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# Superfluous, Mischievous or Emancipating? Thailand's Evolving Senate Today

Paul Chambers

**Abstract:** In Thailand's emerging democracy, the Senate has played an often underestimated role. This study analyzes Thailand's Upper House, examining its historical evolution until 2009. In particular, it focuses on the following questions. What innovations did the 1997 Constitution bring to the Senate? How and why was the Senate adjusted under the 2007 constitution? The study further reviews the Senate elections of 2000 and 2006 as well as the election/ selection of 2008. Finally, it postulates as to the continued significance of an Upper House in Thailand and offers recommendations for the future course of Thailand's developing Senate.

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**Keywords:** Thailand, Senate, Upper House, parliament, democracy, elections

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## Introduction

Though often underestimated, the Upper House has gradually become a crucial institution in Thailand's emerging democracy. On March 2, 2008, Thais went to the polls to elect a new Senate. This was only the third occasion for such an event in Thailand. The first elected Senate had taken office in 2000, only one year prior to the ascension to power of Thaksin Shinawatra and his Lower House party Thai Rak Thai (TRT). By 2006 Thaksin appeared dominant throughout Thailand's various democratic institutions – including in the Upper House. The military coup d'état of September 19, 2006 ousted Thaksin but also ended Thailand's 14-year evolving democratic regime – which had existed since September 1992. The 2007 Constitution established a new bicameral parliament with a partially-elected Senate finally in place on March 9, 2008.

This study<sup>1</sup> scrutinizes the Senate in Thailand's emerging democracy. It begins by analyzing the role of Senates in democracies as reflected in literature. Afterwards it examines Thailand's Upper House in historical perspective. How did the Senate evolve from 1946 until 1997? What innovations did the 1997 Constitution bring to the Senate? How and why was the Senate adjusted under the 2007 Constitution? The study further reviews the Senate elections of 2000 and 2006 as well as the election/ selection of 2008. Finally, it postulates as to the continued significance of an Upper House in Thailand and offers predictions for the future course of the Senate in Thailand's democracy.

## Upper Chambers: Are They Necessary?

Opponents of Upper Chambers argue that they encourage endless delays in the legislative process and enhance the clout of traditional powers, such as royalty and other propertied interests. There is also a fear that the addition of an Upper House would encumber the will of the majority (Bentham 1830 in Rockow 1928). Still, bicameralism has had many advocates. Hamilton (1788) argued that bicameralism thwarts the misguided judgments of only one house and prevents a “tyranny of the majority” given its ability to rationally veto the emotional will of the fickle masses (Hamilton, Jay, and Madison 1961: 364, 379). Also, perhaps the will of only ¼ of voters (“tyranny of the minority”) could prevail, if not for the correcting hand of an Upper House (Buchanan and Tullock 1962). Lijphart (1984) writes that Senates tend to deliberate in a much more “informal and relaxed manner”

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1 Many thanks to Aurel Croissant for his advice and assistance.

than do the generally much larger Lower Houses (Lijphart 1984: 96). Others argue that bicameralism decreases institutional corruption since more individuals would be needed for it to be successful than in a unicameral system (Levmore 1992: 156). Tsebelis and Money (1997) meanwhile hold that bicameralism promotes stability, by making diversions from the status quo more difficult. At the same time, any changes must be structured through a process of “efficient” or “redistributive” measures. They conclude that uncertainties of the other chamber’s patience combined with a structured series of legislative mechanisms help “second chambers alter legislative outcomes even if they do not have the power to veto legislation” (Tsebelis and Money 1997: 230).

During the 1970s, global trends appeared to be pushing towards a single chamber. Since then, there has been a growing move back towards two houses. Still, the International Parliamentary Union counts 114 unicameral and 77 bicameral parliaments around the globe (see table 1). As of 2009, Thailand had experienced 36 years of bicameralism and 41 years of unicameralism, with the latter specifically associated with military regimes.

Table 1: Global Parliaments

Structure of Global Parliaments	Number of Countries Possessing
Bicameral	77 (40.31%)
Unicameral	114 (59.69%)

Source: International Parliamentary Union 2008.

## Method of Selection

Throughout the world’s electoral systems, one can find extreme variations on methods of senator selection. Election is the most common method (over 50%, most by direct suffrage). Meanwhile, several Upper Houses are fully appointed. However these cases are usually in the process of democratization (e.g. Cambodia, Jordan) or else the Upper House has much less power than the Lower House (e.g. Canada). Between these two extremes are three variations. First, at least two countries use a mixed system of direct and indirect election (e.g. Spain, Belgium). Second, four states mingle direct election with appointment (e.g. Italy, Zimbabwe). Third, nineteen countries use a system combining indirect election and appointment (e.g. Ireland, Algeria). Where there is a mixing of systems (form of election/ type of appointment), the number of elected Senators normally greatly outweighs the number of appointed ones. Altogether five methods are currently utilized for the selection of Upper House membership across the world. Thailand first employed indirect election (1946-47), then made use of simple

appointment (1947-51; 1969-71; 1974-76; 1979-91; 1992-2000), thereafter shifting to direct suffrage (2000-06). But since 2008, the country has merged direct election with appointment (see table 2). Regarding a state's Upper House type (strong or weak bicameralism), this generally depends upon conditions specific to the country. Thus, a small population might indicate a weak Senate while strong federalism or strong separation of powers correlates with a strong one (Lijphart 1984: 99-105). Ultimately, there is much variation in the structure and roles of Upper Houses worldwide.

Table 2: Global Upper Houses with Manner of Senate Selection in 2008

Elected or appointed	Elected Senate			Elected/ Appointed Senate		Appointed Senate
	Direct suffrage	Indirect suffrage	Mixed suffrage	Direct suffrage	Indirect suffrage	
Form of suffrage	Direct suffrage	Indirect suffrage	Mixed suffrage	Direct suffrage	Indirect suffrage	
Where Thailand fits	Thailand (2000-2006)	Thailand (1946-1947)		Thailand (2008-Present)		Thailand (1947-2000)
World-wide	21	14	3	4	19	17

Note: Thailand is not tallied below but different historical types of Thailand's Senates are shown.

Source: Based partly on *Bienvenue au Senate* 2006.

Analyzing Thailand's own Senate has been problematical for three reasons. First, aside from works published by the Upper House itself, literature on Thailand's Senate per se has been sparse. Second, the lack of any coherent theory on the role of second chambers makes it difficult to evaluate that of Thailand. Third, democratization in Thailand has been highly discontinuous, with recurrent systemic modifications.

Nevertheless, some general patterns are evident. As a unitary country with a small-average population and no tradition of separation of powers, Thai democratic regimes have experienced weak bicameralism. But during times when the country's military has carved itself a reserved domain in the Upper House (e.g. 1968-71, 1979-2000), parliament has experienced strong bicameralism. Where Thai Senates have existed, the intended role of each seems to have been to assist executives in stabilizing the perceived capriciousness of the Lower House. Returning to the military, when it dominated Thailand, Senates were often utilized to bypass Lower Houses and rubber-stamp the will of executives. Other times they reflected the interests of powerful civilians (e.g. Pridi Panomyong in 1946-47; royalists in 1947-51, 1975-76; Thaksin Shinawatra in 2004-06). In only three instances have Senates resisted executives (1947-51; 2001-04; 2008-09) though in the

first two cases executives eventually gained the upper hand. The Upper House in 2009 is no pawn of Democrat Prime Minister Aphisit Vechachiwa, though most Senators have so far offered little opposition to his government.

