters approved the draft, meaning the new 2007 Constitution was officially legitimised.

Table 5.1 Official result of the 2007 Constitutional Referendum in Thailand

Options	Votes	Percentage
Approve	14,727,306	57.81
Disapprove	10,747,441	42.19
Total	25,474,747	100
Voter's Turnout	57.61%	

Source: (The Election Commission of Thailand, 2007)

Thaksin's supporters regarded it as a referendum on the coup, while the military regarded it as legitimising its regime (Ockey, 2008: 20-28). But, on the other hand, this referendum also reflected a deeply divided Thailand. Although nearly 58 per cent approved the draft constitution, most of the voters who rejected this constitution were mainly in the rural north and northeast, regarded as poor and the main support base for Thaksin Shinawatra (The New York Times, 2007). Later, the 2007 Constitution was officially enacted on 24 August 2007 (The Royal Thai Government Gazette, 2007) as the eighteenth constitution of Thailand in the modern era since the abolition of the absolute monarchy in 1932.

5.1.4 The 2007 Constitution: Key Features

The 2007 constitution was drawn up based on past political experience to prevent the government from becoming too strong. As was the case with the Thai Rak Thai party during the promulgation of the 1997 constitution, the purpose of the previous constitution was to create a strong executive branch to solve political instability problems in the past and create new checks and balances mechanisms in the form of independent agencies. But it turned out that the executive branch was too strong, and the system of checks and balances could not work. As such, the 2007 constitution was drafted from the beginning to diffuse power (Dressel, 2009: 309).

On the legislative branch, the parliament was bicameral, but the constitution changed how members of both houses were acquired. The House of Representatives consisted of 480 MPs, 400 elected by multi-member constituency and from a party list of 80, divided into eight large provincial groups of 10 each. While in the Senate, the number of senators was reduced from 200 to 150, with only one elected senator per province, totalling 76. The other 74 senators were appointed by the senator selection

committee consisting of judges and chairmen of the independent agencies the Senate was supposed to appoint (Dressel, 2009: 311).

On the executive branch, the prime minister's power was a primary target of the constitutional design. Building on the political experience of a strong prime minister like Thaksin Shinawatra, the 2007 constitution attempted to turn back time to the pre-1997 era by weakening the Prime Minister (Hicken, 2007: 144). For example, initiating a no-confidence motion against the prime minister was more accessible than starting a no-confidence motion by using only one-fifth of the total number of MPs to do so against the individual ministers. A simple majority vote could obtain a vote of no-confidence. The constitution also allowed MPs to vote independently, disregarding party resolutions (Dressel, 2009: 309).

The judiciary had become a political institution playing a more political role with the power to elect officeholders in various independent organisations jointly. In other words, the 2007 constitution had designed the courts to tend to “judicialise” even more so than the 1997 constitution (Dressel, 2009: 304).

5.2 The Senate under the 2007 Constitution

5.2.1 Designing the Senate

Soon after the Constitution Drafting Commission selected Prasong Soonsiri as its chairman, it released a blueprint for the new constitution with the critical point that the prime minister must be elected, the same as in the previous constitution. However, the House of Representatives and Senate provisions must be revised. In addition, the drafting commission proposed changing the electoral system and acquiring several MPs and senators (The Nation, 2007i 2A). The key idea behind the institutional design of the Senate under the 2007 Constitution was rejecting *the idea of direct senatorial election*, as in the 1997 Constitution. Jaran Phakdithanakul, who chaired the sub-committee on drafting the provision on the political institution, insists that the committee agreed that the Senate ‘*should consist of members indirectly elected from professional groups*’. The process might start with each professional group nominating its senatorial candidates. Then, a selection committee would be formed, which ‘*might include leading figures like former premiers and court presidents*’. The sub-committee also

suggested that the number of senators might be reduced. "The Senate's main task is to scrutinise draft was, and its seats may not be as many as 200", said Jaran (The Nation, 2007h: 4A). A clear signal that the Senate's power would be reduced was the new acquisition of the Election Commission. Unlike the 1997 Constitution, in which the Senate had the authority to select and approve a nomination of the independent agencies' appointment, the selection committee would choose the Election Commission. It would mainly comprise the court presidents and the chairman of the independent agencies, and the Senate would have only the power to endorse the candidates (Bangkok Post, 2007f: 3).

Initially, the sub-committee on political institutions chaired by Jaran proposed an indirect election of senators. Jaran explained that the Senate *"must not be 100% appointed nor elected but 'mixed method'"*. The Senate would have only the power of legislation review and approval on an appointment of the candidates in the independent agencies. On the other hand, the impeachment power was removed (Post Today, 2007c: A2). In March 2007, the sub-committee released an outline for the new senatorial acquisition. Under this draft, the Senate would consist of 160 senators from two groups: 76 provincial representatives from each province and 84 from professional groups (Post Today, 2007b: A5).

The first senators were selected from every province, one senator per province. The remaining seats are to be selected from professional groups by the senatorial selection committee consisting of seven members, including:

- The President of the Constitutional Court
- The Chairman of the Election Commission
- the Chairman of the Ombudsman
- The Chairman of the National Anti-Corruption Commission
- The Chairman of the State Audit Commission
- A supreme court judge entrusted by a general meeting of the supreme court
- A Supreme Administrative Court judge designated by a general meeting of the Supreme Administrative Court (The Constitution Drafting Commission, 2007)

In addition, the drafting commission agreed to bar senators from holding two consecutive terms and holding ministerial posts or MPs within a year of their ending term. Despite the first draft stating that the Senate would be fully appointed, this issue was unsettled and open for debate (The Nation, 2007h: 4A).

The senatorial appointment was among the most controversial issues in the draft. It drew criticism and opposition from various groups in society. Wiboon Chamchuen, former Kalasin senator and representative of the former elected senators' group (2000-2006), said the group insisted that the senatorial appointment was undemocratic and disagreed with the method. Instead, the group proposed a direct election of senators and claimed that preventing the spouses' house did not have enough ground. Even the Democrat Party also opposed the idea of having appointed senators. The party spokesman, Ong-Art Klampaiboon, said that the appointment method undermined the people's rights and was undemocratic (Ban Mueang, 2007).

Moreover, the selection approach empowered the unelected persons, and there was no guarantee that the appointment method would get 'good' and quality senators (Thaipost, 2007b: 1-3). The People's Network for Elections in Thailand (PNET) coordinator Somchai Srisuttiyakorn also disagreed with the senatorial appointment, citing that this method was designed to solve the 'spouses house' problem; however, there was no guarantee that political intervention would not take place. In addition, if there were an intervention, it would be much worse than in the past, as the appointed senators would be the government's supporters (Thaipost, 2007a: 1,3,8). The junta-appointed parliament and the National Legislative Assembly members disagreed with this acquisition method. The NLA special committee on political reform was concerned that the appointment of senators would change the political balance as the court might face intervention as it would be more involved in politics (Matichon, 2007c: 1, 13).

The empowerment of the judiciary in selecting the senators and members of independent agencies was also questioned for its legitimacy. Despite facing heavy criticism, drafting commissioner Wicha Mahakhun defended this proposal, citing the court has legitimacy from the king's trust: *"We all know elections are evil, but [why do] many people still want to see history repeated?.. Even HM the King trusts the judges; would you condemn*

them?” Wicha also claimed that most people wanted to see senators appointed by the Supreme Court, saying that “*the country collapsed because politicians play politics without principle, but these people [who want elected senators] have never learned from the [country’s] crisis*” (The Nation, 2007g: 4A). The other prominent supporter of appointed senators was Jaran Phakdithanakul. He stated that the primary reason for changing from elected to appointed senators was because “*it is tough for an election not to involve politicians*”. Although elected senators were already a democratic symbol, a key counter-argument was that the Senate should be a neutral and prominent actor to check and balance the independent agencies. With elected senators, a paradox would arise where there would never be impartial senators. With a partisan Senate, on the other hand, the ability to select persons to independent agencies would ensure that these agencies would never be neutral. Since 1997, the system of checks and balances has failed, so senators also served the power holders. Jaran also repeated that the appointment of senators might be seen as undemocratic. However, in a democratic regime, it is not necessary to have an election in every case (Matichon, 2007b: 1, 11).

On the other hand, the courts seemed to disagree and voiced concerns about their potential political activism. In a meeting of concerned judges chaired by the Supreme Court, judge Wattanachai Chotechootrakul concluded that it was not the judges' duty to make political appointments: “*It is inappropriate to make judges involved [in politics] because it will lead to loss of independence and fairness of the courts,*” said Sarawuth Benjakul, the deputy secretary of the Office of the Courts of Justice and the courts' spokesperson who also added that the courts would lose their “impartiality” if it were to select members to the independent agencies. The meeting also rejected involving the courts in an ad-hoc crisis committee (The Nation, 2007f: 5A). When there was more concern about the court’s role and power in politics. However, Jaran conceded that the initial draft granted the judiciary too much responsibility and ‘excessive judicial powers would upset the equilibrium of checks and balances’. In addition, another widely opposed and criticised issue was that of the appointed Senate. Jaran claimed that the public hearings indicated support for elected and appointed senators selected by a committee. However, he said the drafting commission agreed with this proposal but opposed a wholly elected Senate: “*If a Senate is all elected, then I believe there should be no Senate at all. This mechanism will*

not work. Senators will become a tool for politicians".(The Nation, 2007e: 4A)

Even the military government and the junta's ruling body disagreed with having an ad-hoc panel on the national crisis. Deputy Prime Minister Paiboon Wattanasiritham, who chaired the cabinet meeting on the draft constitution, said, *"Most of the cabinet ministers questioned why only this small group of people was being allowed to sit on the council and what would constitute a national crisis."* Similar to the junta-appointed ad hoc study group, it suggested the removal of Article 68: *"We discussed the flaws of this article and felt that it should be crossed out. The majority agreed that we would be better off using the existing channels in the democratic system to resolve a crisis"*. The study group also opposed attempts to involve the courts in politics, including the selection of senators and members of independent agencies (Bangkok Post, 2007e: 1). However, after facing widespread opposition, the constitution drafting commission agreed to remove a clause on an ad-hoc committee tackling national crises. Moreover, it also agreed that the Senate should not be fully appointed but was yet to decide how senators should be selected (The Nation, 2007d: 4A).

Eventually, the Constitution Drafting Commission agreed to reduce the total number of senators to 150 and employed a mixed method of senatorial acquisition: elected and appointed. As a result, each of the 76 provinces would elect a senator, while the remaining seats would be selected from the professional, government, academic, and private sectors. In addition, half of the appointed senators (37) would have to draw lots every three years, while the elected senators would be in office for the entire six-year term. The appointed senators would be selected by a selection committee consisting of seven members, including the President of the Constitutional Court, the chairman of the Ombudsman, the chairman of the Election Commission, the chairman of the National Anti-Corruption Commission, the chairman of the State Audit Commission, and the representatives from the Supreme Court and the Supreme Administrative Court. In terms of its power and functions, the Senate in this draft would have the same powers as stated in the 1997 Constitution (The Nation, 2007c: 3A).

One of the 2007 Constitution drafters, Woothisarn Tanchai, revealed that the two types of members were a 'Thai-style' compromise to

understand this mixed method of senatorial acquisition. When asked why the court would play a crucial role in the selection committee, he admitted that no other institution could perform this duty. At that time, the judiciary was the only acceptable institution to the public⁵⁷.

Later, the Constitution Drafting Assembly voted to approve the Senate model proposed by the Constitution Drafting Commission by a narrow margin of 37-35. However, the CDA member Karun Sai-Ngam also argued that allowing high-ranking officials to select almost half of the senators before the vote was wrong. He reasoned that it could lead to a conflict of interest as the constitution granted the Senate power to impeach these officials, but these same officials have the power to select the senators. Also, CDA member Siwa Sangmanee proposed that there should only be elected senators *“because that would represent the real voice of the people.”* However, CDC deputy chairman Jaran Phakdithanakul defended the drafters' proposal for selected senators by arguing that the main point was *“to bring neutral candidates into the Senate who would be unlikely to win seats in an election”* (The Nation, 2007b: 4A). On 6 July 2007, the Constitution Drafting Assembly members unanimously, 98-0, approved the draft and agreed to hold a referendum on 19 August 2007 (Khaosod, 2007: 1, 10, 11).

5.2.2 The Composition and Power

According to the 2007 Constitution, the Senate consisted of 150 senators, who were to be elected from every province (one senator per province⁵⁸). The remaining seats would be allocated to the appointed senators who are selected by the senator selection committee consisting of 7 persons, including the President of the Constitutional Court, President of the Election Commission, President of the Ombudsman, President of the National Anti-Corruption Commission, President of the State Audit Commission, a judge of the Supreme Court of Justice entrusted by a general meeting of the Supreme Court, and a Judge of the Supreme Administrative Court assigned by the general meeting of the Supreme Administrative Court judges.

⁵⁷ Woothisarn Tanchai, personal communication, 1 June 2017.

⁵⁸ During the 2008 Senate Election, there were 75 provinces and Bangkok. Therefore, there were 76 elected senators in Thailand during the 2008 Senate Election. Later, a new province Bueng Kan was established in 2011 as the 76th province.

The senatorial candidate had to be of Thai nationality by birth, not less than forty years of age, and have no lower than a bachelor's degree or equivalent. Furthermore, the senatorial candidate could not be affiliated with a political party, be an MP or have been an MP for more than five years up to the date of candidacy application or nomination, and could not be a minister or hold other political positions. In addition, the constitution also prohibits an ascendant, spouse or child of the MPs or persons from holding political office⁵⁹.

5.2.3. The Significance of the Senate

The Senate under the 2007 Constitution retained the same crucial powers as the Senate in the previous constitution, namely the power to approve nominations to independent agencies and the power to dismiss political office holders and high-ranking government officials. However, unlike the 1997 Constitution, the 2007 Constitution allowed the Senate only the authority to approve the nominated candidates in the independent agencies from the selection committee⁶⁰. The court had been assigned a more crucial and decisive role in selecting independent agencies. In other words, the unelected institutions were given more power, especially the judiciary, that would play a more active role in politics. This phenomenon was known as the “judicialisation of politics” (Dressel, 2010).

Table 5.2 The selection of candidates to the independent agencies under the 2007 Constitution

Agency	The Selection Committee	Number of panel members
The Election Commission ⁶¹	<ol style="list-style-type: none"> 1. The President of the Supreme Court 2. The President of the Constitutional Court 3. The President of the Supreme Administrative Court 	7

⁵⁹ Article 115 of the 2007 Constitution

⁶⁰ Under the 1997 Constitution, the Senate had the power to select and approve the candidates to the independent agencies.

⁶¹ For the Election Commission, the selection panel would select three commissioners. A general meeting of the supreme court would select the remaining two commissioners. See Article 231 of the 2007 Constitution

	<ol style="list-style-type: none"> 4. The Speaker of the House of Representatives 5. The Leader of the Opposition 6. A supreme court judge entrusted by a general meeting of the supreme court 7. A Supreme Administrative Court judge assigned by a general meeting of the Supreme Administrative court 	
The Ombudsman ⁶²	<ol style="list-style-type: none"> 1. The President of the Supreme Court 2. The President of the Constitutional Court 3. The President of the Supreme Administrative Court 4. The Speaker of the House of Representatives 5. The leader of the opposition 6. A supreme court judge entrusted by a general meeting of the supreme court 7. A Supreme Administrative Court judge entrusted by a general meeting of the Supreme Administrative court 	7
The National Anti-	<ol style="list-style-type: none"> 1. The President of the Supreme Court 2. The President of the Constitutional Court 	5

⁶² Article 43 of the 2007 Constitution

Corruption Commission ⁶³	<ol style="list-style-type: none"> 3. The President of the Supreme Administrative Court 4. The Speaker of the House of Representatives 5. The Leader of the Opposition 	
The State Audit Commission ⁶⁴	<ol style="list-style-type: none"> 1. The President of the Supreme Court 2. The President of the Constitutional Court 3. The President of the Supreme Administrative Court 4. The Speaker of the House of Representatives 5. The Leader of the Opposition 6. A supreme court judge entrusted by a general meeting of the supreme court 7. A Supreme Administrative Court judge entrusted by a general meeting of the Supreme Administrative court 	7
The National Human Rights Commission ⁶⁵	<ol style="list-style-type: none"> 1. The President of the Supreme Court 2. The President of the Constitutional Court 3. The President of the Supreme Administrative Court 4. The Speaker of the House of Representatives 	7

⁶³ Article 246 of the 2007 Constitution

⁶⁴ Article 243 and 252 of the 2007 Constitution

⁶⁵ Article 243 and 256 of the 2007 Constitution

	<ol style="list-style-type: none"> 5. The Leader of the Opposition 6. A supreme court judge entrusted by a general meeting of the supreme court 7. A Supreme Administrative Court judge entrusted by a general meeting of the Supreme Administrative court 	
The Constitutional Court ⁶⁶	<ol style="list-style-type: none"> 1. The President of the Supreme Court 2. The President of the Supreme Administrative Court 3. The Speaker of the House of Representatives 4. The Leader of the Opposition 5. The chairman of the other independent agencies selected other chairpersons until it had shortlisted just one person 	5

Source: (The Royal Thai Government Gazette, 2007).

Another crucial power of the Senate was impeachment. The 2007 Constitution outlined a process of impeachment in which one-fourth of MPs can file a petition to the Senate President to impeach a political office holder or senior official,⁶⁷ or one-fourth of senators file a petition to the Senate President to impeach a senator, or 20,000 eligible voters can file a petition to the Senate President for impeachment. Once the Senate President receives the petition, it will be sent to the National Anti-Corruption Commission for

⁶⁶ Article 206 of the 2007 Constitution

⁶⁷ Including prime minister, minister, MP, senator, the President of Supreme Court, the President of the Constitutional Court, the President of the Supreme Administrative Court, the Attorney-General, Constitutional Court judge, the Election Commission, the Ombudsman, the State Audit Commission, judge, prosecutor, and other high-ranked official according to the organic law on the National Anti-Corruption Commission.

investigation. If the case has ground, the National Anti-Corruption Commission, with the approval of no less than half of its members, will submit the case back to the Senate President for impeachment. Also, it will be forwarded to the attorney general to file a lawsuit with the Criminal Division for Persons Holding Political Positions of the Supreme Court. For a successful impeachment, senators must vote at no less than three-fifths (90) on their numbers⁶⁸.

5.3 Expectation versus Reality

5.3.1 The 2008 Senatorial Appointment

The Senate selection process started in early January 2008. The Senate selection committee consisted of seven members, including:

1. Wirat Limwichai, the President of the Supreme Court (acted as the President of the Constitutional Court⁶⁹)
2. Apichart Sukakkanon, the Chairman of the Election Commission
3. Teeradej Meepien, the President of the Ombudsman
4. Parnthep Klanarongran, the Chairman of the National Anti-Corruption Commission
5. Jaruvan Maintaka, the Auditor-General (acted as the chairman of the State Audit Commission)
6. Montri Sri-iamsaard, Presiding judge of the Supreme Court
7. Amphol Singhakovin, Presiding judge of the Supreme Administrative Court (Siamrath, 2008)

According to the Election Commission, 1,087 people were nominated to be selected by the Senate Selection Committee for the 74 senator posts (The Election Commission of Thailand, 2008: 5). Before the senator selection process began, members of the National Legislative Assembly

⁶⁸ Article 270-274 of the 2007 Constitution

⁶⁹ Since there was no Constitutional Court at that time and the transitory provision of the 2007 Constitution allowed the Constitutional Tribunal set up by the 2006 Provisional Constitution to act as the Constitutional Court until the new judges were selected. Thus, the President of the Supreme Court, as the President of the Constitutional Tribunal, temporarily acted as the President of the Constitutional Court. See Article 300 of the 2007 Constitution

began to resign gradually. As of late January 2008, there were only 34 members of the National Legislative Assembly left in office (Matichon, 2008h: 14). Aside from this, at least 18 former members of the Constitution Drafting Assembly appointed by the junta had also applied to be selected senators (Matichon, 2008f: 15).

As a result, the appointed senators were seen as junta representatives and supporters to balance the Samak government's power; 15 were from the military and police (The Nation, 2008d: 1A, 4A). One source from the military-appointed parliament, the National Legislative Assembly, said the appointed senators were seen as Council for National Security representatives and supporters to balance the Samak government's power. Besides the CNS-appointed NLA members, 15 were from the military and the Royal Thai Police. Moreover, Prasarn Maruekkhapitak worked in the Surayud Chulanont government strategic team. Among 74 appointed senators, 8 were former NLA members: Khamnoon Sitthisamarn, Chalit Kaewchinda, Tuang Antachai, Phumsak Hongyok, Waetueramae Mamingji, Somchai Sawaengkarn, Samak Chawapanant, Pol Gen Sunthorn Saikwan (Bangkok Post, 2008c: 3).

Table 5.3 Result of the Senatorial Appointment 2008

Occupation	Number of selected candidates			
	Male	Female	Total	Percentage
Retired bureaucrat	24	5	29	39.19
Active bureaucrat	1	1	2	2.70
Doctor	3	-	3	4.05
Personal Business	11	2	13	17.57
Consultant	3	2	5	6.76
Farmer	2	-	2	2.70
Legal Profession	3	-	3	4.05
Academics	7	1	8	10.81
Executive, private employee	3	-	3	4.05
Profession	4	1	5	6.76
Self-employed	1	-	1	1.35
Total	62	12	74	100

Source: (The Election Commission of Thailand, 2008).

Although there was a suspicion during a senatorial selection process, former appointed senator Rueangkrai Leekitwattana admitted that appointing senators was 'undemocratic'; however, the 2007 Constitution had been approved by referendum. Therefore, he followed the rules (to run for a senatorial race). When asking about a claim that the appointed senators must have known a senatorial selection panel member, Ruengkrai revealed that there was indeed lobbying, but he had never known. He also denied claiming he was selected as senator because Jaruvan Maintaka supported him. He even claimed that he was a person who helped Jaruvan retain her post as the auditor-general, and later, he was also one of those who filed a case to dismiss Jaruvan from the position⁷⁰.

5.3.2 The Elected Senators: Another House of Spouses?

Although the 2007 Constitution attempted to prevent the so-called "spouses house", as in the 1997 Constitution, by prohibiting the politicians' relatives from contesting a Senate election, the reality was that many senatorial candidates had political connections. For example, in the north, there was Pikulkaew Krairiksh, a sister of Democrat MP for Phitsanulok Juti Krairiksh; Somporn Jooman, a younger sister of a People's Power MP for Phetchabun Wanphen Prompat; Ongart Uae-apinyakul, a brother of People's Power MP for Phrae Worawat Uae-apinyakul; Sumpha Kotchakrai, a close friend of Anongwan Thepsuthin, is veteran Sukhothai MP Somsak Thepsuthin's wife; Narumon Siriwat, wife of former Uttaradit MP Chaipak Siriwat and close aide of Suwat Liptapanlop.

In the central region, there was Sirinart Harnsawat, a sister-in-law of Choocheep Harnsawat, in a contest in Pathum Thani; Suchin Wachiranukoon, a close aide of Democrat deputy leader and former Phetchaburi MP Alongkorn Polabutr, in a competition in Phetchaburi. In the northeast there was Pornthip Chanratanapreeda, former senator and younger sister of veteran politician Aram Lohweera, and Apirak Chaiwiratana, son of former Thai Rak Thai MP Prasit Chaiwiratana, running for the senatorial post in Chaiyaphum; Nitha Theimsuwan, a former senator and sister of Thai Rak Thai MP Kittiponh Theimsuwan, standing in Ubon Ratchathani.