## Unicameralism, Bicameralism, and Thailand's Military: 1932-2000

Since the end of absolute monarchy in 1932, Thailand has alternated between using bicameralism and unicameralism, though only a two-chamber system has been employed when the country has had a democratic regime. Thai constitutional drafters generally modelled their parliament on features specifically from France, the United Kingdom, and Germany (Avudh 2007). The country's experiences with constitutionally engineering and re-engineering its Senates have led it to sometimes strengthen the Senate and other times weaken it. Each time drafters have formulated constitutions, they have looked to models across the globe. The size of Thailand's Upper Chamber has ranged from 80 to 270 members, depending on the constitution. The country has had 11 Senates, following eight different constitutional typologies.

Thailand's first (the *Prudbi Sapha* of 1946-47) was indirectly elected by a committee composed of 178 members of the Lower House who had been directly elected by the people. This Senate was created for the professed purpose of providing wise consideration on legislation and suggestions on governmental behaviour. Yet a more instantaneous aim is alleged to have been "a demand by appointed members of the previous national assembly that positions of dignity be prepared for them before they gave approval to the revised constitution" (Wilson 1962: 207). Thus, they could continue occupying privileged posts of political power. Another potential purpose for the Senate's establishment was to lengthen the authority of Pridi Pano-myong and his followers in parliament even beyond the life-span of the Lower House (Senate terms were six years while Lower House terms were only four).<sup>2</sup> Indeed, the 1946 elections saw Pridi's faction become dominant in both houses of parliament. But only two weeks after the Upper House election, King Rama VIII was found dead. Thereupon, Pridi's prestige rapidly diminished. The coup leaders of 1947 decided to end the Senate's term, given that it was packed with Pridi's supporters (Wilson 1962: 264). For the next 63 years, the Upper House was influenced by the military.

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2 Pridi, through his majority control of the Lower House, was able to fill the Senate with his supporters. See Wilson 1962: 264; "Kiat" 1950: 97-101.

The following seven Senates (thereafter referred to as *Wutthi Sapha*) were all appointed with five especially dominated by the military. During this time, the Senate had greater power than did the Lower House, reflecting the authority of Thai generals at this time. Ironically it was the military's control of the Senate which contributed to the strengthening of the Upper House through which the military boosted its own constitutionally-derived political powers. Such powers included the following: the Senate Speaker was automatically president of parliament; senators could participate in no-confidence motions; active military personnel could serve as senators. After "Black May" 1992, the military, however, lost some of its clout. The seventh Senate saw the Speaker of the House become the president of parliament while the appointed Senate could only screen legislation (Surin 1992: 21-22, 34).

The eighth Senate was appointed under civilian Prime Minister Banharn Silpa-archa, with military Senators reduced to 48 out of 260 members. The ninth Senate (which commenced in 2000) was the first directly elected Upper House in Thailand's history. At the same time, it was an institution with considerable constitutional authority at its disposal. The strength of this new democratic Senate ironically owed to 50 years of military efforts to establish a niche within a democratic institution whereby soldiers could maintain a reserved domain to preserve their privileges. Military prowess ensured that the Senate's powers would grow considerably. Now military control of the chamber was gone but the Senate remained formidable. The tenth Upper House was also elected, but the 2006 coup voided its investiture. The eleventh Upper House, initiated in 2008, is a compromise between elected and appointed senators. And once again there is an indirect though small (15.3%) reserved domain for appointed Senators which facilitates a resurgence of military influence in the chamber (see table 3 below).

Table 3: Chronology of Thai Unicameralism/ Bicameralism

Parliament Type	Duration	Method of Membership	Number of Seats in Unicameral Chamber or Senate/ Level of Military Influence
Unicameral	1932-1933	Appointed	70 (55 or 78.5% military reserve domain of the appointed)
Unicameral	1933-1937	78 elected by Eligible Voters/ 78 appointed	156 (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)
Bicameral (First Senate)	1946-1947 (terminated by military coup)	Indirectly Elected (by the Lower House)*	80 (33 or 41.2% ex-military of the appointed)
Bicameral (Second Senate)	1947-1951 (terminated by military coup)	Appointed**	100 (35 or 35% ex-military)
Unicameral	1951-1957	123 elected by Eligible Voters/ 123 appointed	246 (106 or 86.1% military reserve domain of the appointed)
Unicameral	1957-1957 (terminated by military coup)	160 elected by Eligible Voters/ 123 appointed	186 (military reserve domain same as above)
Unicameral	1957-1958 (terminated by military coup)	186 elected by Eligible Voters/ 121 appointed	307 (98 or 80.9% military reserve domain of the appointed)
Unicameral	1959-1968	Appointed	240 (175 or 72.9% military reserved domain)
Bicameral (Third Senate)	1968-1971 (terminated by military coup)	Appointed	1968: 120 (93 or 78% military reserved domain); 1969: 44 additions: (26 military = 164 total and 72.5% military reserved domain)



Parliament Type	Duration	Method of Membership	Number of Seats in Unicameral Chamber or Senate/ Level of Military Influence
Bicameral (Fourth Senate)	1975-1976 (terminated by military coup)	Appointed	100 (17 or 17% military reserved domain)
Bicameral (Fifth Senate)	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 (Sixth Senate)	1985-1991 (terminated by military 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)
Unicameral	1991-1992	Appointed	292 (152 or 52% military reserve domain)
Bicameral (Seventh Senate)	1992-1996 (served 4-year term)	Appointed	270 (with 154 or 55.2% military reserve domain)
Bicameral (Eighth Senate)	1996-2000 (served 4-year term)	Appointed	260 (with 48 or 18.4% military reserve domain)
Bicameral (Ninth Senate)	2000-2006 (served 6-year term)	Directly Elected	200 (2% ex-military)
Bicameral (Tenth Senate)	2006-2006 (terminated by military coup)	Directly Elected	200 (0% ex-military)
Unicameral	2006-2008	Appointed	242 (with 76 or 31.4% active/ retired military or police)
Bicameral (Eleventh Senate)	2008-Present (serves until 2014)	76 directly elected/ 74 appointed	150 (23 or 15.3% ex-military)***

Notes: \* Article 24, section 2 of the 1946 Constitution stated that Senators could not be government officials. \*\* Under the 1947 and 1949 Constitutions, the ban on soldiers sitting as

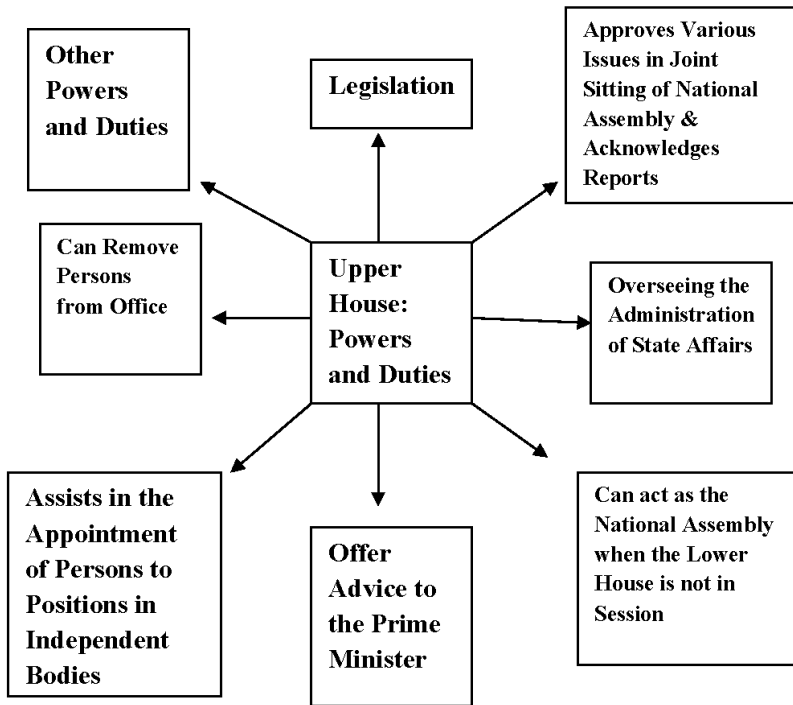
Senators continued (Article 93, Section 5 of the 1949 Constitution). Article 33 empowered the King to appoint all Senators who were nominated by a five-person Privy Council, an institution then dominated by the Army. See Thak 2007: 32. \*\*\* 15.3% of the entire 76 directly elected/74 appointed Senate was composed of retired military officials to make this an indirect reserved domain. Among the 74 appointed Senators, 14 were ex-soldiers for 9.3% military reserved domain.

Source: Secretariat of the Senate 2001: 1-3; Neher 1970: 241; LePoer 1987; Murray 1996: 6; Dorman 1993: 7; Surachart 1999: 161; *The Nation* 2006e; *The Nation* 2008d; author's calculations.

## Thailand's Ninth Senate

Though previous Senates had been mere military-dominated rubber stamps, under the 1997 Constitution, the Senate became an essential arm of Thailand's emerging democracy. As such, it had nine principal roles. First, monitoring and reviewing legislative, organic law, and appropriations bills passed by the Lower House, as well as endorsing Emergency Decrees. Second, it could select most of the members of Thailand's post-1997 autonomous bodies, including members of the Constitutional Court, State Audit Commission, and the Office of the Ombudsman. Third, the Senate could remove office holders deemed to have committed corruption or abused their powers of office in some like fashion. Fourth, the Senate could inquire into any matter within the powers of the Senate through Standing Committees, Ad Hoc Committees, and sub-committees. Fifth, the Upper House could approve important issues such as appointing a Regent, the succession to the Throne, declaring war, and concluding peace treaties. Sixth, the Senate could acknowledge reports of the Ombudsmen, National Human Rights Commission, the National Counter Corruption Commission, and the Constitutional Court. Seventh, the Senate could engage in general debate regarding the administration of state affairs (though no resolution may be passed) (Constitution 1997, chapter 6, part 3, sections 121-135, section 187, chapter 10, part 3, sections 303-307). Eighth, the Senate could meet when the Lower House was not in session with regard to matters of royal succession or when appointing or removing persons from office. Finally, the Upper House could offer advice to the Prime Minister. These new post-1997 abilities of the Senate added teeth to the body, transforming Thailand's legislature into what Lijphart might refer to as "strong bicameralism" (see above). Thus, the Upper Chamber now took an active role in the institutionalization of Thai democracy (see figure 1 below).

Figure 1: Visualization of the Powers and Duties of Thailand's Senate



Sources: Secretariat of the Senate 2001; author's observations.

The new Senate was innovative in many other aspects. First, Senators were for the first time directly elected by the people. Second, the number of Senators was fixed at 200 with senatorial terms lasting six years. In the past, the Senate's numbers had generally stood at three quarters of the House number (which had grown every election based on population censuses). Third, Senators were not allowed to consecutively contest senatorial terms. Though this requirement was designed to lessen the chances of politicians becoming dynastic office holders, they could easily have spouses or relatives proxy for them after the end of their terms. Fourth, Senators could not be members of political parties. Nevertheless, approximately 75% of all Senators were implicitly connected with parties. Fifth, Senators lost their positions should they absent themselves from 25% of the senatorial term (without permission from the Senate Speaker). Sixth, Senators had to possess at least a Bachelor's degree and must be at least 40 years old. Though this provision was seen as

boosting the degree of wisdom and maturity among Senators, it also excluded those candidates unable to afford a college education. Seventh, Senators could not simultaneously hold other political appointments. Eighth, in electoral campaigns, senatorial candidates could only introduce themselves or have the state introduce them, and advertise themselves through posters/notices. All other strategies such as public speeches were forbidden. The Thai government rationalized this last requirement as preventing partisan financial support in Senate elections as well as promoting only “an honourable, well-known, and high-qualified person” as the candidate (Secretariat of the Senate 2001: 23). Yet this rule tended to privilege senatorial candidates who were either personally famous, from well-known families, or individually wealthy.

Electorally, the novel Senate used single member district (non-transferable vote) plurality formula with hare remainder. A *changwat* (province) acted as an electoral constituency and each voter possessed a single vote. However, the number of Senators in each *changwat* was determined, first by dividing the number of the population of Thailand (as determined in the latest census) by the number of Senators (200). This quotient was then divided into the number of the population of each *changwat*. If these calculations resulted in less than 200 senators for the entire country, then the *changwat* with the largest fraction remaining gained an additional Senator. This process continued by *changwat* (largest to smallest fraction) until the number of Senators totalled 200. Single Member District (SMD) was an important device in the democratic stabilization of the Senate. Though such a system certainly promoted simple electoral stability in allowing the winner to take all votes in a simple plurality, the structure could be criticized for ignoring and wasting the votes of those who voted for all other candidates (especially where a high number of candidates contested elections). The system further assisted candidates with the most money or name recognition to win.

## The 2000 Senate Election

March 4, 2000 thus marked a pivotal point in Thailand's democratization and a key part of 1997 reformism since it saw the country's first direct senatorial election. The new Election Commission of Thailand (ECT), the state's recently established election watchdog agency, officially oversaw the voting. The ECT was assisted by numerous nongovernmental organizations (NGOs) – the first time NGOs had been allowed such a direct role in Thai elections (Surin 2002: 204). Voter-turnout was high, with as many as 70% of registered voters participating. This figure certainly owed to the new regulation making voting compulsory, though many voters were clearly

enthusiastic about increased rights to exercise their civic duty. After reviewing 108 complaints of voting irregularities from 43 provinces, the ECT eventually overturned the elections of 78 winning candidates in 35 provinces and ordered repeat elections. Ultimately, the senatorial elections went through five rounds, until July 22, 2000.

Table 4 illustrates the Senate seat breakdown following the election. Of 1,521 candidates competing for 200 seats, 114 were women. Of elected Senators, 90% were men, while 10% were women. This marked an improvement for women's representation in the Upper Chamber. The shift owes perhaps to the fact that in the pre-2000 appointed body, almost all Senators were male. The democratic quality of the post-2000 Senate thus facilitated the shift. In terms of education, 52.5% (105) of Senators possessed at least a Bachelor's degree while 7% (14) had a Ph.D. This might beg the question as to whether voters really value high education for their representatives (or education at all). In terms of occupation, the highest number of Senators, 28% (56), listed themselves as pensioners. Such an ambiguous term implied that perhaps many "pensioners" were in fact politicians. A much smaller number were from the social welfare/ labour sector (5% (10)). Also, a tiny though vocal number of new Senators (1.5% (3)) were affiliated with the mass media. However, the number of Senators formerly members of the military or police was a mere 2% (4) (Secretariat of the Senate 2001: 75).

**Table 4: The 2000 Senate – Seat Distribution Breakdown**

Occupation	Percentage (Number)	Region	Number	Age	Number
“Pensioners”	28% (56)	Bangkok	18	41-50	56
Businesspeople	18.5% (37)	South	29	51-60	52
Attorneys	12.5% (25)	North	31	61-70	84
Politicians	8% (16)	Northeast	65	Over 70	8
Bureaucrats	8% (16)	Central Plains	42		
Social Welfare/ Labour	5% (10)	East	13		
Agriculture	4.5% (9)				
Physician	3.5% (7)				
Teacher	3% (6)				
Military/ Police	2% (4)				
Media	1.5% (3)				
Public Worker	1.5% (3)				
Executive	1.5% (3)				
Other	2.5% (5)				

Occupation	Religion	Number	Gender	Number
“Pensioners”	Buddhist	190	Men	179
Businesspeople	Muslim	8	Women	21
Attorneys	Christian	2		

Source: Secretariat of the Senate 2001: 71-73.