⁷⁰ Ruengkrai Leekitwattana, personal communication, 12 June 2017.

Treephol Johjit, former Democrat MP and senator, and former senator Siriwat Kraisin contested Nakhon Si Thammarat in the south. Waedueramae Wada-oh, brother of Puea Pandin MP Waemahadee Wada-oh, and Muhamarosdee Bortor, younger brother of former MP Phakruddin, stood in Narathiwat. Tuan Da-ohmareeyor, a relative of Wan Mohammad Noor Matha, contested in Yala. Sompong Prasopdee, a brother of an outspoken People's Power MP Pracha Prasopdee, challenged in Samut Prakan (The Nation, 2008c: 3A).

Table 5.4 The result of the Senate election 2008, by occupation

Occupation	Number of Selected Candidates			
	Male	Female	Total	Percentage
Retired civil servant	22	1	23	30.25
Active civil servant	5	1	6	7.89
Business	22	6	28	36.84
Farmer	2	-	2	2.63
Lawyer/Legal profession	2	-	2	2.63
Politician	1	-	1	1.32
Academics, Teacher	3	1	4	5.26
State official	1	-	1	1.32
Profession	1	-	1	1.32
Self-employed	1	2	3	3.95
Others	3	1	4	5.26
Not specify	1	-	1	1.32
Total	64	12	76	100
Eligible voters	44,911,254			
Voter turnout	24,981,247 (55.62%)			
Invalid votes	914,479 (3.66%)			
None of the above	2,079,826 (8.33%)			

Source: (The Election Commission of Thailand, 2008: 43, 81)

Direk Theungfang, a former elected senator from Nonthaburi, revealed that the 2006 and 2008 elections were different. In the 2006 Election, money was a crucial factor, as was the political party's support. In addition, it was more competitive than the 2008 Election because there were three senators in Nonthaburi. Hence, the chance to win seats was high, while the 2008 Election allowed each province only one senator, making it less competitive. He also said he was defamed many times during the election.

For example, his poster and banner were moved to other places where the law does not allow campaign posters. However, he knew this trick as he always took a photo of his campaigning posters wherever he went.

On the other hand, the 2008 election was less competitive, with almost none of the slandering. The other senator was Prasert Chitaphong, a former Songkhla senator who revealed that from his own experience, the 2008 Senate election was less competitive than in 2006. In his opinion, Songkhla people are politically active and would choose a ‘quality’ politician to be a voice for them, unlike in a patron-client network. When asked why he did not run for appointed senator, Prasert stated that if he came by the people’s mandate, it would be his pride to be a voice for the people. Suppose he follows a democratic route. In addition, to run for the appointed senator, the candidate must know and have a connection with the senatorial selection panel members. Prasert realised that the chance to be an appointed senator was challenging⁷¹.

The result of the March 2008 Senate Election reflected a clear correlation between the elected senators and political parties or political families in the provinces, as shown in Table 5.4

Table 5.5 Elected senators in 2008 and their relationships with a party

Province	Senator	Relationship
Chanthaburi	Mongkol Srikamhaeng	Husband of a deputy chief executive of the Chanthaburi Provincial Administrative Organisation and has a good relationship with Palang Pracharat and Pracharat Party politicians.
Chachoensao	Nikom Wairajpanit	Supported by the Tancharoen family, an influential political family in Chacheogsao
Ayutthaya	Kessinee Khaewatthana	Daughter of Boonpan Kwawattana, former deputy prime minister and Ayutthaya MP

⁷¹ Prasert Chitaphong, personal communication, 6 June 2017.

Ratchaburi	Kecha Saksomboon	Brother of Kobkul Nop-amornbodi, a Ratchaburi MP of the Thai Rak Thai Party who was assassinated
Samut Sakhon	Suwit Mekserikun	Steel factory businessman close to the People's Power Party
Saraburi	Jaran Juengyingrungreang	Former Chairman of the Saraburi Chamber of Commerce Relatives to Watcharapong Phuwijitsuwan, MP for Saraburi, Democrat Party
Suphanburi	Prasit Pothasuthon	Brother of Prapat Phosuthon, Suphan Buri MP and a vital figure of the Chart Thai Party
Chiang Rai	Jirawan Wattanasithorn	Sister of Wanchai Jongsutthanamani, the mayor of Chiang Rai Municipality
Chiang Mai	Chuchai Lertpongadisorn	Lawyer for Yaowapa Wongsawat, younger sister of former Prime Minister Thaksin Shinawatra.
Lampang	Peera Manatat	Former Lampang governor who is close to former Lampang MP Boonchu Trithong
Phayao	Pong-ek Apirakyothin	Brother-in-law of Pairoj Tanbanjong, Phayao MP of the People's Power Party
Phitsanulok	Pikulkaew Krairiksh	Sister of Chuti Krairiksh, Phitsanulok MP of Democrat Party
Phetchabun	Somporn Juman	Sister of Wanphen Promphat, Phetchabun MP of the People's Power Party, who is Santi Promphat's wife
Sukhothai	Su-ampha Kochakrai	A close friend to Anongwan Thepsutin, Minister of Natural Resources and Environment

		from Machima Democratic Party, who is the wife of Somsak Thepsutin, a former Sukhothai MP and minister
Uttaradit	Naruemon Siriwat	Wife of Chaiphaphak Siriwat, a former Uttaradit MP
Chaiphaphum	Pornthip Chanratanapreeda	Younger sister of Aram Loweera, former deputy transport minister and Chaiphaphum MP
Buriram	Taweesak Kidbanchong	Former Governor of Buriram Province, which is close to Newin Chidchob
Sakon Nakhon	Pradit Tanwattanapong	Former Vice Rector of Ratchathani University, which former Thai Rak Thai Party MP candidates supported
Chumphon	Konchai Suwannaboon	Close to Chumphon Julasai, Chumphon MP from the Democrat Party
Trang	Wichian Khanchong	Former Trang MP from the Democrat Party

Source: (Krungthek Turakij, 2008b: 15, 18 ; Matichon, 2008g: 14 ; Post Today, 2008 ; Prachachat Turakij, 2008: 36)

Table 5.6 The Senate of Thailand (serves until 2014)

Parliamentary Form	Period	Acquisition	Number of Senators
Bicameral	Between 2008 and 2009 (serves until 2014)	76 directly elected / 74 appointed	150 (23 or 15.3% ex-military)

Source: (Chambers, 2009: 10)

5.3.2 Conflict between the Elected and Appointed Senators

The design of the Senate under the 2007 constitution to have elected and appointed senators, intentionally or not, caused *de facto* conflict between the elected and appointed senators even as early as the election. Both camps campaigned and nominated their representatives to run. It was

reported that the appointed senators' camp would set Lertrat Ratanavanich and Prasobsook Boondech. Lertrat was supported by Winai Phattiyakul, the key junta leader who staged the 2006 Coup and the appointed senators who were military officers, while Prasobsook, the former judge (Thansettakij, 2008), received most of his support from the appointed senators who were retired bureaucrats (Bangkok Post, 2008). The selection of the Senate President and Vice President took place on 14 March 2008. There were four candidates, including Prasobsook Boondech (appointed senator), Taweesak Kidbanjong (Buriram senator who is close to Newin Chidchob), Manoch Kraiwong (Surat Thani senator), and Lertrat Ratanavanich (appointed senator). As expected, Prasobsook was selected as the new Senate President with 78 votes, while Taweesak, Lertrat, and Manoch received 45, 15, and 6, respectively. The position of Senate Vice President was shared between the elected and appointed senators. Chachoengsao senator Nikom Wairajpanit was selected as the Senate's First Vice President, while the appointed senator Tassana Boonthong was chosen as the Second Senate Vice President (Komchadluek, 2008).

Former Senate President Nikom Wairajpanit revealed that the main problem of the Senate under the 2007 Constitution was the mixed method of senatorial acquisition. When the political conflict was deeply divided, some appointed senators joined the elected senators and established themselves as "the Group of 40" senators. This group was established following the Yellow Shirt demonstration that aimed to block Somchai Wongsawat's government from addressing parliament on their policy positions, as these senators escaped from the chaos with around 40 persons. Nikom, as the Senate President, revealed that the Group of 40 had become more active in the Senate meetings. When political conflict became more polarised, the breaking point was an amnesty bill⁷².

Former Songkhla senator Prasert Chitaphong, a member of the group of '40 senators', revealed some conflict among senators. Particularly, Prasert highlighted how a dispute among the senators was more so between the Group of 40 senators and the non-group of 40. Prasert revealed that most of the 40 were 31-37 appointed and 6-7 elected senators.⁷³

⁷² Nikom Wairajpanit, personal communication, 16 June 2017.

⁷³ Prasert Chitaphong, personal communication, 6 June 2017.

To understand the Senate under the 2007 constitution, which consisted of elected and appointed senators, it is worth analysing the polarisation between appointed senators and elected senators. How did the two groups come about?

It was beginning in October 2008. The first group was called the “40 Senators” group. It consisted of approximately 40 appointed and elected senators, most anti-Thaksin. They included:

- The key figures were Ruangkrai Leekitwattana and Paiboon Nititawan.
- In addition, there were people in the network of the junta that staged the 2006 Coup, such as Prasan Maruekphithak, the communication strategist in the Surayud government.
- Former junta-appointed members of the National Legislative Assembly, such as Somchai Sawangkwan, Kamnoon Sittisamarn, Tuang Anthachai, Chalit Kaewchinda, Wittawat Bunyasathit, Samak Chaowananan
- Former members of the Constitution Drafting Assembly, such as Anusat Suwanmongkol, Thawat Bowonvanichayakun, Surachai, Liangboonlertchai
- Elected senators who used to work in civil society, such as Rasana Tositrakul (Bangkok senator), Sumonsuta Wiriyawat (Phetchaburi senator)
- Senators close to the Democrat Party, such as Wichian Khanchong (Trang senator), Pikulkaew Krairiksh (Phitsanulok senator), and senators in the south like Suriya Panjo (Satun Senator), Worawit Baroo (Pattani senator), Prasert Chitpong (Songkhla senator) (Matichon, 2008e: 11)

On the other side, another group of senators, numbering about 64, were formed in favour of constitutional amendments. The group, informally known as "24 October," was created after heated parliamentary debates over constitutional amendments to pave the way for forming the Constitution Drafting Assembly (Matichon, 2008b: 1, 13). Most of them were elected senators and had clear ties to political parties. They could be divided into seven groups:

- A group of senators from the northeastern region, such as Taweesak Kidbanchong (Buriram senator), Jittipot Wiriyaroj (Sisaket senator), who has a younger brother as the People's Power Party MP, Yutthana Yuparit (Yasothon senators). Almost all northeastern senators rely on the political party's vote base.
- A group of senators from the central region, such as Prasit Phosuthon (Suphanburi senator), who is a brother of Prapat Phosuthon (the critical figure of Chart Thai Party), Somchat Pannapat (Nakhon Pathom senator) who is an aunt of Chaayos and Chaia Sasomsub
- Group of senators led by Naruemon Siriwat, Uttaradit senator. Narumon is the wife of Chaayaphak Siriwat, former secretary-general of the People's Party and Uttaradit MPs. Also, there are other senators, such as Kecha Saksomboon (Ratchaburi senator), who is a brother of Kobkul Nopmorabdi (former Ratchaburi MP who was shot dead). Kobkul is Suwat Liptapanlop's cousin. Liptapanlop family is also related to the Siriwat family because Chaayapak Siriwat's sister married Tewat Liptapanlop, Suwat's younger brother.
- A group of senators led by Direk Theungfang (Nonthaburi senator). Direk has a support base from Udomdej Rattanasathien (Nonthaburi MP from the Pheu Thai Party), who is close to Sudarat Keyuraphan, a former key figure of the Thai Rak Thai Party.
- A group of senators in the north led by Chuchai Lertpongadisorn (Chiang Mai senator). Most upper north region senators are in this group, except Jirawan Jongsutthanamani (Chiang Rai senator), who is firmly attached to the Yongyut Tiypairat group.
- The group of senators in the eastern region has an essential base from Sanoh Thienthong, leader of the Pracharat Party.
- Partially appointed senators who coordinated with other groups (Krungthep Turakij, 2008a: 15),

At first, the balance of power of the Senate was divided into six large groups, including:

1. Openly pro-government senators consisting of 30 members and elected senators who were relatives of government MPs and senators in the northern and northeastern regions.

2. The uncertain group of 20 senators, who were mainly elected senators

3. A group of variables, a group of elected senators consisting of about ten senators

4. A group of senators who were firmly against the government, namely the Group of 40 Senators

5. A neutral group of senators who could join both sides. This group consists of 20 elected and appointed senators.

6. A neutral group that did not support the government and was tired of the Yellow Shirt protest. Most were appointed senators, with about 30 people (Matichon, 2008a: 11).

5.3.4 The 2011 Senatorial Appointment

The appointed senators' three-year term was set to expire in March 2011. Therefore, a new senatorial appointment had to be made beforehand. It was reported that at least 60 out of 74 senators were keen to resign to re-apply for a senatorial post (The Nation, 2011: 16A). The highlight was not simply the process of the senatorial appointment but the Senate President's position and a power play between the elected and appointed senators. A group of elected senators, led by Ratchaburi senator Kecha Saksomboon, called Prasobsook for resignation, citing Prasobsook's gentlemanly promise that he would remain in his job for two years and resign. However, his term had almost expired, and he had not quit yet. On the other hand, a group of '40 senators led by the appointed senator Surachai Liengboonlertchai insists that Prasobsook should remain in office (Matichon, 2011c: 11). To confirm the strength of Prasobsook's post, the Senate voted 53-9 to allow Prasobsook to stay in office (Phujatkarn, 2011: 11, 16).

The process of a new senatorial appointment started in February 2011. It was reported that 67 out of the 74 appointed senators who aimed to re-apply for senatorial appointment resigned (Siamrath, 2011b: 2). The Election Commission revealed that the total number of senatorial candidates lodging their application for the senatorial post was 658, with 671 organisations nominated (Krungthep Turakij, 2011c: 15).

Table 5.7 Appointed senators in 2011 and their relationship

Sector	Name	Relationship
Academics	Kobkul Phanchaoenworakul	Former appointed senator (2008-2011)
	Kamnoon Sidhisamarn	Former appointed senator (2008-11), former NLA member (2006-07) and a vital figure of the Yellow Shirts
	Jate Siratharanont	Former appointed senator (2008-11)
	Truengjai Buranasomphop	Former appointed senator (2008-11)
	Thavorn Leenuttapong	Automobile businessman who had a close relationship with the former Thai Rak Thai Party
	Phichet Sunthornpipit	Former Ombudsman
	Wichuda Ratanapien	Sister of Prawit Ratanapien, former Ombudsman and ICT minister in Thaksin Shinawatra's government
	Vitavas Boonsathit	Former appointed senator (2008-11) and a member of '40 senators', former Constitution Drafting Assembly member (2007)
Public Sector	Gen. Charlie Chanruaeng	Former National Legislative Assembly member (2006-07)
	Gen. Chuchart Suksa-nguan	Former judge advocate general
	Gen. Theeradej Me-pien	Former Ombudsman

	Prasongsak Boondech	Brother of Prasobsook Boondech, the Senate President
	Gen. Somchet Boonthanorm	Former chief of the Council for National Security Secretariat
	Somboon Ngamlak	Former appointed senator (2008-11)
	Somphon Panmanee	Former National Legislative Assembly member (2006-07)
	Anusastra Suwanmongkol	Former National Legislative Assembly member (2006-07) and the owner of CS Pattani Hotel
Private Sector	Thawat Bowornwanichakoon	Former appointed senator (2008-11), former Constitution Drafting Assembly (2007)
	Nilawan Petcharaburanin	Former appointed senator (2008-11)
	Boonchai Chokwattana	Former appointed senator (2008-11) and the owner of Sahapattanapibool Group
	Wanchai Sornsiri	Former appointed senator and well-known anti-Thaksin lawyer.
	Som Jatusripitak	Father of Somkid Jatusripitak, former deputy PM, finance minister, and commerce minister in Thaksin Shinawatra's government
	Surachai Liengboonlertchai	Former appointed senator (2008-11) and a

		leading figure of the '40 senators' faction
Professional Groups	Pol. Gen. Chongrak Chutanont	Former deputy police chief who was close to former police chief Patcharawat Wongsuwan, younger brother of former army chief Prawit Wongsuwan
	Tassana Boonthong	Former appointed senator (2008-11) and a member of the '40 senators' faction
	Pol. Gen. Wongkot Maneerin	Husband of Sirikorn Maneerin (deputy education minister in the Thaksin government) and former deputy police chief who was a classmate of Thaksin Shinawatra
	ACM Veeravit Kongsak	Former National Legislative Assembly member and appointed senator who was also a member of the '40 senators' faction
	Somchai Sawangkarn	Former National Legislative Assembly member, appointed senator (2008-11) who was close to the Yellow Shirts

Source: (Komchadluek, 2011)

In addition, 34 out of 73 newly appointed senators were the same old faces linked to the military junta that staged a coup in 2006. Among these 34 appointed senators, six were former members of the National Legislative

Assembly, four were former members of the Constitution Drafting Assembly, and 31 were former appointed senators. Seven persons had been appointed to more than two posts over the past five years (Matichon, 2011b: 2).

Table 5.8 Appointed senators in 2011 and their links to the junta

Name	Position
Kobkul Phanchaoenvorakul	Former appointed senator
Kamnoon Sidhisamarn	Former National Legislative Assembly member, the former appointed senator in the group of 40 senators' faction
Jate Siratharanont	Former appointed senator in the group of 40 senators' faction
Dej-udom Krairit	Former Constitution Drafting Assemblymember
Trungjai Buranasomphob	Former appointed senator in the group of 40 senators' faction.
Somboon Ngamlak	Former appointed senator
Anusart Suwanmongkol	Former appointed senator in the group of 40 senators' faction
Thawat Bowornnichayakoon	Former 2007 Constitution Drafting Assembly member and appointed senator
Nilawan Phetcharaburanin	Former appointed senator in the group of 40 senators' faction
Boonchai Chokwatana	Former appointed senator
Tuang Antachai	Former National Legislative Assembly member and appointed senator in the group of 40 senators' faction
Tassana Boonthong	Former appointed senator in the group of 40 senators' faction and the Second Vice President of the Senate
Pornphan Boonyarataphan	Former appointed senator in the group of 40 senators' faction
Wichan Sirichai-Ekawat	Former appointed senator

Wirat Panichphong	Former appointed senator in the group of 40 senators' faction
Kasemsak Plooksawat	Former appointed senator
Prasong Nurak	Former appointed senator
Monthien Boontan	Former appointed senator in the group of 40 senators' faction
Pol. Lit. Gen. Yutthana Thaipakdi	Former appointed senator
Samak Chaowapanant	Former appointed senator
Thavorn Leenutaphong	Former appointed senator in the group of 40 senators' faction
Pichet Sunthornpipit	Former appointed senator in the group of 40 senators' faction
Vitavas Bunyasatit	Former 2007 Constitution Drafting Assembly member and appointed senator in the group of 40 senators' faction
Charlee Chanrueang	Former National Legislative Assembly member and also a classmate of the junta leader in the sixth class at the military cadet
Yuwadee Nimsomboon	Former appointed senator
Sonthaya Saengpao	Former appointed senator
Surachai Liengboonlertchai	Former Constitution Drafting Assembly member and appointed senator in the group of 40 senators' faction
Kirana Sumawong	Former appointed senator in the group of 40 senators' faction
Weerawit Kongsak	Former National Legislative Assembly and appointed senator in the group of 40 senators' faction
Somchai Sawangkan	Former National Legislative Assembly member and appointed senator in the group of 40 senators' faction
Surasak Sri-Aroon	Former appointed senator in the group of 40 senators' faction
Anurak Niyomvej	Former appointed senator

Another Ritthipanyawong	Former appointed senator in the group of 40 senators' faction
General Somchet Boonthanom	Former National Legislative Assembly and chief of the junta's secretariat

Source: (Matichon, 2011b: 2)

It is worth noting that most of the newly appointed senators had roles that were opposite Thaksin, especially those who had a connection with the key military leaders and the junta that staged the 2006 Coup, such as:

- Somjate Boonthanom, former director of the Council for National Security's Secretary-General Office
- Charlie Chanrueang, former appointed National Legislative Assembly member who was in the 6th class, the same class as the critical junta leaders, at the Royal Military Academy
- Lertrit Wechsawan, former director of the Royal Thai Army Radio and Television Station who was a classmate of the defence minister Prawit Wongsuwan
- Sithawat Wongsuwan, a Prawit Wongsuwan's brother

There are also former yellow shirts and those in the Democrat Party network, such as:

- Wanchai Sonsiri, lawyer
- Sak Korsaeangrueang, former President of the Lawyers Council of Thailand
- Dej-udom Krairit, former President of the Lawyers Council of Thailand
- Piyaphan Nimmanhemin, former Director-General of the Comptroller General's Department
- Panya Benjasiriwan, a husband's brother of Nattaya Benjasiriwan, Bangkok MP of the Democrat Party
- Sutham Phantusak is Alisa Phantusak's father, a former NLA and former candidate for the chief executive of the Chonburi Provincial Administrative Organisation from the Democrat Party.

In addition, there are others such as Wichuda Rattanapian, younger sister of Prawit Rattanapian, former minister of various ministries, MR Wuthilert Devakul, nominated by King Prajadhipok's Institute, Teeradej Meephian,

former inspector. Prasongsak Bundej, older brother of Prasopsuk Bundej, former President of the Senate, Som Jatusripitak, Somkid Jatusripitak's older brother, former deputy prime minister (Naewna, 2011)

Another Struggle for the Senate President

Following the appointments of the new senators and the expiration of the term of the Senate President Prasobsook Boondech, the race for the Senate President started again. Once again, it was a contest of support between the elected and appointed senators. After the newly appointed senators were officially announced, the elected senators then moved by nominating Chachoengsao senator Nikom Wairajpanit⁷⁴, the first deputy Senate President, as a candidate for the Senate President post (Khaosod, 2011: 10). A day later, the appointed senators named Theeradej Meepien their candidate for the Senate President (Krungthep Turakij, 2011b: 15). On 22 April 2011, the Senate voted for Theeradej Meepien as the new Senate President with 91-52 votes. The voting process took only an hour and a half and finished just within the first round of selection. It was reported that Theeradej's victory was not beyond expectation as he already had 73 votes from the appointed senators and some elected senators from the '40 senators' faction and the South. However, another deciding factor was support from the elected senators led by Nonthaburi senator Direk Theungfang, another favourite candidate from the elected senators but eventually lost to Nikom (Matichon, 2011a: 14).

However, Theeradej would remain in office for only a year. On 25 July 2012, Theeradej was dismissed from the post after the criminal court found him guilty and sentenced him to two years, but on suspension after he wrongfully awarded himself and two other colleagues a pay increase when he was a chief Ombudsman in 2004 (Bangkok Post, 2012b: 3). The stage was open for Nikom Wairajpanit and the elected senators once again to compete in the race for the Senate President. Eventually, Nikom was voted the new chief of the Senate (Matichon, 2012: 1, 14).