The Senate election seemed to be a victory for Thai democratic reformism. But it was deficient in several areas. First, the official non-political character of the senatorial elections (as enshrined in the constitution) proved to be unrealistic. Surin (2002: 205) claimed that winning senatorial candidates with tight political connections comprised 75% of the new Senate while mostly only Bangkokians elected most of the 18 Senators because of non-political reasons. As a result, despite the transition from appointed old-guard Senate to directly elected, reformist Senate, most of the Upper House maintained its conservative character. Secondly, the “dirty politics” of vote-buying, seen as a thing of the past, reared its forgotten head in the Senate elections (both in the provinces as well as in Bangkok). This despite constitutional changes to the electoral system that had apparently made vote-buying much more difficult to engage in, especially with regard to senatorial elections where candidates were much more limited in campaigning than their brethren in the Lower House. The occurrence of such unbridled electoral irregularities led to the third problem: the aforementioned five rounds of re-elections (as mandated by an ECT determined to cleanse and re-cleanse tainted voting) which also succeeded in delaying senatorial work.

The elected second chamber got off to a quick activist beginning, appointing members of independent “watchdog” bodies, monitoring Lower House bills, issuing numerous reports, and investigating a myriad of controversial issues. For example, Kraisak Choonhavan, chairman of the Foreign Affairs Committee, led his members on a mission to investigate the narcotics problem on the Thai-Burmese border. In October 2000, the Upper House voted 148-9 to enhance the powers of the independent Electoral Commission, giving the body the right to search private residences for evidence of electoral fraud and allowing it to issue “modified red cards” whereby Lower House candidates could be disqualified without criminal charges being filed.

Despite the 2001 landslide victory of Thaksin Shinawatra’s Thai Rak Thai (TRT) party, the Senate proved to be a thorn in the new administration’s side. That year, Senator Manoonkrit Rupkachorn, an ex-general and serial coup-planner with ties to the opposition Democrat Party, was elected Speaker of the Upper House. Manoonkrit effectively shifted the balance of power in the Senate against the Thaksin government. Under his stewardship, in 2001 the Senate appointed Jaruwat Maintraka, a no-nonsense corruption-buster, to the Office of Auditor-General. The Senate further rejected the entire method by which the National Telecommunications Commission selected panelists, saying the process was “illegal, non-transparent” (*Bangkok Post* 2001). Manoonkrit meanwhile backed claims by journalists that there were links between nominees to the National Broadcasting Commission and broadcasting businesses. In early March, 2002, Manoonkrit’s Senate accepted a petition from the Thai Journalists’ Association alleging that the Thaksin administration had abused press freedom and the right to privacy when it ordered the Anti-Money Laundering Office (AMLO) to scrutinize the bank accounts of 64 journalists and NGO members, all of whom had been critical of the government (*Bangkok Post* 2002).

But by 2003, a growing Senate majority was increasingly managing to guarantee the selection of pro-Thaksin appointees to posts in independent organizations such as the Election Commission while pushing for the retirement of Manoonkrit as Senate Speaker – he eventually resigned from the post in January 2004 (*The Nation* 2003). In his place, the Senate elected pro-Thaksin Senator Suchon Chaleekrua. From 2004 until the end of the term in 2006, Suchon led a majority of Senators to make the Senate into Thaksin’s virtual rubber stamp. Decho Sawananon, a former Constitution drafter, stated that the number of pro-Thaksin Senators had grown from 40 in 2001 to 120 in 2004. He explained that 120 was a key number because the Constitution stated that three-fifths of the Senate was required for impeachment of politicians. “Since the Senate can no longer keep the government in

check, maybe it is time the Senate should be dissolved”, he added (Somrou-tai 2004). Meanwhile, allegations of Senators selling their legislative votes increasingly plagued the body (*Matichon* 2005).

Still, a vocal minority of approximately thirty Senators led by Chirmsak Pinthong, Jon Ungpakorn, and Thongpai Thongpao, among others continued to criticize Thaksin (from author's calculations). In 2005 Suchon's Senate dismissed Auditor-General Jaruvan Maintraka, who had in 2003 investigated possible fraud in construction contracts involving Suvannaphumi Airport. The Upper House replaced Jaruvan with someone expected to not make trouble for the administration. However, the anticipated royal endorsement of this action failed to come in the required three months, possibly reflecting King Bhumipol Adulyadej's personal opposition. This unexpected turn of events amounted to an enormous loss of face for Suchon and the Upper House. Within months, the body had reinstated Jaruvan as chief auditor. But it was this 2005 auditor-general imbroglio in the Senate which helped to set in motion a political crisis the following year. In 2006, there was an election for new Senators. But 2006 also saw sitting Senators become increasingly enmeshed in the nationally polarizing issue of Thaksin Shinawatra – cut short by the September military coup d'état.

## Thailand's 2006 Senatorial Election

The 2006 senatorial election witnessed voter turnout at a lower-than-expected 63% despite the fact that voting is required (*Bangkok Post* 2006c). This perhaps owed to the election occurring just after the April 2 Lower House snap election. The poll saw 27.5 of 45 million eligible voters choosing 200 of 1,477 candidates vying for seats in the elections. According to People's Network for Elections (P-Net), a democracy watchdog, vote-buying was rife, with the cost of a vote ranging from 20 THB (53 U.S. cents) to 1,000 THB (26.50 USD). Meanwhile, the Asian Network for Free Elections criticized the election for using small, nameless ballots as well as for banning senatorial campaigning. The group also slammed Thailand's Election Commission for inefficiency and incompetence in managing the poll (*The Nation* 2006a).

Table 5 illustrates the Senate seat breakdown following the 2006 election (though the body was never actually installed). Businesspeople (and politicians classifying themselves as such) were once again dominant in the Upper Chamber. Interestingly, following this election, there were no Senators with police or military backgrounds, which would have made the 2006 Senate the first in Thailand's history without such an enclave. The 2006 Senate also possessed younger members than its predecessor. A final novel



development was that the 2006 Senate election increased the number of females in the Upper Chamber over 100%. In the previous Senate, the number of women had been 10.5% while in this Senate, the number was 23.5%. The distribution of seats by religion remains unavailable.

Table 5: The 2006 Senate – Seat Distribution Breakdown

Occupation	Number	Region	Number	Age	Number	Gender	Number
Business/ Executives	96	Bangkok	18	31-40	3	Men	153
Bureaucrats/ Social Workers	59	South	29	41-50	70	Women	47
Attorneys	12	North	31	51-60	81		
Physicians	7	Northeast	65	61-70	46		
Artists/ Writers	6	Central Plains	42				
Teachers	5	East	13				
Other	15						

Source: International Parliamentary Union 2006.

The election results clearly reflected an enormous victory by Thaksin-backed candidates. Up to 106 Senate winners were relatives or allies of the ruling Thai Rak Thai (TRT) party headed by caretaker Prime Minister Thaksin Shinawatra and 38 others were tied to the Democrat and Chart Thai parties (Mu 2006; Wong-anan 2006). Allegations raged that 170 senate winners were linked to parties and charged that the election results proved that the senate had become a “House of Proxies” (*Bangkok Post* 2006b: 3). Academic Banjerd Singhaneti, acknowledging the partiality of senate winners, argued,

If we try to stipulate that this or that elected body should be impartial, it’s inevitably tied to political interests. Then it’s not possible to have impartiality, because politicians would intervene to protect their own interests (*The Nation* 2006b).

The outcome also exposed extreme polarization in Thailand between Thaksin-supporters in the north and northeast and Thaksin-detractors in the South and much of Bangkok. Indeed, in Bangkok, only two candidates connected with TRT won senate seats (Nattaya and Ampa 2006). Still, given the apparent lopsided victory for TRT, the election results were a nightmare for those opposed to Thaksin. The results promised an evolving trend which had begun in 2004: increasing domination of the Upper House by TRT. Incumbent Senate Speaker Suchon’s out-going regrets for inadequate checks on Thaksin’s administration seemed like an extreme understatement (*Bangkok Post* 2006a).

Shortly after the 2006 election, it became clear that the same partisanship, endemic in the 2000-2006 elected Senate, was sure to loom over its successor. Indeed there were estimates that the ruling TRT was behind nearly 100 senators-elect, while the Democrat, Chat Thai, Mahachon and Pracharaj parties unofficially supported 22, six, four and two respectively (*The Nation* 2006c).

On May 9, the Election Commission of Thailand (ECT) verified the victories of 109 Senate candidates, continuing to probe 91 others (Mongkol 2006). However, certifications ended when one ECT commissioner resigned and three others were found guilty of malfeasance on July 26. For a few months, Thailand possessed two Upper Houses: an incumbent body and a Senate in Waiting. Given the Election Commission's sluggishness in confirming new Senators and inability to complete its duties, the incumbent Senate held a special session to wrap up all outstanding work.

By September 2006, it seemed an insidious irony that the Senate, blamed by many as a bastion of bribery, lethargy, and a rubber stamp for the executive, was being called upon by the nation to choose non-corrupt, neutral commissioners for the ECT. That was a tall order for a body which had installed highly-politicized pro-TRT loyalists into "independent" bodies). Now the Senate was being counted on to select a new ECT and help usher in a new Senate.<sup>3</sup> The speed and ability of this Senate to finish its work on these matters would furthermore determine the eventual date of a new election for the Lower House – which might have to be pushed to 2007. Amidst these events, the military coup d'état against Thaksin occurred (19 September 2006). The 1997 Constitution, the Senate, and Thailand's democratic regime were immediately terminated.

## Evaluating Thailand's Directly Elected Senate

Thailand's 2000-2006 Upper House proved to be a great disappointment for the 1997 Constitution drafters. Senators, who were supposed to be non-partisan under the rules, were actually quite political. Indeed, though political party affiliations did not exist, the Senate became divided into camps, one pro-TRT, and the other vaguely pro-Democrat. First, there was the initial diehard group of senatorial supporters who were clandestinely tied to TRT through election or regional identity – only 10% of all Senators. Sec-

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3 Pressure from all sides – Thaksin, civil society, and the Privy Council led the incumbent Senate to race through selecting five new election commissioners, whose appointments were being readied to be confirmed by the Palace on the day of the September 19 coup. See *The Nation* 2006d.

ond, as time went on, Senator-businesspeople needing Thaksin's aid increasingly backed him in the Senate. Third, those Senators, with family relatives affiliated with TRT, became drawn into Thaksin's orbit. Fourth, those Senators who wanted their relatives supported or elected by TRT became apt to support Thaksin. Fifth, there were Senators supportive of Thaksin because they were paid off by TRT. Sixth, as the end of the term drew near in 2006, there were Senators who sided with the government because they wanted to please the one in power (and thus possibly the administration would help them out later).<sup>4</sup> Ultimately then, Senate candidates (successful or not) were mostly dominated by affiliations based on family, indirect links to political parties, factional connections, business, or general patronage. Often these linkages were simply a means to skirt the rule prohibiting consecutive senatorial terms. Meanwhile, Senate committees had no power to subpoena individuals to testify. As a result, the Senate could not force officials to testify and exact punishment on those deserving it.<sup>5</sup> Finally, senatorial successes were few and far between: the upper chamber's legislative process was either slow and cumbersome or simply failed to work as an instrument of checks and balances.

Table 6 displays Senate Speakers, their affiliations, and legislative progress across the 2000-2006 term. It shows that the number of bills modified or vetoed, motions, and inquiries diminished by close to 50% upon pro-TRT Suchon Chaleekrua's assumption of the post of Senate speaker in 2004. This paralleled the growing pro-Thaksin majority in the Upper House. The table significantly suggests that the political linkages of the Senate Speaker determined the extent of Senate actions from 2000 to 2006. Indeed, as one Senator told the author, the biggest problem with the Senate was that Thaksin could and did intervene too much in senatorial affairs.<sup>6</sup> TRT's covert financial assistance to Senate candidates brought the Upper House under the control of Thaksin.<sup>7</sup> Ultimately, the Senate hardly reflected what its 1997 designers had had in mind. As the Deputy Senate Speaker lamented toward the end of the term,

[this Senate] had never been responsible or accountable because Senators did not adequately do their duties under the 1997 constitution.

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4 Author's interview with Senator Chirmsak Pinthong, February 9, 2006.

5 Author's interview with Senator Intarat Yodbangtoey, December 27, 2005.

6 Author's interview with Senator Udorn Tantisunthorn, February 10, 2006.

7 Author's interview with Senator Intarat Yodbangtoey, December 27, 2005.

The only useful parts of the Senate had in fact been committee investigations.<sup>8</sup>

In a country where elected representatives were often negatively viewed as corrupt while the pre-2000 Senate had generally been appointed, the apparent growing partisanship and corruption in the elected Senate was seen as a dilemma requiring immediate resolution. Such dissatisfaction led to the redesigning of the Senate in 2007.

## Reforming Thailand's Upper Chamber

Following the September 19, 2006 army putsch, the Council for National Security established a National Legislative Assembly (NLA) to act as a unicameral caretaker 242-member parliament until the next general election. The NLA established a Constitution Drafting Assembly (CDA) to draft Thailand's 18<sup>th</sup> constitution. The CDA created a Constitution Drafting Committee CDC to spearhead constitutional modifications.

In early 2007, powerful voices, including those of coup leader Gen. Sondhi Boonyaratglin, Prime Minister Gen. Surayud Chulanond, NLA Speaker Meechai Ruchuphan, and CDC head Prasong Soonsiri increasingly pressed for a Senate devoid of partisanship, nepotism, money politics, and institutional weakness. As such, the CDC began examining various blueprints for a new Upper House. Too weak a Senate would become another rubber stamp; too strong a Senate might lead to gridlock; no Senate might mean no review of bills from the Lower House. Most importantly, if the drafters really wanted to promote pluralism, they needed to ensure that the Senate would remain an arena where representatives of Thai people could express themselves. An appointed Senate, especially one hosting allies of the military, would be unacceptable to any country striving towards democracy, decentralization, and accountability (Chambers and Waitoolkiat 2007). Still, as early as January, the drafters were already mulling the probability of both downsizing the Senate and making it an appointed rather than an elected body (*The Nation* 2007a).

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8 Author's interview with First Deputy Speaker Senator Nipon Wisityuthasart, December 27, 2005.

**Table 6: Comparisons of Senatorial Actions across Six Years (Including Senate**

	<b>2000<sup>a)</sup></b>	<b>2001</b>	<b>2002</b>
Senate Speaker	Sanit Vorapanya	Manoonkrit Rupakachorn	Manoonkrit Rupakachorn
Political Connections	Alleged to have favoured Thaksin S., TRT <sup>d)</sup>	Linked to Sanan Kachonprasert, Democrat P.	Linked to Sanan Kachonprasert, Democrat P.
Number of Laws received for deliberation for year	51	28	27
Number of Draft Laws actually deliberated	51	57	47
Number of Laws actually enacted	27	46	35
Number of Bills passed by Lower House, seconded <u>as is</u> by the Senate	14	13	9
Number of Bills passed by Lower House, later modified by the Senate	13	22	26
Vetoes, abatements	1	0	2
Number of bills still being considered	23	11	10
Number of Senatorial Motions	16	53	49
Number of Senatorial Inquiries	30	161	107
Number of Royal Enactments	0	1	3

Speaker and Political Connections)

2003	2004	2005	2006 <sup>b)</sup>	Total
Manoonkrit Rupakachorn	Suchon Chaleekrua	Suchon Chaleekrua	Suchon Chaleekrua	
Linked to Sanan Ka- chonprasert, Democrat P.	Linked to Sanoh Tien- thong, Thak- sin S., TRT	Linked to Sanoh Tien- thong, Thaksin S., TRT	Linked to Sanoh Tien- thong, Thaksin S., TRT	
40	62	25	NA	<b>233</b>
52	75	46	NA	<b>328</b>
36	50	27	17 (15 before coup; 2 after coup)	<b>238</b>
13	20	16	NA	<b>85</b>
23	30	11	NA	<b>115, 125<sup>c)</sup></b>
4	3	2	NA	<b>12</b>
12	22	17	NA	<b>95</b>
15	12	18	NA	<b>163</b>
116	210	122	NA	<b>746</b>
2	5	1	NA	<b>12</b>

Note: <sup>a)</sup> The directly elected Senate began to operate only in August 2000. <sup>b)</sup> 2006 likewise represents only ½ of an annual Senate term. The figures for 2006 are not available (NA). <sup>c)</sup> In this case, two sources did not agree on the total number. <sup>d)</sup> Thaksin S., TRT = Thaksin Shinawatra's TRT.