⁷⁴ Nikom Wairajpanit was an elected senator from the eastern province of Chachoengsao (2008-2014). Before entering politics, Nikom was the former Deputy Permanent Secretary of the Bangkok Metropolitan Administration. He is the uncle of a veteran and influential politician in Chachoengsao Suchart Tancharoen, as Nikom's sister married Suchart's father. See Nikom Wairajpanit (2013).

During an interview with the author, when asking about the possibility of becoming the Senate President, he revealed that it was ‘incredible’ that he was voted as Senate President because he thought it was challenging for the elected senators to fight against the appointed senators. Nikom further revealed that he once competed with Theeradej but lost overwhelmingly because they (the appointed senators-author) had mobilised and gathered votes effectively. However, when Theeradej was dismissed from the post, it again paved the way for selecting another Senate President. At first, the media reported that Ratchaburi senator Kesha Saksomboon⁷⁵ would also compete this time. Nikom, as the first deputy Senate President, felt that he also needed to compete. He knew that Kesha had a significant number of votes in hand, so he made a deal with the latter that if he lost, he would transfer his votes to Kesha.

On the other hand, if Kesha lost, he must transfer his votes to Nikom. During the first selection round, the appointed senators’ nominee received 65 votes, while Nikom and Kesha received 46 and 35, respectively. As the winner did not reach half the votes in the Senate (73), it must proceed to the second round. As expected, Kesha transferred his votes to Nikom, who thus became the new Senate President with 146-77 votes⁷⁶. Nikom’s victory was significant in this. It reflects a power shift in directing the Senate from the appointed to the elected senators.

5.3.4 The Senate as the Guardian of the 2007 Constitution

The Politicisation of Impeachment

One of the critical powers of the Senate under the 2007 constitution was the power to impeach those holding political office and high-ranking government officials. However, this mechanism was never implemented when the 1997 constitution was effective. Only with the 2007 Constitution when impeachment was initiated. It reflects a politicisation of this process.

The first case of impeachment of political office holders under the 2007 constitution was the attempt to impeach former Prime Minister Somchai Wongsawat for the dispersal of the Yellow Shirt protests in front

⁷⁵ Kesha Saksomboon is a younger brother of former Ratchaburi MP Kobkul Nopamonbodi, also a cousin of a veteran politician of Suwat Liptapallop. In May 2006, Kobkul was shot by M-16 at the intersection in Ratchaburi and suddenly died.

⁷⁶ Nikom Wairajpanit, personal communication, 16 June 2017.

of the parliament building before the Somchai government's policy statement to parliament on 7 October 2008. Even though Somchai had left office after the Constitutional Court ruled to dissolve the People's Power Party, his case proceeded with retroactive removal. Before the resolution, it was reported that around 70 elected senators would walk out to cause insufficient votes, and the Senate would not approve the impeachment (Thaipost, 2010). However, Somchai's impeachment continued at the Senate session on March 9, 2010, where a resolution was set to impeach or remove Somchai Wongsawat from the Prime Minister. A total of 134 senators attended the meeting, where 49 votes were placed for impeachment, 76 votes were placed against impeachment, six abstentions were made, and three invalid ballots were cast. The votes tallied less than three-fifths of the total number of existing senators required by the 2007 Constitution to proceed with an impeachment. Therefore, the Senate did not impeach Somchai Wongsawat. But this resolution did not affect the consideration of the Supreme Court's Criminal Division for Persons Holding Political Positions (The Secretariat of the Senate, 2010b: 16). After receiving news of the resolution, Somchai said it had confirmed that he did not commit the alleged offence. However, before the vote, some incidents had occurred involving Wicha Mahakun, the National Anti-Corruption Commission Commissioner. He had appeared on a television program on Channel 11, the Public Relations Department, with Chirmsak Pinthong, a former senator. Wicha had stated that he could not respond to the allegations at the Senate meeting as if leading the senators to vote for their removal. Therefore, many saw that Wicha had unfairly violated the council's consideration rules (Matichon, 10 March: 1, 13).

Later, on March 12, 2010, a vote was held to impeach or not impeach Noppadon Pattama, a former foreign minister, that followed the case of the signing of a joint communique with Cambodia over the Preah Vihear temple to register it as a World Heritage site without receiving an endorsement from parliament (Bangkok Post, 2010: 2). The result showed 57 impeachment votes, 55 no impeachment votes, four abstaining, and one invalid ballot. These votes favouring impeachment were less than three-fifths of the number of MPs. Therefore, the Senate passed a resolution not to impeach Noppadol. But the resolution did not affect the ruling of the Supreme Court's Criminal Division for Persons Holding Political Positions (The Secretariat of the Senate, 2010a: 19). After knowing the resolution, Noppadon Pattama

said, *"In this case, I owe my debt to all 55 senators who understand that I did it because I wanted to protect the overlapping areas and did not intend to violate Section 190 of the Constitution as rightly so. Receiving 55 votes in the current political situation is very fortunate because the Council appoints half of the senators for National Security."* (Krungthep Turakij, 2010: 13)"

The following case was the impeachment of Phakdi Phothisiri, a NACC commissioner appointed chairman of the subcommittee investigating the Ministry of Public Health's computer procurement, of which Phakdi used to be Deputy Permanent Secretary. Phakdi was also a board member of a private company, which was against the law prohibiting the NACC from holding positions in partnerships, companies or for-profit businesses (Thaipost, 2012: 2). At the Senate meeting on March 9, 2012, the Senate held a resolution on whether to impeach or not impeach Phakdee. The voting results showed 56 votes for impeachment and 84 for no impeachment (The Secretariat of the Senate, 2012b: 12). However, the result was split. Most senators who voted to impeach Phakdi were close to people in the Pheu Thai Party, especially those in the Northeast and North and some parts of the central region. Another group of senators close to the Democrat Party had lobbied against impeachment. Almost all of the appointed senators supported Mr Phakdi by voting against impeachment because they were considerate of Panthep Klanarongran, the chairman of the National Anti-Corruption Commission, who was one of the senatorial selection panel members who selected this set of senators (Post Today, 2012: A6).

The case for the impeachment of Suthep Thaugsuban started when the National Anti-Corruption Commission indicted Suthep, while he was serving as Deputy Prime Minister in the Abhisit government, for interfering with the work of civil servants by sending MPs from the Democrat Party to work in the Ministry of Culture. It then submitted the case to the Senate for impeachment (Bangkok Post, 2012a: 3). Before the resolution, there was news that about 50-65 appointed senators would help Mr Suthep by voting not to remove him from office and no more than 50 votes to withdraw from the elected senators. Senate President Nikom Wairatphanich admitted that the removal process had never worked because senators' origins differed. Also, the votes required for impeachment were too high (Thaipost, 2012: 3).

At the September 18, 2012 Senate meeting, 139 people were present. Forty voted for impeachment, 95 voted against impeachment, and three voted for abstention, less than three-fifths of the votes. As a result, the Senate voted against the impeachment of Suthep Thaugsuban. However, the Senate resolution did not affect the Supreme Court's Criminal Division for Persons Holding Political Positions ruling (The Secretariat of the Senate, 2012a: 20).

5.3.4 The Politics of the Constitutional Amendment

An amendment to the 2007 Constitution was a priority agenda for the Thaksin-backed parties soon after the election in December 2007, which the People's Power Party won and made Samak Sundaravej the new prime minister. A new coalition government was formed in early January 2008; the PPP-led coalition quickly pushed a constitutional amendment and an amnesty law (Lokwannee, 2008). Thus, it immediately faced outrage and massive opposition from pro-military groups, the People's Alliance for Democracy, the Yellow Shirts (The Nation, 2008b) and the former 2007 Constitution drafters (Matichon, 2008c). The PPP-led coalition attempted to amend the constitution, but the Yellow Shirts protested again in May 2008. Later, the Constitutional Court dismissed Samak from the post after the court ruled on a conflict of interest as he hosted a cooking show (The New York Times, 2008). The first attempt to amend the 2007 Constitution thus failed.

The second attempt was made after Somchai Wongsawat, Thaksin's brother-in-law, succeeded Samak as the new premier in September 2008. Somchai proposed setting up the Constitution Drafting Assembly to write a new charter (Matichon, 2008d). However, Somchai regarded this as time-buying, and the PPP-led coalition government and the Yellow Shirts did not end the protests. Still, they took things to another level by seizing the Suvarnabhumi Airport. Somchai's administration lasted only 67 days after the Constitutional Court dissolved the People's Power Party on charges of electoral fraud. It resulted in a 5-year ban from politics for party executives, including Somchai (The Nation, 2008a). It proved yet another failed attempt by the Thaksin-backed parties to amend the 2007 Constitution.

During a political interregnum, the Democrat Party successfully formed a new coalition government with the former coalition parties in the

Samak and Somchai governments. Abhisit Vejjajiva was named the new prime minister in late December 2008 (Bangkok Post, 2008a). Abhisit's government was also challenged by the Red Shirts, mainly by Thaksin's supporters from rural areas. After chaos in April in Pattaya and Bangkok, a constitutional amendment was put on the agenda again. Abhisit proposed to set up a committee to reconcile and amend the constitution. Thus, the House Speaker Chai Chidchob, the President of the National Assembly, appointed an ad hoc committee called the 'Reconciliation, Political Reform, and Constitutional Amendment' Committee chaired by Nonthaburi senator Direk Theungfang. After three months, the committee proposed to amend the constitution in 6 issues:

1. Dissolution of a political party and revoking the electoral rights of the party leader and executive
2. Acquisition of the MPs
3. Acquisition of senators
4. Treaties needing approval from the parliament
5. MP rights to hold a political office
6. MPs and senators' roles in solving people's problems (The Secretariat of the House of Representatives, 2009)

During an interview with the author, Direk revealed that he was the leading supporter of changing from a half-elected-half-appointed to a fully-elected Senate, as in the 1997 Constitution⁷⁷. However, Abhisit's government did not respond to these proposals. Another amendment was proposed in 2011 before the election, changing the electoral system and the number of MPs (The Royal Thai Government Gazette, 2011), which was successful.

The 2012 Constitutional Amendment: Rewriting an entire constitution

A new general election was held on 3 July 2011. It saw another Thaksin-backed Pheu Thai party victory in a fourth consecutive election, despite its being interrupted by a military coup and a 'judicial coup'. Yingluck Shinawatra, Thaksin's youngest sister, became Thailand's first

⁷⁷ Direk Theungfang, personal communication, 25 July 2017.

female prime minister. Similar to the PPP government in 2008, a constitutional amendment was a top priority for the Pheu Thai government. In February 2012, Pheu Thai pushed another attempt to amend the 2007 constitution by proposing to establish the Constitution Drafting Assembly to rewrite a new constitution. This move received approximately 378 votes from the House of Representatives and the Senate, with 300 MPs from the ruling coalition and 78 senators. Most senators who disagreed with the amendment were appointed senators (Matichon, 2012: 1, 10).

However, this attempt was not successful. The opponents of the proposed amendment filed a petition to the Constitutional Court to rule whether it was 'an act to gain power through undemocratic means' (Khemthong, 2017: 247). The Constitutional Court ruled that an amendment to rewrite a charter must be approved by referendum as it was the 2007 Constitution's constituent power (The Constitutional Court of Thailand, 2012).

During an interview, former Pheu Thai government whip chief Udomdej Rattanasathien explained that Pheu Thai proposed a Constitution Drafting Assembly because the 2007 Constitution had too many problems, and it would have been challenging to amend each clause. Hence, Pheu Thai proposed to employ an election to select the members of the Constitution Drafting Assembly because it was the 'most democratic' solution. When asked about the court's verdict, former Pheu Thai government chief Udomdej Rattanasathien revealed it was an 'unexpected' result. He further said that Pheu Thai did not follow the court's recommendation. After all, passing a referendum would be extremely difficult or even impossible as it required more than half of the eligible votes to become effective⁷⁸.

The 2013 Constitutional Amendment: Returning to a Fully-Elected Senate

A year later, in March 2013, Pheu Thai pushed to amend the 2007 constitution, proposing to amend specific clauses, including the acquisition of senators. In this draft, the Pheu Thai government wanted to change the Senate from a half-elected-half-appointed to a fully-elected chamber, as with the Senate under the 1997 Constitution (Thairath, 2013). This time, former Pheu Thai government whip chief Udomdej Rattanasathien, who

⁷⁸ Udomdej Rattanasathien, personal communication, 24 July 2017.

also submitted this amendment for parliamentary deliberation, told the author that the appointed senators under the 2007 Constitution would be removed immediately. It was an opportunity to make the Senate a fully-elected chamber since it had much power in impeachment and appointments to independent agencies. Moreover, it would be a more dignified institution if it were linked with the people. When asked whether Pheu Thai might benefit from this amendment, Udomdej denied such an advantage, saying Pheu Thai might not benefit from it because it is up to the people to choose⁷⁹.

As with previous attempts, the 2007 Constitution was not easily amended. When the Pheu Thai government introduced this amendment to the parliament for deliberation, the opposition filed a petition to the Constitutional Court to rule whether this amendment was constitutional, reasoning that it violated Article 68 of the constitution as it was an attempt to "overthrow the democratic regime with the king as head of state" (Krungthep Turakij, 2013a). A move by Pheu Thai and a sudden counter-Pheu Thai move by the opposition caused political tension. However, House Speaker Somsak Kiatsuranont also emphasised the parliament's power to amend the constitution and that the Constitutional Court had no right to intervene (The Nation, 2013b).

Controversially, on 20 November 2013, the Constitutional Court ruled that this amendment was unconstitutional with 5-4 votes. The court ruled on the differences and changes between the original and submitted drafts in the first reading during a parliamentary session. Moreover, the court ruled that the 2007 Constitution did not allow the abuse of power or conflict of interest, and the rule of law must be upheld; *"As the democratic system uses the [will of the] majority to judge, how can we [consider] oppression of the minority [which] until it has no place in a democratic administration."* The President of the Constitutional Court, Charoon Intachan, also added that when it came to the content of the amendment, the proposed changes to allow family members of MPs to run in senatorial elections would diminish the will of the Constitution to separate the House and the Senate to uphold checks and balances (The Nation, 2013a).

"The constitutional amendment under the petitions is a return to the former defects, which are difficult and likely to end the faith and harmony

⁷⁹ Udomdej Rattanasathien, personal communication, 24 July 2017.

of the majority of the Thai people. It is an attempt to draw the Nation back into the canal, as it would bring the Senate back to the state of being an assembly of relatives, family members, and husbands and wives. In consequence, the Senate would lose its status and vigour as the source of wisdom for the House of Representatives but would merely be an echo for the people from the same group. The principles of the bicameral system would be debased, leading to the monopoly of state powers and the exclusion of the participation of the members of various sectors and professions. The amendment is thus an effort of its initiators to regain the national government power by the means not recognised by the Constitution—the 2007 Constitution approved by the majority of the people of Thailand at a referendum.” (McCargo, 2019: 206)

On the other hand, Pheu Thai’s reaction was different and aggressive. The party released an announcement which stated that the party “would not accept the court’s ruling and would convince coalition parties and senators to back the impeachment and criminal prosecution of the five Constitutional Court judges who rejected the amendment draft” (Bangkok Post, 2013b). When asked how he felt after the Constitutional Court denied an amendment again, former Pheu Thai government Chief Whip Udomdej Rattanasathien revealed that he was ‘disappointed’. However, he thought that the Pheu Thai Party followed the Constitutional Court’s recommendation to amend specific clauses of the constitution and did not expect the outcome to be against Pheu Thai again (Udomdej Rattanasathien, 24 July 2017).

However, the court’s verdict was not the end of the matter but rather a part of a long political saga. Soon after the court’s ruling, the National Anti-Corruption Commission received five petitions seeking to dismiss the 312 MPs and senators who voted to support this amendment. The senators filing the first petition accused these lawmakers of abusing their authority and sought to remove them from office. The second was submitted by the public seeking criminal charges against the accused MPs who had asked their colleagues to forge votes. In contrast, the Democrat Party and anti-government senators submitted the other three petitions to dismiss House Speaker Somsak Kiatsuranont and Senate President Nikom Wairajpanit. The NACC agreed to consider all these petitions (Bangkok Post, 2013b).

In January 2014, the NACC pressed charges against the 308 MPs and senators who proposed the amendment (Bangkok Post, 2014d). The first

person to learn his fate is Senate President Nikom Wairajpanit. On 20 March 2014, Nikom was relieved from his duty, pending impeachment by the Senate, after the NACC indicted him of abusing authority while chairing the parliamentary session considering this constitutional amendment after he did not allow the MPs who signed up to speak (The Nation, 2014). The next was House Speaker Somsak Kiatsuranont. On 1 April 2014, the NACC indicated that Somsak was aware that the draft amendment to the parliamentary session's agenda differed from the original draft and that Somsak had intentionally closed the session and denied MPs and senators who had signed up to speak. Somsak's and Nikom's cases were later submitted for impeachment (Komchadluek, 2014). In the same month, the accused 36 senators who voted to support this amendment were also charged by the NACC, pending impeachment (Bangkok Post, 2014b).

During an interview, Nikom Wairajpanit revealed that he knew the NACC would press charges and suspend him from his duties because he was the main target for one political group that sought to dismiss him from his post as there would then be a selection of a new Senate President that could aid the appointment of the neutral 'unelected' prime minister. Nikom insisted that he refused to appoint the unelected prime minister because it was unconstitutional, and he performed his duties legally and constitutionally. In addition, Nikom also blamed the NACC for a lack of fairness, claiming that he had wanted to submit the additional documents to defend himself, shortened from 90 to 5 pages. Nonetheless, the NACC had rejected it⁸⁰.

While the fates of Nikom, Somsak, and the other 36 senators were still in the balance, a military coup took place on 22 May 2014. Similar to the past coup, the junta, known as the National Council for Peace and Order (NCPO), revoked the 2007 Constitution and ruled by orders and announcements without a constitution for two months, creating a “climate of fear” through the ‘attitude adjustment’ program (Amnesty International, 2014). Finally, on 22 July 2014, the junta enacted the 2014 Provisional Constitution, which outlined a junta-controlled political system, for example, the junta-installed parliament known as the National Legislative Assembly (NLA), the cabinet, the National Reform Council, the Constitution Drafting Commission, and the junta itself. The most

⁸⁰ Nikom Wairajpanit, personal communication 16 June 2017.

controversial power in this constitution was Article 44, which granted the junta leader absolute power without any accountability, similar to the Sarit Thanarat era during the 1950s⁸¹.

Nikom, Somsak, and the other 36 senators were still in the process of impeachment even though they were no longer in office and the Senate no longer existed. However, following the controversy and heated debate among the members, the junta-installed parliament National Legislative Assembly voted 87-75 in a 'closed-room' session on 7 November 2014 to proceed with impeachment. It was reported that the critical group wanting to proceed with the impeachment were the NLA members, who had been a part of the 'Group of 40 senators' and were mainly appointed senators (Thairath, 2014).

The first NLA-initiated impeachment occurred on 13 January 2015, with the case of the former Senate President Nikom Wairajpanit and the former House Speaker Somsak Kiatsuranont. If they were impeached, it could result in a five-year ban from politics. However, they survived the impeachment (Bangkok Post, 2015). Nikom had admitted to the author that he might face impeachment, but after he survived, he revealed that it was an 'acceptable' result for him and at least there had been fairness. However, Nikom noted that while the Senate never successfully impeached anyone, the NLA could do so because it had an 'order'. Next came the cases of the 38 former senators involved in this amendment. On 12 March 2015, the National Legislative Assembly voted not to impeach anyone in this case (The Nation, 2015b), meaning that all 38 former senators survived. Former Nonthaburi senator Direk Theungfang was among these 38 senators and voted to support this amendment in all three readings. He revealed that he was confident that he would not be impeached when he defended himself against the charges against him by the National Anti-Corruption Commission. He sensed this case was most important as he was not the primary target. When he survived the impeachment, Direk told the author that it proved that everything he had explained to the NACC was correct. However, Direk believed the impeachment 'had been ordered' and insisted that the amendment had been legal and constitutional. In addition, Direk admitted that he had not expected this incident to lead to a long saga because

⁸¹ Prayut was dubbed as 'Little Sarit'. See Time (2018). Thailand's Leader Promised to Restore Democracy. Instead, He's Tightening His Grip. Retrieved on 29 August 2019. See Time (2018)

the power to amend the constitution belongs to the parliament, as stated in the 2007 Constitution⁸².

The National Legislative Assembly continued to proceed with impeaching the 248 former MPs involved in this amendment bill. As with the three previous cases, the NLA voted to reject their impeachments (The Nation, 2015a). However, this long saga of constitutional amendment has not yet ended. A year later, on 8 September 2016, the National Anti-Corruption Commission indicted two former Pheu Thai MPs, Narisorn Thongthirach (former Sakhon Nakhon MP) and Udomdej Rattanasathien (former Nonthaburi MP), on charges of misconduct. Narisorn was accused of using MP ID cards to vote for his colleague.

In contrast, Udomdej was accused of swapping the amendment bill submitted earlier for parliamentary consideration with another draft he introduced to a parliamentary session on 1 April 2013 without authorisation (Bangkok Post, 2016a). An impeachment hearing took place two months later, and on 4 November 2016, the NLA voted to impeach both Udomdej and Narisorn, which resulted in a five-year ban from politics (The Nation, 2016a). These two persons were the only two politicians who were impeached in this long saga of the constitutional amendment and also the last impeached political office holders by the parliament. The new constitution transferred the power of impeachment to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions (Matichon, 2015).

During an interview, Udomdej revealed that he went to defend himself four times at the National Legislative Assembly. Every time he went, some NLA members and parliamentary officials talked to him and reassured him that his case would be all right. Thus, Udomdej believed he was unlikely to be impeached as long as the impeachment process continued 'naturally'. However, on judgement day, Udomdej acknowledged a movement among NLA members who were senators who lobbied the junta leaders to impeach him and Narisorn. Asking after he was impeached, Udomdej pointed out that the appointed legislature could be 'manipulated', but if the people elected it, it would be more accountable to the people.

⁸² Direk Theungfang, personal communication, 25 July 2017.

In contrast, the appointed chamber must listen to the person(s) who selected them, leaving them ripe for manipulation. Udomdej strongly believed that an impeachment against him was 'politically motivated' by questioning why Nikom, Somsak, 38 former senators, and 248 former MPs survived. Still, he didn't, although it was the same case involving the constitutional amendment. Moreover, Udomdej defended that his party never attempted to 'overthrow the democratic regime with the king as head of state, insisting that what he proposed in this amendment was right, and he even believed that he had done the right thing. Finally, after a long saga had ended, Udomdej felt the court's ruling was driven by a conspiracy to destroy democracy⁸³.