Source: Compiled by the author from Secretariat of the Senate 2001, 2006.

Although the CDC was given the job of devising the new Senate (under a new constitution), Thai voters were ultimately given the power to approve or reject the draft in an August, 2007 referendum, the first in Thailand's history. Yet the state made few attempts to expeditiously and meaningfully educate Thailand's populace about the document prior to the vote.

On April 10, 2007, Thailand's Constitution Drafting Committee (CDC), reaching agreement on the constitution's first draft, voted in favour of making the Senate an appointed rather than an elected body. The new Upper House would have 160 members – all appointed, 76 representing provinces (one per province), and 84 representing various functional groups in Thai society. A selection committee of five people – three from the courts plus the House speaker and opposition leader – would select future senators. One innovation (not included in the final draft) would have stated that after every three years, half or 37 of the appointed senators would draw lots in a screening process that would allow new appointments.

The new Senate formula faced immediate criticism. Phairoj Pholphet of the Union for Civil Liberties (UCL) opined that the Senate blueprint was undemocratic, as it “gave absolute power to a selection committee while barring participation from the people” (Subhatra 2007). Meanwhile, Suriyasai Katasila of the Campaign for Popular Democracy (CPD) said that an appointed Senate would promote a system of patronage while the process of appointing Senators could be easily influenced (*The Nation* 2007b). Finally, Somchai Srisutthirvakorn of the People's Network for Elections (P-Net) argued that there was no evidence an appointed Senate could somehow perform more satisfactorily than an elected one (*The Nation* 2007c).

In early June, following reviews by various organizations (including the junta), the CDC completed the second draft of the constitution. The new version called for a 150-seat Senate with some members elected and others appointed. Each of Thailand's 75 provinces (plus Bangkok) would possess a Senator elected through the method of plurality/ single member district where district magnitude equals the entire province (Section 112, Constitution 2007). The remaining 74 senators would be appointed from candidates nominated by organizations from various sectors: academia (15), government (14), the private sector (15), the professional sector (15), and miscellaneous (15). Nominating organizations must be established in Thailand for at least three years (Section 114, Constitution 2007). Also, they had to be non-political (the method by which the selection committee determines this condition is unknown) as well as non-profit-making. This was a requirement which would appear to be at odds with allowing private sector organizations nominate candidates (Section 127, Organic Act 2007).

A seven-member senator selection committee would select senators from these candidates within 30 days of the deadline for official receipt of nominee lists. The committee would be composed of the following officials: the president of the Constitution Court, the Parliamentary Ombudsman, the chairpersons of the Election Commission, the National Counter-Corruption Commission, and the State Audit Commission, and representatives selected by the Supreme Court and the Supreme Administrative Court (Section 113, Constitution 2007). Resolution to select Senators would be by bare majority (Section 130, Organic Act 2007). CDC Deputy Chairman Charan Pakdithanakul argued that the appointed group of Senators (rather than those elected to the Upper House) would bring “decent and neutral” candidates into the body (Sathien 2007). Noticeably absent from the second draft was the inclusion of two officials on the committee directly elected by the people (the House Speaker and Opposition Leader). This second draft Senate design was approved by the CDA on June 22 and ultimately enshrined into the 2007 Constitution.

But criticisms dogged this final blueprint. Ex-Senator Karun Saingam contended that the appointment process amounted to a conflict of interest. Since the new Senate could appoint or impeach Senate-selection-committee officials while the committee picked Senators, there was a fear that malfeasant relations could develop between members of the Senate and judiciary. Meanwhile, ex-Senator Chirmsak Pinthong stated that the panel’s appointment of almost half the Senators would lead to candidates vying for support from high-ranking bureaucrats, throwing Thailand back to the patronage system (Weerayut 2007). Komsan Phokong, a charter-writer, stressed that there could be further conflict-of-interest problems since the Senate-appointed Constitution Court president, while acting as head of the selection committee, might be asked to rule on selection disputes (*The Nation* 2007d). Former Election commissioner Gothom Ariya furthermore charged that by modifying the Senate, the CDC “wanted to readjust the balance of power [from the electorate] and give more say to the bureaucracy” (quoted in Fuller 2007). Yet another problem with the new Senate involved the associations which could nominate senatorial candidates. There were no “organizations” for farmers or those in menial occupations. Thus, professional groups or elites could dominate the Senate (Pravit 2007a). A related issue arose regarding the military’s demand that each of the services – the Army, Navy, and Air Force – be allowed to nominate five candidates (rather than one candidate under the regulations) given that the armed forces possessed a much larger membership than most other organized sectoral groups. Some charter writers feared that giving way to the military demand would mean enhanced power for the military and bureaucracy in the Senate. The CDC



was never able to reach a decision on the number of military Senate nominees and thus it was left ambiguous (Pravit 2007b).

The new Senate rules proved both similar to and different from the previous Senate. The Senate under both the 1997 and 2007 Constitutions mandated that Senators had to be at least 40 years of age and holders of at least a Bachelor's degree (Section 115 [2], [39], Constitution 2007). Two other similarities were that Senators could not be members of political parties while senatorial terms were to be six years in length with Senators forbidden from serving for consecutive terms (Section 117, Constitution 2007; Section 115 [5], [6], Constitution 2007). Still, an added requirement was that Senators could not be an "ancestor, spouse, or child of the members of the House of Representatives" (Section 115 [5], Constitution 2007). Indeed senatorial candidates had to have resigned from political parties, stopped being a member of the Lower House, or resigned from being a minister or local official, at least five years prior to nomination (Section 115 [6], [9], Constitution 2007). Another modification was that, whereas under the 1997 Constitution 50,000 eligible voters were required to submit a petition to the President of the National Assembly to consider legislation (Article 170, Constitution 1997), under the 2007 Constitution that number was reduced to 10,000, and they were to petition the President of the Senate (Article 163, Constitution 2007). Likewise, under Article 271, eligible voters of at least 20,000 could legally petition the Senate President to remove persons from office (up and including Prime Minister). The 1997 Constitution never allowed a petition of this kind. However, as with the previous constitution (Sections 304-07) the 2007 charter stated that the Senate could remove someone from office by a three-fifths vote (Sections 270-74).

Ultimately, the Senate, as enshrined in the 2007 Constitution, was now more directly responsive to popular petition drives either for legislation or removing officials from office. Simultaneously, the new Senate formula appeared to be part of a pattern running through the new constitution: less power for elected politicians and political parties; more power for Thailand's judiciary, military, and related bureaucracy. Indeed it appeared that Thailand had now made a semi-U-turn back to the pre-1997 constitutional system in at least partially appointing its Senate.