The politics of the constitutional amendment demonstrates a tension between the unelected and elected bodies, a result of the 2007 Constitution design what empowered the unelected institutions, in this case, the Constitutional Court, over the elected institutions in the name of 'checks and balances'. The Pheu Thai government claimed its legitimacy from electoral victory and the votes it received to amend the 2007 Constitution, which was drafted by the body appointed by the junta that staged the 2006 Coup, claiming to make the constitution 'more legitimate and more democratic'. However, the Constitutional Court claimed its legitimacy and, therefore, its power to provide checks and balances for the elected institutions when it ruled that the Pheu Thai-proposed constitutional amendment draft was unconstitutional. The situation after the 2014 Coup was one of significant political motivations. Despite the parliament being dissolved and the MPs and senators no longer holding office, the process to impeach those who supported the constitutional amendment continued by the National Legislative Assembly, the junta-appointed parliament.

5.3.6 The Amnesty Bill: A Final Straw

A reconciliation bill, in other words, an amnesty bill, was another top item on the agenda of the Pheu Thai Party. An early attempt was made in 2009, while it was the opposition party; the Pheu Thai-initiated bill, known as the National Reconciliation Bill, sought to 'pardon those involved in political activities between 19 September 2006, and 5 May 2009'. It also aimed to reinstate banned politicians' political rights (Bangkok Post, 2009b).

⁸³ Udomdej Rattanasathien, personal communication, 24 July 2017.

However, it did not receive support from the Democrat-led coalition government. Prime Minister Abhisit Vejjajiva disagreed with this bill, claiming it would not end political division in Thailand (Bangkok Post, 2009a). Also, the ‘Group of 40 senators’ joined the Democrats in opposing the bill (Thairath, 2009). The first attempt by Pheu Thai was thus, therefore, unsuccessful.

The second attempt to release the amnesty bill started in late November 2011, when Sonthi Boonyaratglin, a former junta leader of the 2006 Coup, now an elected MP and leader of the Matuphum Party, proposed a special committee on national reconciliation (Krungthep Turakij, 2011a: 4). Later, Sonthi himself was selected as its chairman (Post Today, 2011: 2-3). In March 2012, the committee announced an amnesty plan based on the research report of King Prajadhipok’s Institute on National Reconciliation (Bangkok Post, 2012c: 3). However, it faced heavy opposition from every side of Thai politics, including the Democrat Party, the Yellow Shirts, the Red Shirts, and even other politicians. It was yet another unsuccessful attempt to pass an amnesty law.

The Pheu Thai government, however, did not give up on passing the bill. Its third attempt was made a year later, in 2013, when Samut Prakan MP and the Red Shirts’ leader Worachai Hema proposed it, claiming that it received support from both Thaksin and Yingluck Shinawatra (Bangkok Post, 2013d: 2). Chalerm Yoobamrung also presented another version of an amnesty bill, but later, Pheu Thai voted to support Worachai’s bill (Krungthep Turakij, 2013b: 13, 16). As the Parliament began considering these bills, the public heavily attacked the Worachai-proposed version. Even the Red Shirts and the opposition saw the bill as granting a blank amnesty to Thaksin Shinawatra, despite Worachai and Pheu Thai Party arguing that it aimed to pardon everyone involved in the political conflict since the 2006 Coup (The Nation, 2013c: A2). Later, it caused an outrage among the public and paved the way for the new movement called the People’s Democratic Reform Committee (PDRC), the avatar of the Yellow Shirts led by former Democrat leading figure Suthep Thaugsuban to stage a demonstration against Yingluck Shinawatra’s government. Along with the movement outside the parliament, the action inside the parliament was also heated when the Group of 40 senators, primarily anti-Thaksin opposition, refused to attend the parliamentary session (Komchadluek, 2013: 13). Eventually,

Yingluck dissolved the house and called for a fresh election (Bangkok Post, 2013a: 3).

During an interview, former Senate President Nikom Wairajpanit revealed that the two types of senatorial membership were a significant problem of the Senate under the 2007 Constitution. A conflict between the elected and appointed senators was reaching its peak during the deliberation of this amnesty bill in a parliamentary session. Nikom further revealed on that day that some appointed senators held a meeting in a different room separately, thus resulting in a quorum of absence. As the Senate President, he had to ask them for cooperation to resume a parliamentary session, but it was for nought. The attempt to pass an amnesty bill was the ‘last straw’ of conflict between the elected and appointed senators, resulting from the institutional design of the Senate under the 2007 Constitution.⁸⁴

5.3.7 The 2014 Senate Election

The elected senators served a full six-year term from 2008 to 2014. Therefore, a new election of senators was held on 30 March of that year. It was an election of 76 senators from 75 provinces and Bangkok, constituting half of the total number of senators under the 2007 Constitution, while the other 74 appointed senators remained in office. A total of 457 senatorial candidates nationwide ran for 77 seats (Bangkok Post, 2014c). However, this election saw a low voter turnout. From 48,786,842 eligible voters, 42.79% of the eligible voters (20,873,688) voted (The Election Commission of Thailand, 2015: 1). The 2014 Senate election, however, clearly reflects the relationship between the elected senators and the political parties, politicians, and political movements, in line with both the ruling government and the opposition.

Table 5.9 Relationships of Pro-government Elected Senators

No.	Province	Name	Relationship
1	Suphanburi	Jongchai Thiengtham	Former Chart Thai MP for Suphanburi
2	Chai Nat	Monthien Songpracha	Former Chai Nat MP
3	Ang Thong	Choosak Sriracha	Former Chairman of Ang Thong Provincial Administrative

⁸⁴ Nikom Wairajpanit, personal communication, 6 July 2017

			Organization who was close to veteran Ang Thong politician Somsak Prisanantakul
4	Phra Nakhon Sri Ayutthaya	Khanipong Khaewatthana	A son of Boonphan Khaewatthana, former Ayutthaya MP
5	Saraburi	Boonsong Kerdham	Saraburi Red Shirts leader
6	Sa Kaeo	Duangporn Thienthong	A daughter of Witthaya Thienthong, former Sa Kaeo MP who was a son of veteran Sa Kaeo godfather Sanoh Thienthong
7	Nakhon Pathom	Thongchai Srisukjon	Former member of Nakhon Pathom Provincial Administrative Organization who was supported by Nakhon Pathom's godfather and veteran politician Chaiya Sasomsub
8	Chonburi	Surasit Nithiwutworarak	Former MP who was close to the Khun Pleum clan, a well-known political family in Chonburi
9	Ratchaburi	Piengpen Saksomboon	Former deputy chief of Ratchaburi Provincial Administrative Organization and the wife of former Ratchaburi senator Kesha Saksomboon
10	Nonthaburi	Thanapong Thanadechakul	Brother of Nonthaburi Municipality mayor Somnuek Thanadechakul

11	Chachoengsao	Sunan Aroonnapparat	Close to Tancharoen's clan, an influential political family in Chachoengsao
12	Uthai Thani	Pairoj Thungthong	Relative of former Uthai Thani senator Singchai Thungthong
13	Singburi	Chaiwut Thanakomanusorn	Former Singburi MP
14	Chiang Mai	Adisorn Kamnerdsiri	Former deputy Chiang Mai governor who was close to Yaowapha Wongsawat, sister of Thaksin Shinawatra
15	Chiang Rai	Mongkolchai Duangsaengtong	Close to Deputy Interior Minister Wisan Techatheerawat
16	Phrae	Bulan Ratkhamphan	Former secretary to Anuwat Wongwan, a chief executive of Phrae Provincial Administrative Organization and a former MP
17	Phayao	Sathien Chueaprasertsak	Close to Thammanat Phromphao, an influential figure in Phayao
18	Lampang	Worawoot Norkham	Close to the Chansurin family, a political family in Lampang
19	Lamphun	Tree Danpaiboon	Former MP and brother of Niran Danpaiboon, the chief executive of Lamphun Provincial Administrative Organization who sided with Pheu Thai Party
20	Nan	Anon Tantrakool	A former executive of Nan Municipality and

			supported by the Red Shirts
21	Sukhothai	Pimpa Limpaphan	Wife Piyachanok Limpaphan, former Sukhothai senator
22	Kampaengphet	Chulaphan Tubtim	Close to Rueangwit Lic, former deputy interior minister
23	Nakhon Sawan	Chakrawal Tangpakorn	Brother of Banyin Tangpakorn, former Nakhon Sawan MP and deputy commerce minister
24	Phetchabun	Pipatchai Phakratchatanon	Former deputy chief executive of Phetchabun Provincial Administrative Organization who was close to the Pheu Thai Party
25	Kalasin	Pan Porntraisak	Former district chief in Kalasin, whom Pheu Thai Party MP supported
26	Khon Kaen	Wan Suwannaphong	Red Shirt lawyer and supported by Chakarin Patdamrongchit, former MP from Pheu Thai
27	Udon Thani	Arporn Sarakham	Wife of Kwanchai Phraipana, a leader of the Red Shirt movement in Udon Thani
28	Maha Sarakham	Srimuang Charoensiri	Former elected senator who was close to Thaksin Shinawatra
29	Nong Khai	Arthit Sritabutr	Brother of Yutthana Sritabutr, the chief executive of the Nong Khai Provincial Administrative Organization

30	Chaiyaphum	Bantoon Kiatkongchuchai	Brother of O-chit Kiatkongchuchai, former MP from the Pheu Thai Party
31	Ubon Ratchathani	Somchai Laosaichuea	A car dealer who was close to former Pheu Thai MP
32	Yasothon	Prayoon Laosaichuea	Wife of Somchai Laosaichuea, Ubon Ratchathani senator
33	Roi Et	Somkiat Phuensaen	Brother of Wiroon Phuensaen, former Pheu Thai party-list MP
34	Nakhon Phanom	Somnarm Laokiat	Former deputy chief executive of Nakhon Phanom Provincial Administrative Organization who was close to Pheu Thai MP
35	Nong Bua Lamphu	Prapart Nualsamlee	Local Red Shirt leader and former assistant to Wichai Samitr, former Pheu Thai MP
36	Nakhon Ratchasima	Pongsiri Kusum	Former Nakhon Ratchasima deputy governor who was close to Suwat Liptapallop
37	Mukdahan	Wiriya Thongpha	Former chief executive of Mukdahan Provincial Administrative Organization and supported by Pheu Thai Party MPs
38	Sisaket	Wilada Inchat	Daughter of former Sisaket senator Sunee Inchat and sister of Pheu Thai MP Malinee Inchat
39	Amnat Charoen	Yaneenart Khemnakh	Former chief executive of Non Nham Taeng District Administrative

			Organization who was close to Pheu Thai MPs
40	Pattani	Somwang Apichairat	Relative of former Pattani MP Muk Sulaiman
41	Yala	Abdulayi Samaeng	Close to Mukta Matha, the chief executive of Yala Provincial Administrative Organization and also Wan Muhammad Noor Matha

Source: (Nation Sud Sapda, 2014: 12)

Table 5.10 Anti-government elected senators

No.	Province	Name	Relationship
1	Bangkok	Jaruvan Maintaka	Former auditor-general who is a staunch opponent of Thaksin Shinawatra
2	Trat	Boonsong Khaiket	Former Democrat MP for Trat and also elected senator
3	Prachuap Kiri Khan	Suebyot Baiyaem	Former chief executive of Prachuap Kirikhan Provincial Administrative Organization and supported by Democrat top figure Chalermchai Sri-on
4	Phetchaburi	Samart U-Saha	Former deputy chief executive of Phetchaburi Provincial Administrative Organization and also a former assistant to Phetchaburi MP Alongkorn Ponlaboot
5	Rayong	Surachai Pitutecha	A relative of Democrat MP Sathit Pitutecha

6	Tak	Chingchai Korprapakit	Former chief executive of Tak Provincial Administrative Organization and close to the Democrats in Tak
7	Uttaradit	Peerasak Porjit	Former chief executive of Uttaradit Provincial Administrative Organization and close to the Democrat Party
8	Chumphon	Narin Busyawit	Former deputy commander of Chumphon Provincial Police who has support from the Julasai family, an influential political family in Chumphon
9	Ranong	Sakda Sriwiriypaiboon	Resort owner on Koh Payam in Ranong with support from the Democrats
10	Surat Thani	Suchin Chaemchoi	Former commander of Wing 7 in Surat Thani who was close to the Democrat Party
11	Trang	Somsak Lohsathapornpipit	Former elected senator and brother of former Democrat MP for Trang Somchai Lohsathapornpipit.
12	Krabi	Apichart Damdee	Former elected senator and ally of the PDRC movement
13	Phattalung	Thawee Phumsingharaj	Leader of the PDRC movement in Phattalung
14	Phang-nga	Warachart Tanangphol	Leader of the PDRC movement in Phang-nga and owner of a local shopping store in Phang-nga

15	Phuket	Chaiyot Panyawai	President of the Lawyer Association in Phuket and also an ally of the PDRC movement in Phuket
16	Nakhon Sri Thammarat	Thammanoon Faijoo	Former commander of Thung Song district police who had a personal relationship with the Democrats
17	Songkhla	Anumat Ahmad	Supported by former Songkhla MP Surin Parare

Source: (Nation Sud Sapda, 2014: 12)

Table 5.11 The Other Elected Senators with Relationship

No.	Province	Name	Relationship
1	Kanchanaburi	Ong-Art Pongsak	Former deputy commander of the 9 th Infantry Brigade and husband of Uraiwan Jeenaphak, former chief executive of Kanchanaburi Provincial Administrative Organization
2	Chanthaburi	Potjana Kitkarn	Sister of Thanaphon Kitkarn, the chief executive of Chanthaburi Provincial Administrative Organization for four consecutive terms
3	Nakhon Nayok	Marut Rojanapiyawong	Former elected senator
4	Pathum Thani	Niphattha Amornrattanametha	Former Pathum Thani governor who has support from Chan Phuangphet, the chief executive of

			Pathum Thani Provincial Administrative Organization
5	Samut Prakan	Waraporn Assavahem	Former member of Samut Prakan Provincial Administrative Organization and also niece of Samut Prakan's influential godfather Watthana Assavahem
6	Samut Sakhon	Sunthorn Watthanaporn	Owner of a local business
7	Samut Songkhram	Boonyuen Siritham	President of the Consumer Protection Federation
8	Phichit	Wichai Danrungroj	Close to Phichit's influential figure, Sanan Kachornprasart
9	Surin	Nirut Charoenphan	Deputy Chief Executive of Surin Provincial Administrative Organization
10	Buriram	Sermsak Thongsri	Brother of Songsak Thongsri, a leading figure of the Bhumjaithai Party
11	Prachin Buri	Sarit Butniam	Close to former MP Sunthorn Wilawan
12	Lop Buri	Pratuan Sutthiamnuaydej	Former director of Lop Buri Provincial Industry Office

Source: (Nation Sud Sapda, 2014: 12)

One thing that can be proved from the 2014 Senate election is that a 'network' is still in operation in electoral politics in Thailand. Even though the Senate was intended as a 'non-partisan' chamber with an active role in checks and balances of those in the political network or political families desiring to secure their constituency, the list of senators in 2014 proved that most of the elected senators had a relationship with a party, politician, political movement or network in some way. However, similar to the 2006 Senate Election, these newly-elected senators had never been in office since

another military coup took place on 22 May 2014. Initially, the junta revoked the 2007 Constitution and dissolved the House of Representatives and the cabinet, but not the Senate. Later, the Senate was dissolved by the 11th Announcement of the National Council for Peace and Order (NCPO) issued on 22 May 2014 (The Royal Thai Government Gazette, 2014b).

5.4 Conclusion: The Senate as the guardian of the status quo

The institutional design of the Senate under the 2007 Constitution aimed to solve the ‘spouses house’ issue of the previous constitution. It claimed that if a senator was a family member or relative of an MP or cabinet minister, they could not perform their duties fully and effectively, and checks and balances would fail. However, to get rid of such ‘bad’ politicians, it allowed half of the senators to be appointed once again. The constitution drafters acknowledged that the Senate must have some legitimacy for its power through links to the people. Even though it proposed a fully-appointed Senate from the beginning and later changed, it resulted in a mixed ‘compromise’ method of senatorial recruitment, dubbed a ‘Thai-style compromise’.

On the one hand, it allowed half of the senators to be elected nationwide by province. On the other hand, it also allowed the other half of senators to be appointed by a committee of seven persons from independent agencies and the courts. In the big picture, the emerging role of the senatorial selection committee was evidence that the unelected bodies under the 2007 Constitution were empowered over the elected bodies and could direct politics.

Since the power of the Senate remained the same as in the 1997 Constitution but changed in its composition to a half-elected-half-appointed chamber, the problem then was legitimacy. As the Senate still had impeachment power and power to approve the nominated candidates for the independent agencies, it needed to be more connected to the voters to provide legitimacy. In addition, regarding senatorial acquisition, the question arises as to why millions of eligible voters can select 76 (later 77) senators. In contrast, seven selection committee members, comprising representatives from the independent agencies and the courts, can choose 74 senators. A question of legitimacy also arises regarding conflicts of interest, given that the independent agencies (on behalf of the selection committee) can choose the senators, who also have impeachment power. This

institutional design of the Senate dramatically poses questions of legitimacy.

The design of the 2007 constitution, in which the Senate was half-elected and half-appointed, was an attempt to maintain the junta's power that staged the 2006 coup by making the Senate its “political agent” in parliamentary politics. The proof here is that many appointed senators were in the junta’s network, whether former members of the National Legislative Assembly or former members of the Constitution Drafting Assembly. Furthermore, once the senators had been appointed, they did their best to protect the very heart of the coup regime. In this sense, the Senate, with half its members appointed, has become the guardian of the status quo for the traditional elite faction.

When analysed in terms of political struggle, it can be seen that the 2006 coup was an attempt by the traditional minority elite to control politics against a populist leader like Thaksin Shinawatra. The design of the 2007 constitution as “the rules of the game” was also apparent. Not wanting any political party with a strong leader to be able to claim legitimacy by obtaining a majority in an election and, then possibly changing the Thai political order, the 2007 constitution was therefore designed to make the executive branch and political parties weak by increasing the role of non-elected institutions, such as the courts, in politics. However, when the People's Power Party, a political party established as a successor to the disbanded Thai Rak Thai Party, won the election, an attempt was made to rewrite the game's rules entirely, though this was thwarted. It was especially true of the senators who came into office by appointment, including the masses opposing Thaksin. Later, after the People's Power Party had been dissolved and the Pheu Thai Party was established and won the election in 2011, the Pheu Thai Party attempted to amend the constitution again in 2012, proposing a new constitution. Later, the Constitutional Court ruled that a referendum must be held before a new constitution could be drafted. In 2013, it proposed to amend the acquisition of the senators to be fully elected. Still, it faced strong opposition both within the House and outside the House. This case shows that the Pheu Thai Party tried to break the “heart” of the coup regime: the 2007 constitution and the appointed senators. However, The 2007 constitution seems to remain the game's rules that

governed politics effectively enough for the traditional elite. The 2014 coup, though, has led to a stricter design of the game's rules, the 2017 constitution.

When considering five partial regimes of embedded democracy: electoral regime, political rights, civil rights, horizontal accountability, and the effective power to govern, the 2007 Constitution did not aim for embedded democracy from the beginning but for defective democracy. More precisely, it desired to create domain democracy in which the Senate was designed to be a reserved domain for veto power like the military and its nominees through its acquisition: half elected and appointed. It thus undermined the principle of horizontal accountability. Furthermore, the 2007 Constitution also undermined the effective power to govern, allowing the judiciary to be involved more in politics.

Chapter 6

The Guardian of the Coup: The Appointed Senate under the 2017 Constitution (2019-2023)

The coup of 22 May 2014, carried out by the junta known as the National Council for Peace and Order (NCPO) and led by army chief Prayut Chan-o-cha, marked another turning point in Thai political history. Afterwards, the junta revoked the 2007 constitution and ruled the country with announcements and orders for over two months before finally promulgating the 2014 Provisional Constitution. Later, the junta appointed a committee to draft a new constitution that was, in turn, rejected by the National Reform Council, an advisory council appointed by the junta, in September 2015. The junta then appointed another constitution drafting committee that completed its task in early 2016. A constitutional referendum was held in August 2016 but was severely criticised as unfair. Nevertheless, the draft constitution was approved, along with additional amendments based on the recommendations of King Vajiralongkorn, and was promulgated on 6 April 2017 as the 20th constitution of Thailand.

The 2017 constitution has been heavily criticised for its undemocratic provisions, especially those regarding the Senate, which in the initial 5-year term will be appointed by the junta and assume extensive power, such as voting for the Prime Minister with the House of Representatives. This chapter analyses the Senate under the 2017 constitution, starting from the constitution drafting process, the institutional design of the Senate, and the reality of the Senate after the promulgation of this constitution. It will explain both in terms of the creation of this institution and its role and why it is the "guardian of the status quo". Furthermore, it will argue that the 2017 Constitution did not aim for embedded democracy but created defective democracy, and the Senate is the crucial reserve domain for 'veto power' like the military after two general elections in 2019 and 2023.

6.1 Setting the Rule of the Game: The 2017 Constitution

6.1.1 Context: The 2014 Coup

After seven months of demonstrations by the People's Democratic Reform Committee (PDRC⁸⁵), on 22 May 2014, a military junta consisting of military commanders and police known as the 'National Council for Peace and Order (NCPO) staged a coup against the caretaker Pheu Thai-led coalition government (Daily News, 2014). The junta, chaired by army chief Prayut Chan-Ocha, revoked the 2007 Constitution and ruled the country by the NCPO's orders and announcements for nearly two months. By doing this, the junta created a 'climate of fear' and a 'culture of enforced silence' through the so-called 'attitude adjustment' program. Reportedly, 665 people were summoned during this period, including politicians, academics, political activists, and journalists (Amnesty International, 2014).

After two months of political interregnum, a provisional constitution was promulgated on 22 July 2014 (The Royal Thai Government Gazette, 2014a), which outlined and set up a critical political structure under the military regime commonly known as the 'five rivers' which included:

- The junta, known as The National Council for Peace and Order (NCPO)
- The unicameral junta-picked parliament, known as The National Legislative Assembly (NLA)
- The cabinet
- The military-appointed National Reform Council (NRC)
- The constitution drafting committee

Appointments to the NLA were primarily military generals, senior police officers and bureaucrats. As a result, 105 out of 200 NLA members were former military generals (Khaosod, 2014). Prayut was named the new prime minister by his handpicked parliament (Bangkok Post, 2014a), simultaneously holding two posts as both the junta leader and premier. He was also granted absolute power through Article 44 of the interim charter, enabling him to act without accountability, a power

⁸⁵ The People's Democratic Reform Committee (PDRC) was a movement led by a former key figure for the Democrats, Suthep Thaugsuban, during 2013-14. At first, it demonstrated against Yingluck Shinawatra's government after a failed attempt to pass an amnesty bill. Even though Yingluck later stepped down, the PDRC did not cease its demonstrations but, rather, continued to incite riots that culminated with the coup on May 22, 2014. The PDRC could be explained as deriving from the 'Yellow Shirts'. See Prajak Kongkirati (2022). ให้คนดีปกครองบ้านเมือง [Let the Good People rule the Country]. Bangkok: Same Sky Books.

also bestowed upon Sarit Thanarat through Article 17 of the 1959 Constitution⁸⁶.

6.1.2 The 2015 Draft Constitution

The 2014 provisional constitution outlined a process and body for drafting a new constitution. The drafting committee comprised 36 members, including the commission chairman nominated by the junta, 20 by the National Reform Commission, five by the National Legislative Assembly, five by the cabinet, and five by the NCPO⁸⁷. Following the first amendment of the interim charter, once the drafting commission finalised the draft constitution, it had to be submitted to the National Reform Council for a vote. If approved, it had also to be voted on by referendum for promulgation⁸⁸. Notably, the provisional constitution also outlined a foundation for the new constitution, requiring *"the adoption of a democratic regime of government with the King as Head of State which is suitable for Thai social conditions"*⁸⁹ (The Royal Thai Government Gazette, 2014).

The drafting committee was appointed from two closely linked groups of elites: retired and serving army generals and civilian legal experts (McCargo, 2015: 329-354). It was chaired by prominent legal expert Borwornsak Uwanno, who was described as "the chief legal ideologue of the monarchical network" (McCargo, 2005: 499-519). The drafting commission worked on the draft for almost four months before finalising it. However, after its release, the draft caused controversy among the public due to its undemocratic features. Most controversial was the so-called "National Strategic Reform and Reconciliation Committee", consisting of 23 members, all military commanders and police chiefs, intended to 'guide' a reform initiated by the junta during a transitional period and also have the power to assume executive and legislative power "in times of crisis" (BBC

⁸⁶ Because Prayuth has absolute power under Article 44 of the 2014 Provisional Constitution, he was portrayed by Time Magazine as 'Little Sarit'. See Time (2018)

⁸⁷ Article 32 of the 2014 Provisional Constitution.

⁸⁸ Article 5 of the 2014 Provisional Constitution (First Amendment B.E. 2558). See The Royal Thai Government Gazette (2015)

⁸⁹ Article 35(2) of the 2014 Provisional Constitution.

<http://www.ratchakitcha.soc.go.th/DATA/PDF/2557/A/055/1.PDF>

News, 2015). In other words, the creation of this committee was an attempt to legalise a coup that could last up to five years.

Another controversial institution, the Senate, according to the 2015 draft constitution, was to consist of 200 senators selected from professional organisations. However, after releasing the draft, the junta sought a fully appointed Senate. Woothisarn Tanchai, one of the drafters, revealed that this critical proposition may prove a vehicle by which the junta (NCPO) can remain in power. He further explained that the crucial argument for such a provision is facilitating a 'transition' (i.e., 'royal succession' per the author's interpretation) and that it was an 'undeniable' request from the 'security division'. Despite such claims, Woothisarn believed that a more typical mechanism could also prove effective. However, such a provision on the strategic committee was ultimately rejected. Woothisarn went further to explain that the selection of senators from among the professional organisations was a new method in light of the failure of the mixed method under the 2007 Constitution, which saw regular interference from lobbying efforts and bloc voting. He also emphasised that the drafting committee could not find an appropriate method of linking the Senate to the people (in terms of legitimacy: author's interpretation). Further, he disagreed with the 'cross-selection'⁹⁰ method, as it is uncertain how candidates unknown to one another can then vote for one another⁹¹.

After the final draft was finalised, it was subjected to a vote by the National Reform Council scheduled for September 2015. However, a widespread rumour that the draft would be rejected (Thairath, 2015) was realised after it failed to receive a majority, with 135 votes of rejection, 105 supporting votes and seven abstentions (The Guardian, 2015).

During an interview, Woothisarn revealed personal communications with various bureaucrats claiming to be “unsure” and that, from this, he believed the draft would be rejected. He also said that he had disclosed this to Borwornsak, but the latter still believed, at that time, that the draft would be passed in the end. Eventually, though, it was rejected. Woothisarn further pointed out that, even now, he still does not understand the cause for rejection, assuming that the critical dissatisfaction for the junta was the

⁹⁰ Initially, the 2015 draft employed the so-called ‘cross-selection’ method for selecting the senators. This method prevents occupational groups from selecting in-group candidates and requires that they, instead, vote for individuals from other occupational groups.

⁹¹ Woothisarn Tanchai, personal communication, 1 June 2017.

provision on the Senate, which went against the junta's desire that it be 'controllable'. He emphasised that the draft was already released to the public and that the provision related to the Senate had been revised. He believed that the provision was a breaking point (that led to the draft's rejection by the National Reform Council: author)⁹². In addition, Woothisarn also viewed the 2015 draft constitution as a heavily 'biased' charter on politics. Instead of designing an effective system of checks and balances, it proposed a so-called 'moral assembly'.

Another drafter, Suchit Bunbongkarn, pointed out that he was only about 50 per cent sure that this draft would be passed, where its critical handicap was the role and power of the Senate and the junta's role in controlling politics once the election was held. After the draft was rejected, Suchit revealed that it was better set aside since this draft had been a grand 'compromise' in the drafters' view. In addition, various groups had been behind each drafter, resulting in myriad voices and compromises. Suchit believed this draft was rejected due to its lack of practicality, mainly regarding the supervisory role (by the junta, author), and concern that the 'reforms' (initiated by the junta, author) might not be maintained, making it easier to draft a new one⁹³.

Another drafter, Nakharin Mektrairat,⁹⁴ revealed that he knew the draft might not be passed, given conversations with drafters nominated by the National Reform Council. Nakharin later told three days before the vote that he was sure the draft would not be passed. Nakharin saw self-selection among professional groups as a tremendous 'headache' regarding senator acquisition. At the time, it was still an undisputed issue, and it would present a long-term problem in Thai politics as it could not satisfy every group⁹⁵.

Today, there is no clear explanation for why the 2015 draft constitution was rejected. Nevertheless, the rejection of the 2015 draft reflects two issues. First, the junta wanted to remain in power and dominate politics after the election. Second, the Senate had thus become an institution capable of helping the junta maintain control of parliamentary politics after

⁹² Woothisarn Tanchai, personal communication, 1 June 2017.

⁹³ Suchit Bunbongkarn, personal communication, 21 June 2017.

⁹⁴ Nakharin was later appointed as a judge of Thailand's Constitutional Court after the junta-dominated parliament, the National Legislative Assembly, approved his nomination in 2015. From this stage, I would like to make it clear that I interviewed Nakharin as a former constitutional drafter, not a constitutional court judge.

⁹⁵ Nakharin Mektrairat, personal communication, 4 July 2017.

the election. To do this, the Senate must remain 'controllable'. After the 2015 draft constitution was disapproved, the former chairman of the drafting committee, Borwonsak Uwanon, revealed to the public in February 2016 that *"when I was the chairman of the drafting committee, and then the draft constitution was rejected by the National Reform Council (NRC), I regretted it, but only for a single day. It is Sunday, 6 September 2015. When I thought about it, I knew they wanted to stay long (Matichon, 2016d)."* Borwonsak's words confirm the desire of the coup junta to remain in power as long as possible.

6.1.3 Drafting the 2017 Constitution

Soon after the draft was rejected, a new constitution drafting committee was set up. Meechai Ruchuphan was appointed committee chairman. The process of drafting a new constitution then started once again. The drafting commission finalised its first draft in January 2016. By the provision of the first amendment of the 2014 provisional constitution, it must be submitted to 12 agencies, including the junta-installed parliament, the cabinet, and the junta, to recommend the draft (The Royal Thai Government Gazette, 2015). However, similar to the previous draft, the 2016 draft was also heavily criticised for its undemocratic features.

6.1.4 The 2016 Constitutional Referendum

After the drafting committee finalised the draft, with comments and recommendations from other bodies, including the junta itself, the next step was to seek approval in the referendum. Before the referendum, there was dissent from political parties and civil society groups. The Pheu Thai Party was the first to express its stance against the draft constitution and urged the people against it. In a statement, the Party argued that *"when the draft charter is undemocratic; creates political problems; limits the economic growth of the country; reduces the rights and opportunities of the citizen while allowing only a small group of people, who are not representative of the people, to set the direction of the country; gives the Constitutional Court and Independent Organisations power over the people; lays down mechanisms for the transfer of power – it is then fitting that the people jointly "reject" the draft charter (Pheu Thai Party, 2016)."* The Democrat Party also rejected the additional question that gave senators the power to choose the Prime Minister during the first five years. It disagreed with the

draft constitution as it had more disadvantages than advantages. They also urged the junta to state what would be gained if the referendum did not approve the draft constitution (Matichon, 2016b).

The New Democracy Movement (NDM), for its part, was a civil society group that campaigned against the constitution, presenting seven reasons to oppose its adoption:

“1. "Choose someone you like, but get a party you hate": Your vote for a constituency MP also bolsters their party-list MPs. If voters want to select a particular candidate, they're also forced to choose that candidate's party, even if they dislike it. Therefore, the votes that a party wins are not based on the real needs of the people.

2. "Military senators are set up by the military": The first set of 250 MPs are appointed by the National Council for Peace and Order, with six positions assigned to the Permanent Secretary of Defense and the commander-in-chief of the four Armed Forces

3. "Establishing a state apparatus of by-profession government officials": If the cabinet is out of office due to budget amendments, the Permanent Secretary will become Acting Minister and choose the Prime Minister himself without holding proper elections.

4. "An outsider Prime Minister": The election of the Prime Minister may allow for individuals not elected by the people to compete for office, just as The NCPO has brought in its people to ensure that they continue to inherit power.

5. "The NCPO is still dominating the country": Even though this constitution has passed by referendum, the NCPO will continue to hold power under Section 44 until an elected government can be put in place. Therefore, they can “legally” overturn any election results.

6. "Governing bodies placed above the people": The Constitutional Court and independent bodies have the power to interpret traditions in governing the country and set ethical standards to regulate politicians. The government has become a puppet of these organisations, and

7. "Destroy guarantees of rights and liberties": Rights the people have held in the past have been withdrawn. For example, free education until Grade 6 has been reduced to Grade 3, and vague language has been added

to limit rights, such as appealing to state security in every matter (Matichon, 2016c)."

The Thai Academic Network for Civil Rights (TANC) also issued a statement rejecting this draft constitution for five reasons:

"1. The constitution is a 'social contract' that all parties in society agree upon and create as a template rule for political and social life for shared prosperity. However, this draft constitution by the NCPO lacks principle and sanctity as the country's highest law. Instead, it's just a law for the benefit of particular groups of people only.

2. This draft constitution is contrary to democratic principles. It does not respect the political voices of the people and deliberately weakens the parliamentary system. For example, the prime minister can come from an unelected party or senators appointed by the NCPO, with extensive powers of the Senate. It determines the number of senators for military leaders. The system for calculating votes for party-list MPs is inconsistent with the status of representatives of the people; most importantly, instead of the end of the NCPO as promised orally, they have been able to maintain power at least one year after the referendum on the draft constitution.

3. This draft constitution destroys the rule of law based on the 'separation of powers' that is the essence of government in an entirely liberal and democratic system. It also delegates political power and governing roles of the highest order to the judiciary, especially the Constitutional Court and independent agencies, allowing these to monitor the performance of the legislative body (parliament) and executive bodies (government) without a mechanism to monitor those bodies. Even during the past decade, it has become clear that the actions of these organisations have done everything from undermining basic laws to advocating for the destruction of democratic principles.

4. This draft constitution allows the state to violate the powers and liberties of the people by creating conditions for applying the law in the name of security. It puts interpretations regarding limits on such power in the hands of the military and those outside the state administration. Constitutional law is not only aimed at giving power to the state. There must also be provisions that limit state power and prevent violations of the civil liberties of the ultimate sovereign body, the people.

5. *This Draft Constitution stipulates an uncompromising content amendment that may prove impossible* (Matichon, 2016a). "

Ahead of the August 2016 constitutional referendum, the highly controversial Referendum Act was implemented despite sharp criticism around the junta's 'suppressive actions' towards those campaigning against the draft constitution. The Referendum Act provides for penalties for "anyone who disseminates text, pictures or sounds that are inconsistent with the truth." Violators can face up to 10 years in prison. The law has sparked a nervous reaction from the international community, with more than 20 ambassadors from Europe, the US, and Canada issuing statements of concern over the situation ahead of the referendum (The Guardian, 2016b)—concerns that ultimately became a reality. The Human Rights Watch reported the arrests of activists who campaigned for 'vote-no' and journalists reporting on the campaigns. In April 2016, Prayut threatened opponents of the draft constitution, saying, *"[they] have no rights to say that they disagree... I don't allow anyone to debate or hold a press conference about the draft constitution. Yet they still disobey my orders. They will be arrested and jailed for ten years. No one will be exempted, not even the media."* The United Nations Secretary-General Ban Ki-Moon has previously expressed concern over the situation, including in a telephone conversation with Prayut. However, on that same day in April, the leaders of the United Front for Democracy against Dictatorship (UDD) were arrested for violating the junta's prohibition on gatherings of more than five people (Human Rights Watch, 2016).

Despite the wave of criticism toward it, the constitutional referendum nevertheless took place on August 7, 2016. Two questions were put to the voters.

- 1) Do you approve of the draft constitution?
- 2) Do you agree or disagree that for the continuity of the country's reform to occur according to the national strategic plan, it is appropriate to stipulate in the transitory provisions that within the first five years, counting from the first National Assembly according to this constitution, a joint sitting of the National Assembly must be held to consider the approval of the individual who should be appointed to be prime minister? (Nelson, 2016)

In the first question, the majority of Thai voters (61.35%) approved this draft constitution, as shown in Table 1

Table 6.1 The result of the 2016 Constitutional Referendum in Thailand (Question 1)

Question 1	Approve	Disapprove
Do you approve or disapprove of the draft constitution?	16,820,402	10,598,037
	61.35%	38.65%
Voter Turnout	59.40%	

Source: (The Election Commission of Thailand, 2016).

For the second question, added by the National Legislative Assembly, a majority of Thai voters (58.07%) also voted to allow the junta-appointed Senate to vote for the prime minister during the first five years.

Table 6.2 The result of the 2016 Constitutional Referendum (Question 2)

Question 2	Agree	Disagree
Do you agree or disagree that for the continuity of the country's reform to occur according to the national strategic plan, it is appropriate to stipulate in the transitory provisions that within the first five years, counting from the first National Assembly according to this constitution, a joint sitting of the National Assembly must be held to consider the approval of the individual who should be appointed to be prime minister? ⁹⁶	15,132,050	10,926,648
	58.07%	41.93%
Voter Turnout 59.40%		

Source: (The Election Commission of Thailand, 2016).

When asked about an additional question on the power of the Senate to choose a prime minister, a drafter of the 2017 Constitution, Chartchai Na Chiang Mai, revealed that the drafting committee did not initiate this question. He admitted that he and other drafting committee members 'disliked' this proposal. However, when this constitution was approved by referendum, Chartchai said he was relieved⁹⁷.

⁹⁶ English translation in Nelson (2016)

⁹⁷ Chartchai Na Chiang Mai, personal communication, 18 May 2017.

Although the results demonstrated the support of Thai voters for the draft to enact a new constitution, on the other hand, the referendum was also highly controversial. According to the report released by Human Rights Watch, the junta has 'forcibly blocked opposition efforts to monitor the nationwide referendum on a new constitution. The junta leader Prayut Chan-Ocha even indicated that *"anyone monitoring support for the referendum would be subject to arrest and trial before a military court"* (Human Rights Watch, 2016b). Moreover, criticism and campaigning for either dimension of the draft were also banned, with violators subject to up to ten years of imprisonment. Reportedly, thirteen activists were arrested after campaigning for "vote no" (The Guardian, 2016a). McCargo (2017) also pointed out the success of the 2016 Constitutional Referendum due to 'coercive measures to suppress participatory democracy' (McCargo et al., 2017: 65-95). Although most Thai voters approved the new constitution by referendum, its legitimacy, transparency, and the people's participation in the referendum process have inevitably been questioned.

Eight months after the referendum, minor changes were made according to King Vajiralongkorn's recommendations, and it was officially promulgated as the new constitution on 6 April 2017 (The Royal Thai Government Gazette, 2017). It is the 20th constitution in modern Thai politics since the end of absolute monarchy in 1932

6.1.5 The 2017 Constitution: Key Features

The 2017 constitution has weakened the political institution but made the guardians even more powerful. As a bicameral body, parliament now consists of a House of Representatives and a Senate. The House of Representatives comprises 500 MPs, divided into 350 constituencies and 150 party-list MPs. A new electoral system called "mixed member apportionment" (MMA) was introduced, in which voters receive only one ballot for constituency and party votes. Medium and minor parties, in particular, have an advantage in this electoral system. The Senate comprises 200 senators, but at the outset, it will consist of 250 senators appointed by the junta leader Prayut Chan-Ocha. Six seats will be reserved for the army commanders.

The selection of the prime minister under this constitution is complicated. Unlike the 1997 and 2007 constitutions, which required the prime minister to be an MP themselves, the 2017 constitution requires political parties to submit their three PM candidates before the election, and candidates must come from a party that gained more than 5 per cent of the

seats in the same election. Further, to be selected as prime minister, a candidate must receive more than half the support of the parliament, including both the House of Representatives and the Senate. Therefore, by the 5-year transitory provisions, they must have the backing of the senators appointed by junta leader Prayut Chan-ocha. This process allows for unelected prime ministers who have not had to run for office formally but have gained the support of Prayut's appointees.

As for the executive branch, the 2017 constitution limits the powers of the government that will emerge after the election by requiring the government to follow a 20-year national strategy that covers almost all matters, from education to justice, public health, and the economy. A committee appointed by the junta determines the details of the 20-year national strategy. If the government does not follow the junta-initiated master plan, the prosecution may follow.

The 2017 constitution also increases the power of the guardian institutions of the judiciary and independent bodies. It has exceeded precedent by giving power to the Supreme Court, while the National Anti-Corruption Commission (NACC) can dismiss ministers if they violate ethical standards. The constitution also gives the Constitutional Court the power to take necessary measures and prosecute those who criticise the court for damages, a move that has been viewed as an effort to silence critics (Khemthong, 2018: 643-651).

Also, in the absence of the House of Representatives, whether due to the expiration of its term, its dissolution, or on any other grounds, the Senate shall not hold its sitting except to act as parliament on particular issues or consider the appointment of political office holders under this constitution

6.2 The Senate under the 2017 Constitution

6.2.1 Designing the Senate

According to the first draft, the Senate would have 200 senators selected among the professional organisations. In other words, it rejected the method of senatorial appointment laid out in the 1997 and 2007 constitutions.

Chartchai Na Chiang Mai, one of the constitutional drafters, stated that the drafting committee had considered a fully-elected Senate like that instituted by the 1997 Constitution and insisted that this body had been

given too much power, including the power to impeach and the appointment of independent agencies. Chartchai pointed out that in Thailand, there is no such thing as a '*good culture of power exercise*'. He argued that impeachment never works because it is about *puak krai puak mun* (loosely, "one's group, one's tribe", i.e., the notion of tribalism), meaning that an accused official is already in bed with those who would vote on their impeachment (in this context, the senators). He argued that another problem of the fully elected Senate was its acquisition: direct election. Chartchai emphasised that senatorial candidates cannot run for election without campaigning in the Thai context. The half-elected/half-appointed Senate under the 2007 Constitution also did not work. Thus, it led to the idea of making the Senate a '*fulfilled chamber*' by removing impeachment power to prevent the politicisation of the Senate. Chartchai explained that they do not have direct political accountability but a 'moral obligation' when asked how these senators are held accountable. If a senator commits a wrongdoing, it is a legal obligation. Thus, the Senate does not have a political commitment⁹⁸.

The junta's requests: the appointed Senate

The drafting commission released the first draft to the public and submitted it to twelve agencies for recommendation. However, it was met with much criticism from these circles. On the other hand, the junta seemed to have a much different reaction. The deputy junta leader and defence minister Prawit Wongsuwan demonstrated the junta's desire for a 'special mechanism' during the five-year transitional period that would allow the junta the power to guide and supervise the elected government once the election was held (The Nation, 2016e), saying "*senators should be selected for a five-year term to ensure the success of national reform and national strategies*". Prawit even explicitly stated that junta members are qualified to serve in the upper house: "*Why not? What's wrong with that? The NCPO members understand all these issues [of national significance], I don't see anything wrong with that [NCPO members serving as appointed senators]*" (Bangkok Post, 2016c: 3)". Prawit's words also received support from the junta leader and prime minister Prayut Chan-Ocha, who cited that the constitution should give power to senators "*to balance the executive branch for five years during a transitional period*" (The Nation, 2016d)".

⁹⁸ Chartchai Na Chiang Mai, personal communication, 18 May 2017.

This junta's proposal was then submitted to the drafting committee. The transitory provision stipulates that the Senate shall consist of 250 appointed senators, including six ex-officio senators (the armed forces supreme commander, the army chief, the navy chief, the air force chief, the permanent secretary of the defence ministry, and the police commissioner). Initially, this draft did not grant the Senate power to vote for the prime minister but broadly stated that the Senate would have the power to 'protect this constitution' and also have the power to hold a vote of confidence. However, when this 'request' was submitted to the constitution drafting committee, the junta's reaction seemed far more aggressive. The junta leader Prayut Chan-Ocha strongly insisted that if the drafting commission did not accept this proposal, he would submit it repeatedly until the drafting commission took it (Post Today, 2016).

The constitution drafting committee was reportedly reluctant to accept this proposal. One of the drafters, Chartchai Na Chiang Mai, revealed that he and his colleagues did not like this request⁹⁹. Initially, the commission had proposed a compromised option: 200 senators would be appointed, while 50 would be selected from professional organisations. In addition, the Senate would not have the power to hold a vote of confidence to support the government or choose a prime minister (Matichon, 2016). However, after a long and heated debate, the drafters agreed to accept a junta's request for a fully-appointed Senate during the five-year transitional period (The Nation, 2016) and, thus, the ability of the junta to extend its power after the election through the appointed Senate.

Later, in April 2016, the National Reform Steering Assembly¹⁰⁰ proposed including an additional question on the constitutional referendum ballot, positing that the Senate could vote for the prime minister (The Nation, 2016c). Unsurprisingly, it voted to add this question to the referendum and later submitted it to the National Legislative Assembly, which also voted to add this question to the ballot (Bangkok Post, 2016b). As a result, the upcoming constitutional referendum will ask Thai voters two questions: approve or disapprove of the draft and agree or disagree with allowing the junta-appointed Senate to vote for the prime minister during the first five years.

⁹⁹ Chartchai Na Chiang Mai, personal communication, 18 May 2017.

¹⁰⁰ The National Reform Steering Assembly was set up to replace the National Reform Council after it disapproved the draft constitution in September 2015

6.2.2 The Composition and Power

According to the 2017 Constitution, the Senate comprises two hundred senators selected from professional organisations. A senator must be forty years old or over and

- must not be a civil servant
- must not be an MP or have left the office more than five years ago
- must not be a member of a political party
- must not be a cabinet minister or have left the office more than five years ago
- must not be a member or executive of the local administration council/organisation or have left the office more than five years ago
- Must not be the parent, spouse or child of an MP, senator, political office holder, member or executive of the local administration organisation, senatorial candidate at the time of application, or office holder in the Constitutional Court or other independent agencies.