## Thailand's 2008 Senate Selection/ Election: 74 Appointed/ 76 Elected

Would Thailand's new Senate be less partisan and more efficacious in carrying out its duties? This was the hope of the 2007 charter drafters. 1.8 billion THB was earmarked for the EC to organize the election of 76 senators and

appointment process of 74 others (*The Nation* 2007e). As for the appointments, the new seven-person senatorial selection committee agreed to accept senatorial nominations (for selection-quota positions) in early January 2008. The selection committee consisted of six persons since the Supreme Court chief justice was concurrently serving as acting head of the Constitution Court (Atthayuth 2007). All committee members had been appointed under the junta-created interim government, were anti-Thaksin crusaders, or had participated in the annulling of the 2006 electoral victory of Thai Rak Thai. In order to reduce the expected large pool of candidates, an EC-appointed panel vetted the credentials of the Senate nominees before allowing them to proceed to the committee. The aim was to gather together senators who would be representatives from professional groups, private enterprise, the public sector, academics, NGOs, labour groups, religious organizations, and others.

Meanwhile, 34 members of the 216-member 2006-8 National Legislative Assembly resigned from their seats to vie for Senate seats. These included 10 potential anti-Thaksin stalwarts (*The Nation* 2008a). In the end, 1,087 selection-quota candidates were nominated by various state and societal organizations. The nominating organizations were quite disparate, including a Chumphon-based Durian Growers Association, a temple-related foundation, and an association of apartment-business owners. The selection committee screened these applicants, specifically rejecting any nominees whose candidacies did not correspond to the rules (e.g. nominees belonging to political parties were discarded as were those who had not left politics in the previous five years). Ultimately, 148 were actually short-listed for the selection of the final 74 by the selection committee. The final 74 were announced on February 19 (*The Nation* 2008b; 2008c).

The 74 were predominantly (retired) business-folk or government officials and most were aged in their 50s or 60s (five senators were in their 40s while a single septuagenarian (Lt Col Kamol Prachupamoh, 72) had won election). Only 17 appointed senators came from the functions of NGOs or academia – non-private enterprise dimensions of civil society. This functional tilt ensured that the appointed Senators would have a conservative edge and be dominated by a nexus of bureaucrats and entrepreneurs. Meanwhile, the military and police were granted a pseudo-reserved domain (an indirectly set-aside sphere of influence) within the appointed grouping of Senators. Five out of 14 Senators in the Government Sector were previously military/ police personnel. This included two representatives from the Army and one each from the Air Force, Navy, and Police. Finally this Senate grouping included a former Deputy Secretary General of the Council of National Security. All in all, 9.3% (14/ 150) of the Upper House is com-

prised of retired military. This included six former police, four former army, two former air force, and two former navy officials – as well as the former aforementioned NSC official (based on author’s calculations).

The election date was set for March 2, 2008 with one elected senator per province. Senators contesting polls were elected using the aforementioned formula of winner-take-all single member district (with the electoral district equal to one province or the Bangkok Metropolitan Area, BMA) for a total of 76 Senators (75 provinces + BMA). Overall, 505 candidates registered as candidates with 35 in Bangkok alone (Suphon 2008). Thailand’s Election Commission expected a voter turnout of 70% for the race and sought to keep invalid ballots at no less than 3% (Mongkol 2008). Upon the seating of at least 95% of the new Upper House (with a quorum of 93 out of 150), members of the military-appointed National Legislative Assembly, then acting as the Senate, would step down. Given the near landslide victory by Thaksin proxy People’s Power Party (PPP) in the December 23, 2007 Lower House election, it was reasonable to assume that most senatorial candidates aligned with Thaksin would also achieve victory – and thus ensure that most of the elected 76 senators would be pro-PPP.

Though Section 115 (5) of the 2007 Constitution forbade ancestors, spouses or children of current or former MPs from running as Senators, relatives or cronies did indeed contest the polls. Table 7 below lists some connected candidates from each region.

Though the Election Commission campaigned to “get out the vote”, fewer than 30% of people surveyed admitted to being aware of the election for 76 senators countrywide on the day of the election (*Bangkok Post* 2008). Ultimately, approximately 55.6% of eligible voters (44.9 million people) took part in the election. This despite mandatory voting requirements and numerous EC campaigns to ensure at least 70% turnout. 8% of voters chose no candidate. EC Chairman Apichart Sukhaggonond rationalized that

Voters might be bored with so many elections [the General Election had only occurred on December 23, 2007] and Thai candidates had had only two months to campaign [for voters to cast their ballots] (Kesinee 2008).

**Table 7: 2008 Senate Election Candidates and their Political Linkages**

Region	Province	Name	Elaboration
North	Chiang Rai	Chongsuthamane Wattanasirithorn	Younger sister of PPP MP Mongkol Wattanasirithorn
	Phitsanuloke	Pibulkaew Krairiksh	Sister of Dem MP Juti Krairiksh
	Phetchabun	Somporn Jooman	Sister of PPP MP Wanphen Prompat
	Phrae	Ongart Uae- apinyakul	Brother of PPP MP Worawat Uae-apinyakul
	Uttaradit	Narumon Siriwat	Wife of former MP Chaipak Siriwat and an assistant to former TRT MP Suwat Liptanpanlop
Central	Sukhothai	Suampha Kotchakrai	Confidant of Matchima- thipataya Party Secretary General Anongwan Thepsutin
	Pathum Thani	Sirinart Harnsawat	Sister-in-law of former TRT MP Chuchep Harnsawat
	Rayong	Kimhor Leesengheng	Sister of Yongyos Arunvessa- sate (former PPP candidate)
	Samut Prakan	Sompong Prasopdee	Brother of PPP MP Pracha Prasopdee
	Suphanburi	Prasit Potasuton	Brother of Chart Thai Secretary General Prapat
Northeast	Chaiyaphum	Apirak Chaiwratana	Son of former TRT MP Prasit Chaiwratana
	Nakorn Ratchasima	Sumet Sripong	Close friend of former TRT MP Suwat Liptanpanlop
	Khon Kaen	Prasert Suksueksaphan	Brother of a former MP close to Suwit Khunkitti
	Ubon Ratchathani	Nitha Theimsuwan	Sister of former TRT MP Kittipong Theimsuwan
	South	Narathiwat	Waeduramae Wada- oh
Yala		Tuan Da- ohmareeyor	Relative of former TRT MP Wan Mohammad Noor Matha
Petchaburi		Suchin Wachiranukoon	Aide to Dem party deputy Alongkorn Polabutr

Source: Based upon Sucheera 2008 and Manop and Mongkol 2008a.

The EC considered 4% of ballots to be invalid, higher than in the December 2007 general election. In Bangkok, anti-Thaksin consumer advocate Rosana Tositrakul sailed to a landslide victory (Manop and Mongkol 2008b; Kamol 2008). Along with Rosana, 27 Senate candidates formerly won the 2006 Senate election.

As for election irregularities, reports varied. There were immediately 34 accusations of fraud from Chiang Rai, Amnart Charoen, Ubon Ratchathani,

Prachuap Khiri Khan, Nong Khai, and Phrae (*The Nation* 2008e). Five of these six provinces were bastions of Pro-PPP support. The chairman of the Chiang Mai EC said some candidates had bribed local sub-district heads and village headmen, but he had no evidence to prove it (Kesinee 2008).