The term of a senator is five years¹⁰¹. It is noteworthy that the prohibitions under this constitution prevent the 'spouses house' phenomenon like the Senate under the 1997 Constitution

However, on the transitory provision of the 2017 Constitution, the Senate consists of 250 senators appointed by the junta, including:

- **50 senators** selected from the professional organisations, and the junta will make a final decision
- **194 senators** chosen by the senatorial selection committee appointed by the junta
- **Six ex officio senators**, including the armed forces supreme commander, the permanent secretary of the Ministry of Defence, the army chief, the navy chief, the air force chief, and the police commissioner-general

In addition, this provision does not include the prohibition that the senators must not be civil servants, cabinet ministers, or executives of the local administration organisation¹⁰², thereby providing the chance for an

¹⁰¹ Article 108 of the 2017 Constitution

¹⁰² Article 269-272 of the 2017 Constitution

active civil servant or even the cabinet minister under the current administration to become a senator.

With the approval of the second question in the 2016 constitutional referendum, the Senate has been established according to the transitory provision of the 2017 Constitution. It is among the most potent unelected institutions. Its most powerful tool is its selection of the prime minister. For the first five years, this would occur in a joint parliamentary session and involve choosing a prime minister from among the candidates nominated by the political parties before the election. The candidate must obtain over half of the parliamentary votes (i.e., more than 376). In other words, as the House of Representatives and the Senate would perform this function together, the 250 junta-appointed senators would have a vote for the prime minister.

Moreover, suppose the parliament cannot choose a new prime minister according to the list submitted to the Election Commission before the election. In that case, two-thirds of the existing members in the parliament can vote to exempt this procedure and allow the parliament to vote for the prime minister outside the list of prime ministerial candidates. Either by choosing a prime minister on or off the list, this constitution allows the unelected prime minister to assume office.

Apart from the power to choose a prime minister, by the transitory provision of the 2017 Constitution, the Senate also had the power to monitor the government execution of the National Reform Program stipulated in this constitution. The government must also report progress to the parliament every three months¹⁰³. Every bill of the constitution relating to the provision of the national reform must be proposed and considered in a joint meeting of the parliament, meaning that the Senate also have an additional legislative role in this regard. In addition, if any bill is rejected by the House of Representatives or the Senate, such a bill must be considered in a joint meeting of the parliament if it relates to an amendment on penalties for elements of misconduct in public or judicial office.¹⁰⁴

The appointment of senators, by the transitory provision, must be made within three days after the Election Commission officially endorses the elected MPs. One of the critical senatorial powers that was removed was

¹⁰³ Article 270 of the 2017 Constitution

¹⁰⁴ Article 271 of the 2017 Constitution

the impeachment power. The 2017 Constitution drafter Chartchai Na Chiang Mai explains that since being granted this power by the 1997 Constitution, the Senate had never successfully impeached anyone. In addition, Chartchai also emphasises that this power does not work and always causes conflict. Therefore, under the 2017 Constitution, impeachment power was abolished¹⁰⁵.

Unlike past versions, the 2017 Constitution also outlined how the so-called 'national reform' programs must be carried out. The Senate can "monitor, recommend and accelerate national reform" by the transitory provision. Joint sittings of Parliament must consider bills for national reform.

Under the 2017 Constitution, the Senate could be seen as a 'guardian' of the junta-controlled political system. One must examine the extremely difficult or even impossible process of amending the constitution to confirm this argument. According to the 2017 Constitution, the cabinet, no less than one-fifth of MPs, no less than one-fifth of MPs and senators, or fewer than 50,000 eligible voters, could propose an amendment to the constitution. Three readings in the parliamentary session would consider the draft constitutional amendment. The Senate would have a significant role in the first and third readings. On the first reading, in addition to the requirement of favourable votes from more than half the numbers from both houses, one-third of the Senate must also vote in favour to proceed to the second reading. If it were passed in the second reading, it would move to a third in which, apart from requiring more than half the votes from both houses combined, it must receive votes from no less than 20 per cent of the MPs of parties whose membership does not include cabinet ministers, the Speaker of the House, or the Deputy House Speaker as well as no less than one-third of the Senate.

6.2.3 The Significance of the Senate

The Senate, according to the transitory provisions of the 2017 constitution during the first five years, has five crucial powers:

- The selection of the prime minister

¹⁰⁵ Chartchai Na Chiang Mai, personal communication, 18 May 2017.

- Monitor and accelerate the government to follow the National Strategy and national reform program.
- Vote on the bills related to the national reform program
- The appointment of independent agencies
- The constitutional amendment must receive one-third of the senators' votes to be successful.

6.3 Expectation versus Reality

6.3.1 *The 2018-19 Senatorial Appointment*

Under the transitory provision of the 2017 Constitution, the senatorial selection process started after the senatorial selection decree was released in mid-November 2018 (The Royal Thai Government Gazette, 2018). Initially, the Election Commission was confident that many candidates would apply. However, the total number of senatorial candidates was relatively low; 7,210 candidates used to run for the Senate, far less than the expected 90,000 to 100,000 candidates nationwide (Khaosod, 2018b: 10). It was reported that there were even 52 districts without any senatorial candidates (Khaosod, 2018a: 10). The 7,210 candidates can be categorised into ten occupational groups, as shown in the table below.

Table 6.3 2018-19 Appointment senatorial candidate occupational groups

Occupational Group	Number of candidates
Agriculture	1452
Education and public health	1124
Women, older people and disabilities	943
State administration affairs and security	765
Legal and justice process	576
SMEs	493
Art, Culture, performance, entertainment, athletics	398
Environmentalism	288
Other	702

Total	7,210
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Source: (Krungthep Turakij, 2018b: 14)

After the district round of the senatorial selection process finished, 5,899 candidates were selected and qualified for the provincial round of senatorial selection in mid-December (Bangkok Post, 2018: 3). Of the 5,899 candidates, there were 5,410 independents, while professional organisations nominated 489 (Krungthep Turakij, 2018a: 14). 2,746 candidates were selected in the provincial senatorial selection process and proceeded to the national selection round (Matichon, 2018: 10).

It was also reported that during the provincial selection round, 'vote-buying' at 20,000 baht had occurred among the candidates, revealing a lack of transparency and the presence of lobbying efforts even before the junta had the final say (Thaipost, 2018: 12). The national round of selection was held in late December. Eventually, 200 candidates were shortlisted, from which the junta would decide the final 50 senators for the first category (Phujatkarn, 2018: 11). Among the 200 shortlisted candidates were the former election commissioner, former senators, former junta-appointed National Reform Council members and the National Reform Steering Council members. Again, this reflected a lack of transparency and indicated that only those close to the ruling regime were selected. Another piece of evidence that confirmed speculation that the senatorial appointment was aimed at prolonging the junta's power was a viral video clip in December 2018. Wanchai Sornsiri¹⁰⁶, a former appointed senator after the 2006 Coup and the former junta-appointed member of the National Reform Steering Assembly, proudly revealed at a party gathering that he was one of those who proposed that the Senate must have the power to choose a prime minister (Matichon Online, 2018).

The second category of senators, totalling 194, received appointment from a selection panel appointed by the junta. The controversial leading figure of the junta and defence minister, Prawit Wongsuwan, chaired the committee. They proposed a fully appointed Senate for a five-year transitional period during the drafting process of the 2017 Constitution in March 2016. Moreover, after being selected as a panel chairman, Prawit made things more explicit, saying that the 250 junta-appointed senators

¹⁰⁶ Wanchai was also later appointed as a senator in June 2019.

would be 'controllable' (Bangkok Post, 2019e). Despite heavy criticism of the lack of transparency in the selection process, junta leader and prime minister Prayut Chan-Ocha defended the senatorial selection process. During a daily press conference, it was reported that Prayut said, *"Although I will appoint the senators, will you look down on all 250 of them? Don't they have brains? Don't they love the country? Everyone loves the nation. The love of the country and democracy shouldn't be monopolised only by political parties and politicians. That's all I ask"* (Bangkok Post, 2019d). In early March 2019, 400 senatorial candidates were selected by the selection panel chaired by Prawit (Daily News, 2019: 2). The selection process was described as an 'internal selection' (The Nation, 2019: 2) by Prawit and his friends (Thaipost, 2019: 12).

It was not just the list of appointed senators that sparked controversy among the public. Disclosure of the list of senatorial selection panel members also sparked speculation about how these senators are appointed. Initially, no official written announcement of the senatorial selection panel was released. Still, as speculation grew among the public, Deputy Prime Minister Wissanu Krea-Engam revealed during an interview with the press that the selection panel consisted of ten members, including:

Table 6.4 The Senatorial Selection Panel

No.	Name	Position	Role
1	Prawit Wongsuwan	Deputy junta leader Deputy prime minister and defence minister	Chairman selects 50 candidates
2	Somkid Jatusripitak	Deputy prime minister	Selects 50 candidates
3	Chatchai Salikalya	Junta member Deputy prime minister	Selects 50 candidates
4	Prajin Juntong	Deputy junta leader Deputy prime minister	Selects 50 candidates
5	Wissanu Krea-Engam	Deputy prime minister	Selects 50 candidates
6	Thanasak Patimaptrakorn	Deputy junta leader	Committee member
7	Narong Pipathanasai	Deputy junta leader	Committee member

8	Adul Saengsingkaew	Deputy junta leader Prime Minister's Office Minister	Committee member
9	Anupong Paochinda	Junta member Interior Minister	Committee member
10	Pornpetch Wichitcholchai	President of the junta- installed parliament, the National Legislative Assembly	Committee member

Source: (BBC Thai, 2019c).

Despite the constitution stating that the senatorial selection committee must be 'neutral', six selection panel members were appointed senators, including Chatchai, Prajin, Thanasak, Narong, Adul, and Pornpetch.

Under the transitory provision of the 2017 Constitution, the appointment of the 250 senators had to be made three days after the Election Commission announced the official election result. However, some critical military regime figures seemed to know they would be appointed senators. It was reported that 16 cabinet ministers and critical junta leaders resigned before the appointment, including the junta deputy leader, former air force chief Prajin Juntong, and Preecha Chan-Ocha¹⁰⁷, the former permanent secretary of the Ministry of Defense and Prayut's younger brother (See Khaosod Online, 2019a). Even Pornpetch Wichitcholchai, the President of the junta-appointed parliament National Legislative Assembly, also quit amid a rumour that he was tipped to be the President of the Senate (Bangkok Post, 2019c). Following the number of cabinet ministers and vital military figures who resigned, a number of the NLA members and candidates who ran under the Phalang Pracharat Party who failed to get elected also quit and hoped to be appointed senators (Matichon Online, 2019e). The resignations caused controversy among the public. When asked about this incident, the interior minister and key junta leader Anupong Paochinda furiously replied, *"Why in heaven are you asking me?"* (Khaosod English, 2019)"

Soon after the Election Commission officially endorsed 498 MPs on 8 and 9 May 2019, the list of 250 appointed senators was announced three days later on 12 May. The appointments sparked outrage in the public, as it

¹⁰⁷ It was reported that during his tenure with the NLA, Preecha was absent from sessions 394 out of 400 days. See Khaosod Online (2019b).

was seen as nothing but a chamber of key junta leaders. In addition, people close to the military regime—even the brothers of Prayut Chan-Ocha, Prawit Wongsuwan, Wissanu Krea-Ngam¹⁰⁸, and Somkid Jatusripitak¹⁰⁹—were also appointed.

Table 6.5 Examples of appointed senators who have a relationship with the junta

Name	Relationship
Preecha Chan-Ocha	A younger brother of the junta leader Prayut Chan-Ocha and former permanent secretary of the defence ministry
Sittawat Wongsuwan	A younger brother of the junta deputy leader and defence minister Prawit Wongsuwan
Chalermchai Krea-ngam	The younger brother of the deputy prime minister Wissanu Krea-ngam
Som Jatusripitak	The older brother of deputy PM Somkid Jatusripitak
Surachai Danaitangtrakoon	The younger brother of Suraporn Danaitangtrakoon, the executive committee member of the Palang Pracharath Party
Jirada Songpracha	The elder sister of Montien Songpracha, the Palang Pracharat MP for Chai Nat
Amorn Nilprem	A brother of Adul Nilprem, the Palang Pracharat candidate for running for election in Ubon Ratchathani

¹⁰⁸ Former secretary-general of the cabinet (1993-2002), Wissanu was a deputy prime minister in Thaksin Shinawatra government (2002-2006) and quit just three months before the 2006 Coup. He was among those who helped draft the 2006 provisional constitution after the 2006 Coup and was later appointed as a member of the junta-installed parliament, the National Legislative Assembly (2006-2007). Wissanu faded from politics for a while but returned as a deputy prime minister in the Prayut Chan-Ocha government after the 2014 Coup. Wissanu was described by the Thai media as a ‘legal serviceman’ due to his expertise in law and ability to provide legal legitimisation for political actions.

¹⁰⁹ Former deputy prime minister, finance minister, and commerce minister in Thaksin Shinawatra government (2001-2006), Somkid was later appointed as a deputy prime minister in the Prayut Chan-Ocha government, overseeing economic affairs.

Noppadol Intapanya	The classmates of Prawit Wongsuwan, the deputy prime minister and deputy junta leader, at the Royal Military Academy
Boonsang Niampradit	
Lertrit Vejsawan	
Pairoj Panitsamai	
Ood Bueangbon	

Source: (*iLaw, 2019b*)

Of the 250 appointed senators, 101 are military generals. Eighteen are Prayut's friends from his 12th-grade Armed Forces Academies Preparatory School class, including the junta leader and former armed forces supreme commander Tanasak Patimapragorn¹¹⁰. Four senators are Prawit's friends from his 6th-grade Armed Forces Academies Preparatory School class, including Boonsrang Niumpradit¹¹¹ and Lertrat Rattanawanich¹¹². Fifteen former cabinet ministers were appointed to the Senate, including the deputy junta leader, former air force chief, deputy prime minister, and justice minister Prajin Juntong. One hundred and twenty-six former members of the junta-appointed assembly were also appointed. These may be divided into two groups: the former members of the National Legislative Assembly (NLA) and the former members of the National Reform Council and the National Reform Steering Assembly. Eighty-six former National Legislative Assembly members were appointed senators, including the former NLA President Pornpetch Wichitcholchai. Forty former National Reform and National Reform Steering Assembly members were appointed senators (Bangkok Post, 2019: 1). The official announcement of the 250 appointed senators shows a clear picture of the designated persons and their relationships with top figures in the military regime.

Moreover, according to the data collected by the prominent Thai civil society group iLaw, of the 250 senators appointed by the NCPO, at least 157 are active in the NCPO network, including the junta members, cabinet ministers, junta-installed parliament members, junta-installed reform

¹¹⁰ Tanasak was also later appointed as foreign minister and deputy prime minister in Prayut's government after the 2014 Coup.

¹¹¹ Boonsrang is a former supreme commander of the armed force appointed after the 2006 Coup. He was also later appointed as a member of the junta that staged a coup in 2006.

¹¹² Lertrat was a former assistant army chief and was appointed senator (2008-2014). He was a leading mediator in negotiations between the Abhisit government and the Red Shirt leaders before a military crackdown in May 2010.

council members, constitution drafting committee members, National Strategy committee members, and National Reform Committee members.

Table 6.6 Junta-appointed senators within the junta's network

No.	Position	Number
1	Junta (National Council for Peace and Order) members	20
2	Cabinet ministers	18
3	Junta-installed parliament (National Legislative Assembly) members	89
4	Junta-installed National Reform Council members	26
5	Junta-installed National Reform Steering Assembly members	35
6	Constitution drafting committee members	5
7	National Strategy Committee members	25
8	National Reform Committee	26

Source: (iLaw, 2019b).

Another prominent piece of evidence that the Senate, by the transitory provision of the 2017 Constitution, was designed to be that junta's 'proxy' in parliamentary politics after the election was the selection of the President of the Senate. Pornpetch Wichitcholchai, a former president of the junta-appointed parliament National Legislative Assembly, was tipped early to be the next President of the Senate (Bangkok Post, 2019c). Despite opposition from a small group of senators, Pornpetch was the sole candidate and quickly voted in as the President of the Senate without opposition in the first Senate meeting on 24 May 2019 (Bangkok Post, 2019b). Pornpetch was also an ex-officio deputy president of the parliament.

6.3.2 Prayut's Power Base: The Senate and the 2019 Selection of the Prime Minister

The first role of the Senate as a proxy for the junta under the 2017 constitution is the selection of the prime minister alongside the House of Representatives. According to the transitory provisions of the 2017 constitution, during the first five years after the general election, the election of the prime minister shall be held at a joint sitting of the National Assembly. As such, the 250 senators appointed by the junta have the right

to vote for the Prime Minister and the 500 members of the House of Representatives elected by the people. The candidate selected as Prime Minister must receive more than half of the votes of the National Assembly (at least 376 votes from the total 750 parliamentary votes). As predicted, on 5 June 2019, Prayut Chan-o-cha, leader of the junta and prime ministerial candidate of the military-backed Palang Pracharath Party, was elected as Prime Minister with 500 votes, surpassing Thanathorn Juangroongruangkit, the leader of the Future Forward Party, who received 244 votes. Thanathorn represented the political party opposing the junta, with Pheu Thai Party as its prominent leader. However, of his 500 votes, Prayut received significant support from the senators, taking 249 out of 250 senatorial votes, with one abstention by Senate President Pornpetch Wichitcholchai (Bangkok Post, 2019a). The role of the junta-appointed Senate in electing Prayut as prime minister is only a "prelude" to its role as guardian of the status quo. The 2017 Constitution was designed to make Prayut and the junta stay in power long after the election. However, the role of the junta-appointed Senate as the guardian of the status quo is even more intense in preventing the attempts to amend the constitution between 2020 and 2022 from being successful.

6.3.3 The Veto Player: The Senate and the Politics of Constitutional Amendment

An attempt to amend the 2017 constitution came almost immediately after Prayuth, backed by his self-appointed Senate, returned as prime minister after the 2019 general election. A constitutional amendment was a primary condition by which the Democrat Party joined the government formed by the military-backed Palang Pracharat Party with Prayuth as Prime Minister. Democrat Party leader Jurin Laksanawisit stated, *"I still have the same opinion that before there were three types of democracy: corrupt democracy, abnormal and perverse democracy, and genuine democracy, which is the ideology of the Democrat Party. Joining the government, on the condition of amending the constitution, is one way to free the country from a perverted differing from what democracy should be"* (The Momentum, 2019). Later, in a policy statement from the Prayut government to the National Assembly on 25 July 2019, the Prayut government did not commit support for the amendment to the constitution, but one of its 12 urgent

policies called for the "*study of Public hearings and proceedings to amend the constitution, especially in part about the rules and procedures for amending the constitution.* (The Royal Thai Government, 2019)"

Meanwhile, in July 2019, the coalition pro-democracy coalition, including the Pheu Thai Party, Future Forward Party, Pheu Chat Party, Prachachat Party, New Economics Party, Thai Seri Ruam Thai Party and People's Power Party jointly called for an amendment to the constitution (Matichon, 2019d). Later, in August 2019, the Future Forward Party started a campaign to propose an amendment to the 2017 constitution, urging in a public speech in Chiang Mai the "creation of a new imagination for a new deal, new constitution" by the proposals of the Future Forward Party towards:

- Democracy is a system in which the supreme power belongs to the people.
- A constitutional monarchy above political conflicts
- A parliamentary system that genuinely expresses the will of the people and an efficient and stable government.
- The rule of law in which people's rights and liberties are protected, as well as a system of checks and balances (BBC Thai, 2019b)

There were also movements from 30 pro-democracy civil society groups that supported the constitutional amendment (Matichon Online, 2019c). Later, all groups came together to support the opposition parties in setting up a committee to amend the constitution (iLaw, 2019a). The first move in the politics of the constitutional amendment took place on 18 December 2019, in which an urgent motion requiring the House of Representatives to set up a special committee to study the rules and procedures for amending the constitution was proposed by Piyabutr Saengkanokkul, MP for the Future Forward Party and a former law professor at Thammasat University, as well as influential scholars of the "Nitirat" group. In response, the House of Representatives unanimously resolved to set up the committee consisting of government coalition parties, opposition parties and civil society representatives (BBC Thai, 2019a).

In early 2020, Chuan Leekpai, Speaker of the National Assembly and former Prime Minister of the Democrat Party acknowledged that the Senate was a key factor in the 2017 constitutional amendment. If it was to be

successful, it must also receive cooperation from the Senate: *"If we want the amendments to succeed, don't topple them. We should get consent from all sides and talk to them (senators) about how to revise the charter or remove certain things and make it 'democratic'"*. Chuan also commented that he disagreed with the appointments of the six ex-officio senators from the military and police command because it goes against democratic principles: *"I have no problem with those positions, but by democratic principle, it shouldn't be written like that"* (Bangkok Post, 2020b). After Chuan commented on this matter, the reaction from the former junta side was predictable. However, Prayuth Chan-o-cha and Prawit Wongsuwan said that it was Chuan's opinion and that they had no thought on the matter, despite having both clearly stated that the positions of 6 ex-officio senators reserved for military and police commanders are untouchable (Thaipost, 2020).

Nevertheless, a turning point in the movement against the junta successor government came when the Constitutional Court dissolved the Future Forward Party in February 2020 on allegations of violating political party laws by borrowing money from its leader, Thanathorn Juangroongruangkit (BBC, 2020). The incident sparked opposition rallies to the Prayut government by student groups, including flash mob rallies, starting from schools and universities in Bangkok before expanding to many other provinces (The Straits Times, 2020). Alongside actions against Prayut's government came the first wave of the COVID-19 outbreak and the government's lockdown order, which effectively halted the movement.

In July 2020, the movement against the Prayuth government resumed. In one such instance, the group Free Youth organised a rally on 18 July where they put forth three demands:

"1. The dissolution of the Palang Pracharat-led parliament, which has failed to handle the Covid-19 situation.

2. An end to harassment by the authorities of people exercising their freedom of expression.

3. The replacement of the current constitution, which favours the regime, with a new one meant for the benefit of the people. (Prachatai English, 2020b) "

Later, the protests spread to major provinces such as Chiang Mai, Ubon Ratchathani, Nakhon Ratchasima, and more than 20 other provinces (The Bangkok Insight, 2020). As it grew, calls for reform of the monarchy arose, starting with a Harry Potter-themed protest on 3 August. A key leader of the rally, lawyer Anon Nampa, accused the ever-increasing power of the monarchy of undermining democracy: *"Talking about this is not an act to topple the monarchy, but to allow the monarchy to exist in Thai society in the right way and legitimately under a democratic and a constitutional monarchy,"* Anon told the group of about 200 at Bangkok's Democracy monument (The Guardian, 2020).

A turning point in the student movement came on 10 August 2020 when a group of Thammasat students calling themselves the United Front of Thammasat and Demonstration organised a large rally at Thammasat University, Rangsit Campus in Pathum Thani in which they made ten demands:

"1. Revoke Article 6 of the 2017 Constitution that does not allow anyone to make any accusations against the king. And add an article to enable parliament to examine the wrongdoing of the king as stipulated in the constitution promulgated by the People's Party.

2. Revoke Article 112 of the Criminal Code, allow the people to exercise freedom of expression about the monarchy and give amnesty to all those prosecuted for criticising the monarchy.

3. Revoke the Crown Property Act of 2018 and make a clear division between the king's and his assets under the control of the Ministry of Finance.

4. Reduce the amount of the national budget allocated to the king to align with the country's economic conditions.

5. Abolish the Royal Offices. Units with a clear duty, for example, the Royal Security Command, should be transferred and placed under other agencies. Unnecessary units, such as the Privy Council, should be disbanded.