The Senate election outcome reflected the selectoral identity of its winners, both appointed and elected. Table 8 delineates the functional breakdown of 74 appointed Senators and 76 elected Senators. It also indicates seats by gender, showing that the number of women Senators dropped 7.5 percentage points. Women represented 10.5% of the 2000-2006 Senate. This grew to 23.5% in the 2006 Upper House (which was never actually consolidated). However, the 2008-Present Senate contains 16% (see below). What accounted for these dramatic shifts? The pre-2000 Senate was a chamber of mostly male appointees. Regardless, in Thailand’s rapidly-evolving civil society, women (e.g. Chodchoi Sophonpanich) have played growing leadership roles (in NGOs, etc.). These positions have provided platforms from which they could compete in elections including the senatorial contests of 2000, 2006, and (partly) 2008. More women candidates ran in the 2006 than the 2000 race and more won. The fact that the percentage of female Senators is still higher in the half-elected post-2008 system than following the fully-elected 2000 race owes to the continuing interest of female candidates and changed character of appointees. As appointees are supposed to be from a multiplicity of functions (rather than mostly the military), this has facilitated a higher number of female appointed Senators than in the pre-2000 system. At least women’s representation is higher than the global average (15.47%) as well as the 2007 percentage in Thailand’s Lower House (11.7%). Statistics on the distribution of Senate seats by age and religion remain unavailable.

**Table 8: 2008 Senate Seat Distribution Breakdown**

Occupation	Number Appointed	Number Elected	Total	Gender	Number
Bureaucrats	19	21	40	Men	126
Private Sector	17	17	34	Women	24
Politicians	0	19	19		
Academics	12	4	16		
NGO	5	2	7		
Military/ Police	14	9	23		
Other	7	4	11		

Source: International Parliamentary Union 2008; Manop and Mongkol 2008b.

## 2008 – A New Senate

The new 2008 Senate was disappointing in some ways. Like its predecessor, open partisanship rapidly appeared in the body as two senatorial cliques clashed (*Krungthep Thurakij* 2008). Moreover, new Senate Speaker Prasobsuk proved unable to effectively mediate the crisis of late 2008 (between the People's Alliance for Democracy (PAD) and the pro-Thaksin Samak and Somchai governments). At the same time, the new Senate had three successes. First, in terms of appointing officials to office, the Senate was not stymied by the executive. Secondly, the Senate appeared to be somewhat successful in seeking passage of legislation. Finally, through the use of senatorial petitions, members of the Senate have been able to force the resignation of office-holders, including Prime Minister Samak himself (*Chiang Mai Mail* 2008; *The Nation* 2008f). Indeed, one could argue that this ability to petition is perhaps one of the most prominent weapons in the Senate's arsenal today. Though considered a toothless tiger at the onset of its term in early 2008, by 2009, the Senate appeared to be exerting a modest influence on Thailand's institutionalized politics. Regardless, the body remained only partly elected, a situation which some believed needed drastic re-engineering (so that the Upper Chamber could reflect a greater commitment to democracy) while others preferred the body to remain as a sort of half-appointed House of Lords (which would not apparently succumb to corruption).

## Conclusion: Engineering an Upper House for Thai Democracy?

The experience of Upper Houses in Thailand reveals a decided preference among elites for an appointed body which can be relied upon to safeguard the institutional pillars of power – entrenched elites, bureaucrats, and the judiciary. The 1997 Constitution represented a movement toward political space – indeed, a democratic break – with a traditional power equilibrium which had guaranteed a pseudo-bureaucratic autocracy over much of the political arena. Thus, only in 2000 did Thailand gain its first elected Senate. But drafters thought they could construct a Senate devoid of partisanship and politics – dirty words in Thailand's political system. As such, senatorial campaigning and affiliation with political parties were forbidden. Eventually, many members of this elected Senate became supportive of Thaksin – lured perhaps by cash payments or at times by their more sincere support for the man and his policies. Therefore, when the 2006 coup voided the 1997 Constitution (which had brought Thaksin to office), the drafters of the 2007

Constitution viewed Thailand's 2000-2006 Senate (and the body's eventual domination by Thaksin) as a failed experiment.<sup>9</sup>

The 2008 Senate ascended to office as a compromise: half appointed and half elected. The democratic part of the body was but a token granted to pro-civil rights groups. The appointed portion was meant to maintain some degree of parliamentary stability and influence by entrenched bureaucratic actors. Ultimately, it appears that the influence by the military over Thailand's pre-2000 Senates has indirectly returned (though on a lesser scale) in the post-2008 Upper House. Where Thaksin once lorded over the chamber, in 2009 it was dominated by anti-Thaksin traditionalists.

Still, political parties of all shades and hues have voiced their intentions to amend the constitution to allow once again for an elected Senate. Most recently, Prime Ministers Samak and Somchai sought to make such changes. Prime Minister Abhisit has likewise supported an eventual constitutional modification for a more pluralistic Senate. Perhaps as stability returns to Thailand in the wake of the December 2008 political crisis, political forces across the spectrum will eventually allow a return to the country's trajectory towards greater democracy. In such an environment – and with elite actors acquiescing – Thailand's Upper House can once more be a directly-elected body.

Bicameralism is perhaps more appropriate for Thailand than is unicameralism. Given the array of forces in the country (the palace, royalist demonstrators [the PAD], pro-Thaksin demonstrators [the UDD] the military, police, political parties, business conglomerates and associations, various NGOs), if an unicameralist system became dominated by a single party, the result could rapidly facilitate parliamentary domination and national strife. Conversely, a two-chamber system offers all of these political players an institutional voice.

Meanwhile, the Senate can and should be made more effective than under the 1997 Constitution. For example, mechanisms should be enacted to monitor senatorial elections more closely; senatorial campaigning should be allowed; senatorial behaviour should be more closely monitored; committees should have greater subpoena power. Such reforms might diminish vote-

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9 Continuing electoral victories by candidates favoured by Thaksin Shinawatra contributed to a distaste among Thaksin opponents for the electoral method which ushered in the Senates of 2000 and 2006. Indeed, the People's Alliance for Democracy, charging that Thaksin's enormous rural constituency merely sold their votes, favours a "New Politics" where it initially sought to make parliament 70% appointed but now opts to transform the electoral system such that 50% of Parliament is elected by geographic area and the other 50% by occupational representatives. See Komchadluek 2008.

buying; improve the electoral chances of lesser-known candidates (though also perhaps increase vote-buying); reduce malfeasance in office; and enhance the Senate's legal muscle. But Senators will forever be moved by partisanship and politics; bribery is always a possibility; there will be times when executives reduce the checks-and-balances abilities of the Upper House (simply by sharing an affinity with the senatorial majority). In fact, Thailand's more democratic (since 1997) Upper House has ironically opened up an enclave through which provincial vested interests can acquire or deepen their agglomeration of power through added postings and a new sources of budgetary resources. Indeed, though the 2007 charter sought to prevent family dynasties from being established in the Senate, cronies and distant relatives of Senators can still succeed them.

Thailand will never have a perfect Senate or flawless constitution. But the Upper House, as a changing organ of Thailand's constitution, can be a major engine driving the country's evolving pluralism. It should be an efficient instrument for checks and balances, reassessing Lower House actions, and launching inquiries. At the same time, its goal of efficiency should be carefully balanced with the objective of political empowerment – the Senate must increasingly become a voice for Thai people. Only such equilibrium can provide Thailand's Senate with a successful, stable future.

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### **Thailands Oberhaus: Überflüssig, schädlich oder unabhängig?**

**Zusammenfassung:** In Thailands junger Demokratie spielte der Senat eine häufig unterschätzte Rolle. Die Studie analysiert die Entstehung des Oberhauses bis zum Jahr 2009. Der Artikel konzentriert sich auf folgende Fragen: Welche Neuerungen brachte die Verfassung von 1997 für den Senat? Wie und warum wurde der Senat im Jahr 2007 angepasst? Die Studie kommentiert ebenfalls die Senatswahlen der Jahre 2000 und 2006 sowie die Wahl/ Ernennung 2008. Außerdem bewertet sie die Bedeutung des Oberhauses in Thailand und bietet Empfehlungen für die zukünftige Entwicklung des Senats.

**Schlagwörter:** Thailand, Senat, Oberhaus, Parlament, Demokratie, Wahlen