6. Cease all giving and receiving of donations by royal charity funds for all of the monarchy's assets to be auditable.

7. Cease the exercise of royal prerogative over expressing political opinions in public.

8. Cease all public relations and education that excessively and one-sidedly glorify the monarchy.

9. Search for the facts about the murder of those who criticised or had some relation with the monarchy.

10. The king must not endorse any further coups. (Prachatai English, 2020) "

Later, various groups of demonstrators gathered under the name "The People's Party" (Bangkok Post, 2020a), modelled from the 1932 group, and presented proposals that later became the main proposals of the protest groups, including.

1. Prayut must resign from the position of Prime Minister.
2. Draft a new constitution
3. Reform the monarchy (Anusorn, 2022: 6)

The following amendments to the 2017 constitution arose in the context of the protest movement against the Prayut government.

The 2020 Constitutional Amendment

The politics of constitutional amendments officially took place in 2020, with a total of 7 draft amendments to the constitution being proposed to the parliament, namely:

- The first draft (introduced by the opposition parties) proposed the establishment of a constituent assembly with 200 elected members.
- The second draft (introduced by the ruling coalition parties) proposed the establishment of a constituent assembly with 200 members: 50 appointed and 150 elected members.
- The third draft (introduced by the opposition parties) proposed revoking senatorial power to monitor the national reform program as stipulated in the constitution.
- The fourth draft (introduced by the opposition parties) proposed revoking senatorial power to elect the prime minister, who must be an MP.

- The fifth draft (introduced by the opposition parties) proposed revoking the NCPO's orders.
- The sixth draft (introduced by the opposition parties) proposed a change in the electoral system
- The seventh draft (introduced by the people under the initiative of iLaw) proposed the establishment of a constituent assembly (Workpoint Today, 2020).

In the end, the joint meeting of the National Assembly approved only the first and second drafts proposed for establishing the Constituent Assembly. In contrast, the other five drafts were all rejected, as shown in the Table 6.6

Table 6.7 Results of the first reading of the seven constitutional amendment drafts in 2020

Draft	MPs and senators approving	Senators approving	MPs and senators disapproving	Abstained	Result
The 1 st draft	576	127	21	123	<i>Passed</i>
The 2 nd draft	647	176	17	55	<i>Passed</i>
The 3 rd draft	213	4	35	473	Rejected
The 4 th draft	268	56	20	432	Rejected
The 5 th draft	209	0	51	460	Rejected
The 6 th draft	268	59	19	432	Rejected
The 7 th draft	212	3	139	369	Rejected

Source: (Workpoint Today, 2020)

However, in February 2021, a joint parliamentary session considered an urgent motion proposed by Palang Pracharath party-list MP Paiboon Nititawan and Senator Somchai Sawaengkan requesting that the Constitutional Court decide on the powers and duties of the parliament, namely whether it can establish a constituent assembly to draft the entire constitution or not. The Constitutional Court ruled in March 2021 that parliament could draft a new constitution. First, however, two referendums must be held. The first referendum is for the people to vote on whether to have a new constitution. The second will occur when the draft constitution is completed, allowing the people to accept or reject the new one (BBC Thai, 2021c). In the third reading of the parliamentary joint session considering the constitutional amendment draft on the establishment of the Constituent Assembly, the results showed that there were 208 votes in favour (206 MPs and two senators), four votes against (all four were senators), 94 votes abstained (10 MPs and 84 senators), and 136 did not vote (9 MPs and 127 senators) (BBC Thai, 2021b).

The 2021 Constitutional Amendment

A subsequent constitutional amendment attempt came in mid-2021 when political parties proposed 13 constitutional amendments:

- The first draft (introduced by the Palang Pracharath Party MPs) proposed amending five issues, including rights in the judicial process, changing the electoral system, allowing MPs and senators to amend the budget, allowing MPs to have people address the government, and allowing MPs to follow up on the progress of the 20-year national strategy and the national reform program.
- The second draft (introduced by the Pheu Thai Party MPs) proposed amending the rights of the people in various matters, such as the right to the judicial process, freedom of expression, and the right to oppose the coup.
- The third draft (introduced by the Pheu Thai Party MPs) proposed changing the electoral system of the House of Representatives election.
- The fourth draft (introduced by the Pheu Thai Party MPs) proposed abolishing the power of senators to choose the prime minister.

- The fifth draft (introduced by the Pheu Thai Party MPs) proposed cancelling the 20-year national strategy.
- The sixth draft (introduced by the Bhumjaithai Party MPs) proposed that the 20-year national strategy must be amendable.
- The seventh draft (introduced by the Bhumjaithai Party MPs) proposed a universal basic income.
- The eighth draft (introduced by the Democrat Party MPs) proposed amending the rights of people in various matters, such as rights in the judicial process, community rights, and consumer rights.
- The ninth draft (introduced by the Democrat Party MPs) proposed a more straightforward procedure for a constitutional amendment by removing the requirement for a one-third vote in the Senate.
- The tenth draft (introduced by the Democrat Party MPs) proposed revising the checks of the National Anti-Corruption Commission.
- The eleventh draft (introduced by the Democrat Party MPs) proposed abolishing senatorial power to choose the prime minister.
- The twelfth draft (introduced by the Democrat Party MPs) proposed decentralisation.
- The thirteenth draft (introduced by the Democrat Party MPs) proposed changing the electoral system for the House of Representatives (The Matter, 2021b).

At a joint session of the National Assembly on 23-24 June 2021, the result of the first reading of the vote on the 13 amendments to the constitution showed that only one was approved in the first reading as it received more than half of the parliamentary votes and one-third of senatorial votes: the thirteenth draft introduced by the Democrat Party to change the electoral system for the House of Representatives. Details of all resolutions can be seen in Table 6.8

Table 6.8 The Result of the 13 constitutional amendment drafts in the first reading in 2021

No.	Amendment	The House of Representatives		The Senate		Result
		Approve	Reject	Approve	Reject	
1	Five issues (introduced by	335	71	0	127	Rejected

	the Palang Pracharat Party)					
2	Amend the people's rights (introduced by Pheu Thai Party)	394	9	6	127	Rejected
3	Change the electoral system (introduced by the Pheu Thai Party)	341	18	36	70	Rejected
4	Abolish the power of senators to choose the prime minister (introduced by the Pheu Thai Party)	441	8	15	93	Rejected
5	Cancel the 20-year national strategy (introduced by the Pheu Thai Party)	327	8	1	142	Rejected
6	The 20-year national strategy must be amendable (introduced by the Bhumjaithai Party)	420	8	35	78	Rejected
7	The universal basic income (introduced by the Bhumjaithai Party)	422	8	55	70	Rejected
8	The people's rights	422	8	48	67	Rejected

	(introduced by the Democrat Party)					
9	Easier constitutional amendment procedure (introduced by the Democrat Party)	401	8	15	94	Rejected
10	The checks on the NACC (introduced by the Democrat Party)	399	8	33	89	Rejected
11	Abolish the senatorial power to choose the prime minister (introduced by the Democrat Party)	440	8	21	88	Rejected
12	Decentralisation (introduced by the Democrat Party)	408	8	49	75	Rejected
13	Change the electoral system (introduced by the Democrat Party)	343	19	210	5	<i>Approved</i>

Source: (iLaw, 2021b).

A 13th draft submitted by the Democrat Party, which proposes to change the electoral system for members of the House of Representatives, later came into consideration in the second and third readings, respectively. In September 2021, the joint meeting of the National Assembly voted to approve this draft amendment to the constitution with:

- Approval 472 votes (323 votes from MPs and 149 votes from senators)
- Disapproval 33 votes (23 votes from MPs and ten votes from senators)
- Abstentions 187 votes (121 votes from MPs and 66 votes from senators) (BBC Thai, 2021a)

As a result, the amendment was officially promulgated on 7 November 2021 (The Royal Thai Government Gazette, 2021) and remains the only successful constitutional amendment to date.

However, apart from the 13 constitutional amendments proposed by political parties, there is still one draft amendment to the constitution proposed by a citizen's group calling themselves the Re-Solution led by Parit Watcharasin, Piyabutr Saengkanokkul and Yingcheep Atchanon. More than 150,921 people signed on to this progressive constitutional amendment (The Matter, 2021a), which calls for:

- Abolishing the Senate by switching to a unicameral parliament made up of a House of Representatives consisting of 500 elected MPs
- Sacking the Constitutional Court and the independent agencies and allowing the people and elected MPs to participate in recruiting candidates for positions in the Constitutional Court and independent agencies
- Abolish the 20-year national strategy and national reform plan (Re-Solution, 2021).

Regarding the abolition of the Senate, Parit Watcharasin, a key leader of the Re-Solution group, stated to the joint session of the National Assembly the reasons for the repeal of the Senate: *"The power of 250 senators to jointly elect a prime minister gives one senator equal power to 70,000 people, and anyone who controls 250 senators has the same power as 19 million people. That contradicts the democratic regime with the King as Head of State. (iLaw, 2021a) "*

It is foreseeable that the parliament will not approve this draft amendment to the constitution. In particular, the senators will not allow it to pass. On 17 November 2021, the Joint Assembly of the National Assembly disapproved the draft amendment to the People's Constitution of the first term. There were differing votes between the parties and, as shown in Table 6.9, significant differences in the numbers approving and disapproving.

Table 6.9 Results of the vote on the draft constitution amendment of the Re-Solution Group

Decision	MPs	Senators	Total
Approve	203	3	206
Disapprove	249	224	473
Abstain	3	3	6

Source: (The Standard, 2021)

This vote once again reflected how the Senate has acted as the guardian institution protecting the constitutionally established order from being disrupted by other forces. Therefore, the rejection of the draft constitutional amendment that looked very progressive and aimed to destroy the main power structure under the 2017 constitution was foreseeable. However, this was not the end but a new beginning to challenge the Senate on the subsequent constitutional amendment.

The 2022 Constitutional Amendment

Efforts to propose constitutional amendments retook place in 2022 when four constitutional amendments were introduced to parliament, including:

- The first draft (submitted by Pheu Thai Party) proposes fixing the issue of community rights and the environment.
- The second draft (submitted by the Pheu Thai Party) proposes amending the matter of the right to justice, freedom of expression, and public health rights
- The third draft (submitted by Pheu Thai Party) proposes that the prime minister must be an MP.
- The fourth draft (submitted by the people) proposed removing senatorial power to choose the Prime Minister.

On 7 September 2022, once again, all these four constitution amendment drafts were disapproved, as shown in Table 6.10

Table 6.10 The result of parliamentary votes on the constitutional amendment on 7 September 2022

Group	Choice	The 1st Draft	The 2nd Draft	The 3rd draft	The 4th draft
	Approve	382	346	346	356

MPs and senators	Disapprove	252	299	292	253
	Abstain	28	17	24	53
Only senators	Approve	40	8	9	23
	Disapprove	153	196	192	151
	Abstain	26	15	18	45
Result		Rejected	Rejected	Rejected	Rejected

Source: (iLaw, 2022).

The politics of the 2020-2022 constitutional amendments have well demonstrated the role of the Senate as the "guardian of the status quo". The Senate rejected almost all the more than 20 proposed constitutional amendments, especially draft amendments related to the powers of the senators and the establishment of a constituent assembly to draft a new constitution. They have no intention of allowing any to pass, as the 2017 constitution is considered the "heart" of an untouchable coup regime. If the junta-drafted rules of the game are changed, it will precipitate their collapse. Only one constitutional amendment has been approved—receiving sufficient votes in the National Assembly and from one-third of the Senate—relating to changes in the electoral system. This amendment can be analysed as providing a political advantage to the ruling Palang Pracharath party in the next election and is not directly related to the authority of the Senate or changes to the entire constitution. Therefore, the Senate has approved such amendments to the constitution. Nevertheless, the Senate remains the key guardian institution. It was proved by the politics surrounding past constitutional amendments.

6.3.4 The 2023 Election and the Role of the Senate

On March 20, 2023, just three days before the House of Representatives completed its four-year term, Prayut Chan-o-cha announced the dissolution of the House (Thai PBS World, 2023b). Later, a new general election was set for May 14, 2023 (The Nation, 2023b). It is the second general election under the 2017 constitution, drafted after the 2014 coup. Before that election, there had been conflict among the junta's leaders (Bangkok Post, 2022a). Ultimately, Prayut Chan-ocha split off to form a new political party called the United Thai Nation Party (Bangkok Post, 2023f). At the same time, Prawit Wongsuwan continued to be the leader of the Palang Pracharat Party.

The 2023 election result shows that, surprisingly, Move Forward, a political party established after the Constitutional Court dissolved the Future Forward Party in February 2020, won the election. A few days later, the Move Forward announced joining hands as a coalition of 8 political parties to form a government with 312 votes in support. Pita Limjaroenrat, the Move Forward Party leader, announced his readiness to become the new prime minister (Bangkok Post, 2023e).

Table 6.11 The 2023 Thailand Election Result

Party	Party Votes	% of Votes	Seats		Total MPs
			Party-list	Constituency	
Move Forward	14,438,851	37.99	39	112	151
Pheu Thai	10,962,522	28.84	29	112	141
Bhumjaithai	1,138,202	2.99	3	68	71
Palang Pracharath	537,625	1.41	1	39	40
United Thai Nation	4,766,408	12.54	13	23	36
Democrat	925,349	2.43	3	22	25
Chart Thai Pattana	192,497	0.51	1	9	10
Prachachart	602,645	1.59	2	7	9
Thai Sang Thai	340,178	0.90	1	5	6
Chart Pattana Kla	212,676	0.56	1	1	2
Pheu Thai Ruam Palang	67,692	0.18	-	2	2
Seri Ruam Thai	351,376	0.92	1	-	1
New Democracy	273,428	0.72	1	-	1
New Party	249,731	0.66	1	-	1
Party of Thai Counties	201,411	0.53	1	-	1
Fair	184,817	0.49	1	-	1

New Social Power	177,379	0.47	1	-	1
Thai Teachers for People	175,182	0.46	1	-	1
Other parties	2,207,068	5.81	-	-	-
Total	38,005,037	100	100	400	500
Valid votes	38,005,037	96.18			
Invalid/ blank votes	1,509,836	3.82			
Total votes	39,514,873	100			
Registered voters	52,238,594				
Voter's turnout	75.64%				

Source: (The Election Commission of Thailand, 2023)

However, under the 5-year transitory period, the junta-appointed Senate still has the power to vote for prime minister. It means that to be voted as prime minister, a candidate must receive more than half of the parliamentary votes (376). Initially, the first two months were filled with uncertainty about whether the Senate would vote to support Pita, while the Move Forward was confident that it had gained enough senators' votes. But when the time came, it appeared that several senators would not vote for Pita, citing his party's agenda to amend Article 112 of the Criminal Code, known as lese majeste law, as the main reason (Bangkok Post, 2023d). Ultimately, on July 13, 2023, Pita was not chosen as the new Prime Minister of Thailand. Even though he received more than half of the votes in the House of Representatives, he received only 13 Senate votes, for a total of 324, which is not enough to be elected according to the 2017 constitution (Bangkok Post, 2023c).

Table 6.12 The prime ministerial vote on 13 July 2023

PM Candidate	Yes		No	
Pita Limjaroenrat (Move Forward Party)	MPs	Senators	MPs	Senators
	311	13	148	34
Valid votes	324		182	
Abstain	199			

Total votes	705
The total existing number of parliamentary members	749

Source: (Bangkok Post, 2023c)

Later, on 19 July 2023, There was an attempt to re-nominate Pita to vote for prime minister in parliament for the second time. However, the parliament voted not to allow the second nomination of Pita, with the majority of votes coming from the senators. Pita was then blocked from becoming a new prime minister despite his party winning an election (Bangkok Post, 2023b). Move Forward, then step back and let Pheu Thai take charge of government formation (Bangkok Post, 2023a). However, On 2 August 2023, Pheu Thai announced its break from Move Forward to form its coalition government and nominate its party's prime ministerial candidate, Srettha Thavisin, for a selection of prime minister (Thai PBS World, 2023a). Three weeks later, Pheu Thai announced an 11-party coalition with 314 votes, including the pro-junta party United Thai Nation Party and Palang Pracharath. The coalition agreed to nominate Srettha Thavisin as the new prime minister. Eventually, on 22 August 2023, the Thai parliament voted for Srettha Thavisin to be a new prime minister with 482 votes, ending the nearly 100-day political deadlock. Srettha received 330 MPs' votes and 152 senators' votes (The Nation, 2023a).

Table 6.13 The Prime Ministerial Vote on 22 August 2023

PM Candidate	Yes		No	
Srettha Thavisin (Pheu Thai Party)	MPs	Senators	MPs	Senators
	330	152	152	12
Valid votes	482		165	
Abstain	81			
Total votes	728			
The total existing number of parliamentary members	748			

Source: (The Nation, 2023a)

The role of the Thai Senate in selecting the prime minister after the 2023 elections is even confirmed that it is “the guardian of the status quo”. It is not just about whether or not to vote for any prime minister candidate.

But it goes so far as to indicate which party should be in government. For example, the senators claimed that Move Forward wanted to amend the lese majeste law, which is unacceptable, and they would not vote for Pita as a new prime minister. On the other hand, after the Senate successfully blocked Pita in the second nomination, it forced Pheu Thai to break away from the Move Forward and cooperate with the pro-junta parties United Thai Nation and Palang Pracharath in exchange for votes from senators for Srettha Thavisin as the 30th Prime Minister of Thailand.

6.3.5 The Senate in the Post-Transitional Period

The 5-year transitory provisions under the 2017 constitution will end in 2024 after having been in effect since the first general election on 24 March 2019. As such, the excessive power of the Senate under this constitution will also end.

The House of Representatives, elected on 24 March 2019, is about to complete its four-year term on 23 March 2023. According to the 2017 Constitution, a new general election must be held within 45 to 60 days of the end of this four-year term, and the Election Commission has subsequently announced a new election on 7 May 2023 (Bangkok Post, 2022b). However, the possibility that Prayut may dissolve the house is also looming. It appears now that a new election will be held by 2023, as the Constitutional Court ruled that the revised Political Parties Act and the Election Act of Members of the House of Representatives Amendments made after the 2021 constitutional amendment are not unconstitutional (The Nation, 2022a; The Nation, 2022b).

In the 2023 general election, junta-appointed senators will again retain the power to elect the prime minister. Before such authority under the transitory provisions ends the following year, the Senate can still be a key base for the junta in determining the prime minister after the election. In addition, for more than a year before the 5-year transitory provisions end, the Senate will still have the power to oversee and expedite the government's implementation of national reforms and the 20-year national strategy and can vote with the House of Representatives on bills related to national reform. Also, the Senate will still have the power to approve the appointment of persons holding positions in independent agencies and can

vote on constitutional amendments, which require one-third of senatorial votes to pass.

However, after the five-year transitory provisions end and the Senate appointed by the junta completes its five-year term, the new Senate will consist of 200 senators elected from professional bodies. The Senate will no longer have the extraordinary power to choose the prime minister, monitor and accelerate the government in implementing national reform and the 20-year national strategy, and vote with the House of Representatives on bills related to national reform programs. The Senate still possesses the power to approve the appointment of individuals holding positions in independent agencies and vote on constitutional amendments where one-third of their number is required.

6.4 Conclusion: The Senate as the Guardian of the Status Quo

Like the 2007 Constitution, the Senate is one of the vital institutions designed in the post-coup political system that allows the junta to retain power and influence in parliamentary politics. Unlike the Senate under the 2007 Constitution, which still had some legitimacy by having half of its number elected and half appointed, by the transitory provision of the 2017 Constitution, the current fully-appointed Senate is a stronghold for the junta. From the 2015 drafting of the constitution and the 2017 version, it could be said that the fully-appointed Senate was a direct 'request' from the junta. The 250 senators are close to the military regime, as evidenced by their appointments. This is the most blatant attempt to retain power by the junta. The Senate has become a powerful 'unelected' institution that has the power to choose a prime minister and supervise the elected government by various means. The political system under the 2017 Constitution can be described as a form of 'guided democracy' in which the unelected bodies have been handed power over the elected bodies.

The Senate, once again, was designed to be a 'proxy' of the junta in its return to parliamentary politics. Evidence to confirm this argument can be seen in the list of 250 appointed senators, their apparent relationships with top leading figures in the military regime, and the role of senators in choosing a prime minister. The Senate is also a 'guardian' of the 'guided democracy' created by the 2017 Constitution facilitated by the requirement of one-third of their votes in addition to half of the parliamentary votes. In other words, a constitutional amendment must obtain 'approval' from the

Senate, which makes an amendment unlikely to be successful or even impossible.

Empowering the Senate raises the question of its legitimacy: the unelected chamber has power over the elected House. It is not just checks and balances; the Senate was designed for a political purpose: to maintain the junta's control and ensure the continuation of post-coup politics. In a broad picture, it is a continuing conflict between the majority and minority. For over a decade, Thaksin Shinawatra and his parties won a majority in four consecutive elections and claimed their votes as legitimacy to govern. Thaksin's rise threatened the conservative minority.

The Senate has thus been a designated junta proxy in parliamentary politics after the election and a part of the junta's 'systematic attempt' to retain its power by designing a new constitution, proposing a fully-appointed Senate, selecting the senators close to the military regime, and voting overwhelmingly to choose Prayut's return as premier. Under the 2017 Constitution, the Senate will strongly act as a guardian of the junta-created guided democracy. This argument was confirmed in the politics surrounding the proposed constitutional amendments between 2020 and 2022. The Senate has served vigorously as the guardian of the status quo of the junta in preventing attempts to amend the 2017 Constitution, as more than half of the required approval votes in the parliament must include one-third of the Senate (at least 84 votes). The 2017 constitutional amendment would be nearly impossible to pass if blocked by senators.

When considering five partial regimes of embedded democracy: electoral regime, political rights, civil rights, horizontal accountability, and the effective power to govern, the 2017 Constitution was not designed to create embedded democracy.

- Electoral regime: change the electoral system to benefit pro-junta parties.
- Political rights: despite the constitution guaranteeing civil liberties, civilians still face harassment.
- Civil rights: despite the constitution guaranteeing civil liberties, civilians still face harassment.
- Horizontal accountability: various independent agencies were appointed during the military regime.

- The effective power to govern: the junta-appointed Senate was given the power to vote for prime minister for five years. The elected officials do not have the effective right to rule unless they have approval from the Senate.

More precisely, it was a domain democracy in which the Senate, as the “guardian of the status quo”, was a reserved domain for ‘veto power’ like the military to sustain its power after the election, and it works. The 2019 and 2023 election results show that the winning parties (Pheu Thai in 2019 and Move Forward in 2023) could not form a government as the Senate opposed. Moreover, what proved that the 2017 Constitution undermines the effective power to govern is the role of the Senate in constitutional amendment. Unless it receives one-third of the senators’ votes, any constitutional amendment would not be successful. The 2017 Constitution is the “untouchable core” of the military regime that transformed itself into electoral politics.

Chapter 7

Conclusion

This chapter summarises the study's findings, focusing on the development and institutional changes in Thailand's Senate from the beginning of bicameralism in 1946 to the current situation under the 2017 Constitution. Two research questions are answered, and two hypotheses are tested, compiled from the crucial findings on the development of the Thai Senate in each period.

7.1 Testing Hypothesis 1

Research question 1 How has the Thai Senate evolved?

Hypothesis 1. The evolution and the institutional change in the Thai Senate should be analysed in the broader context of Thailand's struggling democracy since 1932: 20 constitutions and 13 coups have resulted from a power struggle between the elite and the masses. The power struggle determines the constitution as “the rule of the game”. A constitution designs political systems and institutions. When the constitution changes, it also changes the arrangement of political institutions, including the parliament. The change in the constitution reflects the reality in Thai politics that power relations have changed. The institutional change of the Senate is part of constitutional change, which reflects the shift in power relationships in Thai politics.

From the above assumptions, it can be observed that constitutional change in Thailand is a matter of changing the power relationships. In other words, the people in power compile the rules. Therefore, to understand the constitutional change in Thailand, starting with those who set the rules is necessary, as shown in Table 7.1.

Table 7.1 The constitutions of Thailand since 1932

No.	Constitution	Period	The Drafters	Group
1	The 1932 Provisional Constitution	June–December 1932	The People’s Party (drafted by Pridi Banomyong)	Elite (the People’s Party)
2	The 1932 Constitution	1932–1946	The Drafting Committee approved by the House of Representatives	Elite (the People’s Party and the Monarchy)
3	The 1946 Constitution	1946–1947	The Drafting Committee approved by the House of Representatives	Elite (civilian leaders from both the royalists’ camp and the People’s Party)
<i>The 1947 Coup</i>				
4	The 1947 Provisional Constitution	1947–1949	The junta	Elite (the royalists and military)
5	The 1949 Constitution	1949–1951	The Constitution Drafting Assembly (selected by the	Elite (the royalists)

			royalist-dominated Senate)	
<i>The 1951 Coup</i>				
6	The 1932 Constitution (1952 Amendments)	1952–1957	The junta	Elite
<i>The 1957 Coup</i>				
7	The 1959 Charter	1959–1968	The junta	Elite (military)
8	The 1968 Constitution	1968–1971	The Constitution Drafting Assembly (appointed by the junta)	Elite (military)
<i>The 1971 Self-coup</i>				
9	The 1972 Charter	1972–1974	The junta	Elite (military)
<i>The Uprising of 14 October 1974</i>				
10	The 1974 Constitution	1974–1976	The drafting committee approved by the National Legislative Assembly (selected from the royally appointed National People's Assembly after the events of 14 October 1973)	Elite and mass (the royalists and the people)
<i>The Massacre of 6 October 1976 and the Coup</i>				

11	The 1976 Constitution	1976–1977	The junta	Elite
<i>The 1977 Coup</i>				
12	The 1977 Charter	1977–1978	The junta	Elite (military)
13	The 1978 Constitution	1978–1991	The drafting committee approved by the House of Representatives	Elite (military)
<i>The 1991 Coup</i>				
14	The 1991 Charter	February–December 1991	The junta	Elite (military)
15	The 1991 Constitution	1991–1997	The drafting committee (appointed by the junta) and the House of Representatives	Elite (military)
<i>The Black May 1992 and Political Reform</i>				
16	The 1997 Constitution	1997–2006	The Constitution Drafting Assembly (elected by the people and selected by the experts)	Elite and Mass (the CDA)
<i>The 2006 Coup</i>				
17	The 2006 Provisional Constitution	2006–2007	The junta	Elite (military)

18	The 2007 Constitution	2007–2014	The Constitution Drafting Assembly (selected and appointed by the junta) approved in the referendum.	Elite (military)
<i>The 2014 Coup</i>				
19	The 2014 Provisional Constitution	2014–2017	The junta	Elite (military)
20	The 2017 Constitution	2017–present	The drafting committee (appointed by the junta) approved in the referendum)	Elite (military)

Source: Author

According to the game's rule, political systems and institutions are designed under the constitution. Table 7.2 shows how the rules create the system and institutions.

Table 7.2 The Composition of the Senate from 1946 to the present

Constitution	No. Of Senators	Method of Acquisition	Period
<i>The Siamese Revolution of 1932</i>			
<i>The unicameral House of Representatives had two types of membership (elected and appointed) under the 1932 Provisional Constitution and the 1932 Constitution (1932–1946)</i>			
The 1946 Constitution	80	Indirect election	1946–1947
<i>The 1947 Coup</i>			

The 1947 Provisional Constitution	100	Appointed by the King	1947–1951
The 1949 Constitution	100		
<i>The 1951 Coup and the unicameral House of Representatives under the 1932 Constitution (the 1952 Amendment) (1952–1957)</i>			
<i>The 1957 and 1958 Coup and the unicameral Constitution Drafting Assembly under the 1959 Charter (1958–1968)</i>			
The 1968 Constitution	164	Appointed by the leader of the junta	1968–1971
<i>The 1971 Coup and the unicameral National Legislative Assembly under the 1972 Charter (1972–1973)</i>			
<i>The uprising of 14 October 1973</i>			
The 1974 Constitution	100	Appointed by the prime minister	1974–1976
<i>The Massacre of 6 October 1976 and the coup</i>			
<i>The unicameral National Administrative Council appointed under the 1976 Constitution (1976–1977)</i>			
<i>The 1977 Coup and the appointed unicameral National Legislative Assembly 1977–1978</i>			
The 1978 Constitution	225	Appointed by the prime minister	1978–1991
<i>The 1991 Coup and the unicameral National Legislative Assembly) appointed under the 1991 Charter</i>			

The 1991 Constitution	270	Appointed by the junta (1992) Appointed by the prime minister (1996)	1992–2000
The 1997 Constitution	200	Direct Election	2000–2006
<i>The 2006 Coup and the unicameral National Legislative Assembly appointed under the 2006 Provisional Constitution</i>			
The 2007 Constitution	150	Direct Election and Appointment (50:50 split)	2008–2014
<i>The 2014 Coup and the unicameral National Legislative Assembly appointed under the 2014 Provisional Constitution</i>			
The 2017 Constitution	250 (5 years) 200 (after 5 years)	Appointed by the junta leader (5 years) Selected from professional organisations (after 5 years)	2019–present

Source: by author

The following findings are revealed in answer to the first research question: *How has the Thai Senate evolved?* The Thai Senate lacks continuous, linear institutional development but acts according to each constitution. Ten of the 20 Thai constitutions stipulate that parliament must be bicameral. The Senate is the upper house under the 1946 and 1947

Provisional Constitution and Constitutions of 1949, 1968, 1974, 1978, 1991, 1997, 2007, and 2017.

Furthermore, a unicameral parliament was established under three constitutions: the 1932 Provisional Constitution, the 1932 Constitution (promulgated on 10 December 1932), and the 1932 Constitution (1952 Amendments). In the House of Representatives of a unicameral parliament, there are two types of MPs: elected and appointed.

Some of the 20 constitutions stipulated that a bicameral parliament be formed, while others drafted after the coup established a unicameral parliament. In the case of a bicameral parliament, the Senate also has different compositions and powers. Therefore, to answer the first research question, the development of the Senate in Thailand is divided into the following four phases.

- **Phase 1:** The Pre-1997 Senate (1946–2000): The Senate was an appointed House, but the appointee, composition, and powers of the Senate vary according to the constitution. Those established with a Senate consisted of the 1946 Constitution, 1947 Provisional Constitution, and the Constitutions of 1949, 1968, 1974, 1978, and 1991. In some eras, the Senate had the power to trust the government and was designed to be the power base.
- **Phase 2:** The Senate under the 1997 Constitution (2000–2006), the Senate was wholly elected. In addition to reviewing the legislation, the Senate had two significant powers: selecting and appointing persons in independent agencies, which were newly established under this constitution, allowing the public to punish politicians and high-ranking officials. The Senate under this constitution was designed with the expectation of a non-partisan chamber in line with its core aim of political reform. However, according to the findings of this study, the Senate was also a political support base for powerful political parties at that time. In the early days, Senate President Manoonkrit Roopkhachorn also had a good connection with the Democrat Party government. Later, when the Thai Rak Thai Party won the election, and Thaksin Shinawatra became prime minister, the

Thaksin government gradually dominated the Senate, especially when Suchon Chaleekrua was appointed Senate president in 2004. The officeholders subsequently appointed to independent agencies were all close to or related to the Thaksin government.

- **Phase 3:** The Senate under the 2007 Constitution was equally split between elected and appointed representatives. On the one hand, it cannot be denied that the design of the Senate under this constitution, drafted after the 2006 coup, must have some level of democratic legitimacy. However, on the other hand, the experience of the Senate under the 1997 constitution demonstrates that if it is entirely elected, the political system will be dominated by political parties with a majority in parliament. Therefore, senators appointed by the nomination committee must include chairmen of various independent agencies and the judiciary. The Senate continues to be responsible for reviewing legislation and has impeachment powers, but appointments to independent bodies are limited. The selection of candidates falls under the authority of the nomination committee, consisting of chairmen of independent agencies and the judiciary. The Senate only has the power to approve or disapprove of elected and appointed senators in the same House. Therefore, a proxy war exists between the majority and the minority.
- **Phase 4:** the Senate under the 2017 Constitution is a fully appointed House. This constitution was drafted after the 2014 coup. The transitory provisions stipulate that during the first five years after the general election, senators must be appointed by the junta leader. The Senate has the power to elect the prime minister and members of the House of Representatives. It also has the power to monitor and expedite the government's implementation of the national strategy and national reforms stipulated in the constitution. Furthermore, it has the power to vote on draft laws relating to the National Reform program as specified in the constitution and, most importantly, to amend it. However, as well as the requirement for a majority in parliament, the government must receive one-third of the senators' votes to succeed. After five years under the transitional provisions, the senators shall come from the self-selection of professional bodies, while the power

under the provisional legislation will also cease to exist. However, the remaining power under the constitutional amendments requires one-third of the votes from the Senate and the approval of incumbent appointments from independent bodies. This constitutional design reflects a throwback to the pre-1997 Senate.

7.2 Testing Hypothesis 2

Research question 2: Why does the Thai Senate exist?

Hypothesis 2. The upper house in Thailand neither represents special interests or social classes nor improves the quality of the legislative outcome. By contrast, the Thai Senate has been “the guardian of the status quo”, a reserved domain for ‘veto powers’ to take certain political domains out of the hands of democratically elected representatives by constitutional means throughout Thailand's political development since the end of absolute monarchy in 1932. Those in power always employ the upper house as a support base to safeguard their power and influence parliamentary politics.

Table 7.3 explains how the Senate became the guardian of the status quo and the methods used by senators to enter office.

Table 7.3 Senatorial acquisition under the Thai Constitution

Constitution	Acquisition
The 1946 Constitution	Selected by the incumbent MPs (dominated by Pridi Banomyong's faction in the House of Representatives)
The 1947 Constitution	Appointed by the King <i>*de facto appointment by the council of regency as the King was not in the country at the time</i>
The 1949 Constitution	Appointed by the King

The 1968 Constitution	Appointed by the junta leader (Thanom Kittikachorn)
The 1974 Constitution	Appointed by the prime minister (Sanya Dharmasakti)
The 1978 Constitution	Appointed by the prime minister (Kriangsak Chomanan)
The 1991 Constitution	Appointed by the junta leader (1992) (Sunthorn Kongsompong) Appointed by the prime minister (1996) (Banharn Silpa-archa)
The 1997 Constitution	Direct election by the people
The 2007 Constitution	<ul style="list-style-type: none"> • Direct election by the people • Appointment by the seven-member selection panel consisting of independent agency chairmen and judges
The 2017 Constitution	Appointed by the junta leader (Prayut Chan-ocha) (5 years) Selected among professional organisations (after 5 years)

In addition to the origins of the senators, to understand how the Senate became the guardian of the status quo, it is necessary to examine the different constitutional mechanisms empowering the Senate and the methods used to safeguard the power holders, as shown in Table 7.4.

Table 7.4 The constitutional mechanisms ensuring the Senate is the guardian of the status quo

Constitution	Mechanisms
The 1946 Constitution	<ul style="list-style-type: none"> • The Senate president presides over the joint parliamentary session • The senators can jointly participate in a vote of confidence with the elected MPs when the government presents the policy statement to the National Assembly • The Senate president jointly countersigns the royal command, appointing the prime minister with the Speaker of the House of Representatives
The 1947 Provisional Constitution	<ul style="list-style-type: none"> • Without the House of Representatives, the Senate was granted power to act as the parliament. • The Senate, acting as the parliament, played a vital role in setting up the Constitution Drafting Assembly. • The senators can jointly participate in a vote of confidence with the elected MPs when the government presents the policy statement to the parliament.

The 1949 Constitution	<ul style="list-style-type: none"> • The Senate president is the president of the National Assembly • The government must separately present the policy statement to the House of Representatives and the Senate • The Senate has no power to participate in a vote of confidence but can submit remarks to the House of Representatives • The Senate can veto bills approved by the House of Representatives for up to one year
The 1968 Constitution	<ul style="list-style-type: none"> • The Senate president is the president of the National Assembly, who can nominate the prime minister. • The appointed senators can initiate a motion of no confidence • The appointed senators can jointly participate in a vote of confidence with the elected MPs • The senators can introduce a bill
The 1974 Constitution	<ul style="list-style-type: none"> • The Senate can veto bills approved by the House of

	Representatives for up to 180 days.
The 1978 Constitution	<ul style="list-style-type: none"> • The Senate president is the president of the National Assembly, who can nominate the prime minister. • The appointed senators can jointly participate in a vote of confidence with the elected MPs (4 years) • The appointed senators can jointly vote with the elected MPs on proposed bills, notified by the cabinet as being related to national security, the monarchy, and the economy (4 years) • The annual budget bill must be voted on in the parliamentary session, meaning that the appointed senators can vote and approve the annual budget bill with the elected MPs (4 years) • Bills introduced by elected MPs can only be submitted by obtaining approval from the special commission (4 years) • The senators can jointly approve the royal decree with the elected MPs

The 1991 Constitution	<ul style="list-style-type: none"> • The Senate president is the president of the National Assembly (before Black May 1992) • The senators can jointly participate in a vote of confidence with the elected MPs (4 years) • The senators can jointly approve the royal decree with the elected MPs (4 years)
The 1997 Constitution	<ul style="list-style-type: none"> • The power of impeachment • The power to select and approve nominations from independent agencies
The 2007 Constitution	<ul style="list-style-type: none"> • The power of impeachment • The power to approve nominations from independent agencies
The 2017 Constitution	<ul style="list-style-type: none"> • The junta-appointed Senate can jointly vote for the prime minister with the House of Representatives (5 years) • The Senate can monitor the government to ensure it follows the National Strategy and the National Reform program as stipulated in the constitution (5 years) • Bills relating to the National Reform program must be introduced and voted on in the parliamentary session.

	<ul style="list-style-type: none"> • Bills related to the National Reform program stipulated in the constitution must be considered and voted on in the parliament. • The constitutional amendment must receive one-third of the senators' votes for approval.
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Source: Author

The design and purpose of the Senate are explained in this paper to answer the second research question: Why does the Thai Senate exist?

The Senate has been regarded as the “guardian of the status quo” by power holders throughout Thailand's political development. This is demonstrated by the origin of the senators and the powers of the Senate in each constitution, which can be divided into four phases as follows.

- **Phase 1:** The pre-1997 Senate (1946–2000) was an appointed chamber, with those appointed as senators all belonging to the political power network at that time. Meanwhile, constitutional mechanisms have given the Senate significant power in specific periods. For example, the 1968 and 1978 Constitutions made the Senate president the National Assembly's president, who nominated the prime minister. Furthermore, under these constitutions, the Senate has the power to participate in a vote of no confidence. It indicates that the Senate was designed to be a political institution for sustaining the control of those in power at the time, namely the junta.
- **Phase 2:** The Senate under the 1997 Constitution was fully elected. Although this constitution was drafted based on the idea of political reform and the Senate was designed to be a non-partisan chamber, most of the elected senators belonged to political networks of parties and politicians. During Manukrit Rupkachon's Senate presidency, he was close to the Democrat Party, which actively supported the Democratic government. When the Thai Rak Thai Party won the

election, and Thaksin Shinawatra became prime minister, it gradually dominated the Senate. Neither the Democrat Party nor Thaksin wrote these rules, but the Senate was used as a political support base similar to an appointed Senate. The most obvious example is the selection and appointment of position holders in independent agencies, especially during the Thaksin era. Most appointees were related to people in the Thai Rak Thai government.

- **Phase 3:** The Senate under the 2007 Constitution was equally divided into elected and appointed members. Undeniably, the appointment of senators was designed to represent the junta in parliament, which was responsible for staging the 2006 coup. To avoid a phenomenon in which the majority party could completely control parliament, as happened with the Senate under the 1997 Constitution, having an appointed senator would act as a counterweight for the House of Representatives and political parties, including the government. The power to select and appoint a positionholder in the independent agencies was reduced to merely the approval of the appointment. The selection committee, consisting of chairmen of independent agencies and the judiciary, was given the authority to select candidates. This allowed the unelected institutions to become more involved in politics.
- **Phase 4:** The Senate under the 2017 Constitution consisted of the junta leader appointed by the senators in the first five years. The most obvious manifestation of the guardian of the status quo is the power to elect the prime minister and monitor the government in implementing national strategies and national reforms as stipulated in the constitution. During the first five years, it can be guaranteed that the junta will be able to continue holding power after the general election. In addition, to be successful in a constitutional amendment, one-third of senators must vote to support it. Furthermore, the rules of the game under the 2017 Constitution were designed by the junta that staged the 2014 coup, and since these are at the heart of the post-coup political system, they cannot be easily overthrown.

7.3 How does the Thai Senate fit under a theory of democracy?

Considering five partial regimes of embedded democracy: electoral regime, political rights, civil rights, horizontal accountability, and the effective power to govern, it can be said that Thai democracy is not embedded throughout its political development. Instead, it has been a defective democracy. As “the guardian of the status”, the Senate has been a crucial part of it.

- **Before 1997:** The Senate was mainly a reserved domain for ‘veto powers’ (e.g. military) in many periods as it had more power than the elected House of Representatives.
- **The 1997 Constitution:** The constitution aimed to create embedded democracy, and the Senate was designed to have a meaningful role in checks and balances as a ‘gatekeeper’ to select and approve the nominations in the newly established independent agencies. However, under the Thaksin government, the Senate did not effectively function as expected, and it was just another branch of government. It gradually turned Thai politics into a delegative democracy in which checks and balances were undermined.
- **The 2007 Constitution:** The constitution did not aim for embedded democracy as it was drafted after the 2006 Coup. More precisely, it desired to create domain democracy in which the Senate was a reserved domain for the military and its nominees through its acquisition: half elected and appointed. It also undermines horizontal accountability as well as the effective power to govern.
- **The 2017 Constitution.** The constitution aims to prolong the military regime, and the Senate was designed to be a reserved domain for the military to sustain its power in electoral politics. The result of the 2019 and 2023 general elections shows that the winning parties could not rule as the Senate opposed. The constitution also undermines the effective power to govern, allowing the junta-appointed Senate to vote for prime minister for five years. Furthermore, constitutional amendment seems to be impossible unless one-third of senators approve.

7.4 Is the Thai Senate still relevant?

As demonstrated in this thesis, the Thai Senate has been the ‘guardian of the status quo’, a reserved domain for ‘veto powers’ to take certain political domains out of the hands of democratically elected representatives by constitutional means throughout Thailand's political development since the end of absolute monarchy in 1932. Therefore, it is not surprising that in the present era, the question arises: is the Thai Senate still relevant? This thesis does not have a single answer to whether bicameralism is still necessary in Thai politics. However, it wants to raise four key issues to consider for political reform.

Constitutional Design

A debate on the relevance of the Senate is just one part of a big question in Thai politics: What is a suitable constitution for Thailand? Having 20 constitutions reflects that Thailand does not yet have basic rules for governing the country that are acceptable to all parties in Thai society. The Constitution is merely a set of rules that those in power have determined at that time. But in Thailand, there has never been a true "consensus" on the rules that will be used to govern the country. To debate the relevance of the Thai Senate, we must start with a crucial question: What is the suitable and acceptable constitution for all parties? To find a consensus, it is necessary to have all groups and parties participate in drafting the constitution to write rules that will be mutually acceptable first.

Unicameralism or Bicameralism?

This thesis does not provide a definitive answer as to what type of parliamentary system is appropriate for Thailand: a unicameral system or a bicameral system, because both forms have different advantages and disadvantages. A common explanation is that the unicameral system makes the legislative process fast and efficient. As for the bicameral system, the advantage is that it allows for the representation of various groups in society in the parliamentary system, being a check and balance mechanism. However, there is a disadvantage in the duplication of powers and duties. The question of the form of this parliamentary system first goes back to what the constitution is appropriate and acceptable to all parties in society. What does it look like? If the constitutional question can find consensus, it can answer the question about the form of the parliamentary system, whether it

should be a unicameral or bicameral system. If it is a unicameral system, the question of representation is self-evident in that it represents all citizens. But if it is a bicameral system, there is a question that needs to be further debated. If the lower house is elected, what should be the origin of the Upper House? And what powers and duties should they have?

The Relationship between the Lower House and Upper House

There will be a lot of debate about power relations in the parliamentary system. Considering the history of the Thai parliament, especially in the era of the bicameral system, the power between the House of Representatives and the Senate is different. In some eras, the Senate had considerable power in voting for the Prime Minister or vote of confidence for the executive (such as the Senate under the 1968 Constitution or the 1978 Constitution), reflecting that powers not elected are superior to those that the people elect. But in some eras, such as the Senate under the 1974 Constitution, it only had the power to scrutinize laws. It reflects that elected power is superior to non-elected power. From the 1997 Constitution onwards, the Senate has the power to approve the appointment of office holders in independent agencies. The asymmetry in power relations between elected and non-elected powers remains a critical constitutional issue that continues to be contested. In the future, Thailand will continue to use the form of a bicameral or unicameral system. One thing that this thesis wants to propose in the long term is the form of the parliamentary system. It should not be the case with non-elected powers. It is superior to the power that comes from elections. Because, in the end, it will lead to problems of legitimacy. And when there is a question of legitimacy, it would eventually lead to crisis and conflict.

The Acquisition of senators

Concerning the issue of power relationships in the parliamentary system, if Thailand still must use the form of a bicameral system, what should be the origin of the senators? This thesis has no objection to the continuation of the Thai Senate. But the critical issue that needs to be debated first is why it exists and how much power it should have. If it has much power and the origin is not tied to the people, there will be a question of legitimacy. As mentioned above, if it has little power, it is only a legislative power.

7.5 Concluding Remarks

The political development of Thailand and the establishment of 20 constitutions reflect the view that all political and social forces will accept no rules of the game. However, changes in power relations can occur. Any party in power will write rules and design institutions to maintain their power. The Senate is considered a political institution for performing such functions. This study proposes that the development and institutional change of the Senate should be considered in the broader context of constitutional change. The Thai Senate neither represents the special interests nor improves legislative outcomes but is the “guardian of the status quo”. This argument is confirmed by the findings reported in this thesis, namely that the design of the Senate institution, the acquisition of senators in each era, and the powers of the constitutional Senate all contribute to making the Senate the guardian of the status quo. Unless consensus is reached between all political and social forces that there can only be one rule of the game in the political system, institutions will always be designed to maintain the status of power holders, including the Senate.

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