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Michael H. Nelson
Walailak University
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**The Attempt to Adopt a Mixed-Member Proportional Election System in
Thailand: The Near Miss of the Constitution Drafting Committee
and Constitution Drafting Assembly in 2007**

Michael H. Nelson

Regional Research Unit
Southeast Asian Studies Program
School of Liberal Arts
Walailak University
Mhnelson_kpi@hotmail.com
<http://wu-th.academia.edu/MichaelHNelson>

Introduction¹

On September 19, 2006, after a long process of anti-government protests, a failed general election, and a series of speeches attacking the prime minister by the chief of King Bhumipol's Privy Council, the military ended Thaksin Shinawatra's time as head of Thailand's government. He had assumed this position first after the election of January 2001, and he convincingly defended it in the elections of February 2005. The coup plotters assigned experts in public law to draw up an "Interim Constitution."² Its articles 19 to 32 concern the establishment of a Constitution Drafting Assembly (CDA) as well as a Constitution Drafting Committee (CDC), the procedure of constitution drafting, and subjecting the constitution draft as approved by the CDA to a referendum. The CDC was tasked with preparing the draft constitution. This group of 35 people (25 selected by the CDA, ten by the coup plotters), comprised almost exclusively senior male members of the Bangkok-based bureaucratic and technocratic power elite (variously referred to as *aphichon* or, especially by the red-shirt movement, *ammart*). The CDC started its work on January 25, 2007 and held its decisive joint meeting with the CDA, in which the new constitution was decided upon point-by-point, on June 21, 2007. In its 62 meetings, the CDC debated a host of constitutional design issues. The word-by-word minutes of 47 of these meetings are accessible to the public, as are the word-by-word minutes of the CDC's three sub-committees.³ This paper only describes the debates of the CDC, including the decision-making in its final meeting with the CDA. The thirteen meetings (comprising 637 pages of text) of the second sub-committee on political institutions, which are relevant to the topic of this paper, could not yet be included.

Amongst the host of constitutional design issues debated by the CDC, the election system was one of the most prominent and contentious. It remained highly contentious right until the CDC's decisive meeting with the CDA on July 21, 2007, when 45 members voted in favor of the mixed-member *majoritarian* election system introduced with the 1997 constitution, while 39 members supported the switch to a mixed-member *proportional* system (there were two abstentions and one no-vote). A number of important CDC members considered the redesign of the election system as one of the most important tasks of this round of constitution drafting. They perceived that the election system stipulated in the 1997 constitution had had strong undesirable effects, especially in creating a government unassailably backed by a parliamentary majority

that was substantively bigger than the voter share of the main political party. Yet, this point was also expressly directed against the Thai Rak Thai Party of Thaksin Shinawatra, who stood accused of having established a “parliamentary dictatorship.”

However, this did not mean that the constitution drafting process, and even the decisions about the election system, was always of a deliberative nature where the participants clearly understood the issues, and merely acted based on pure reason, and complete information. Rather, an analysis of institutional development that pays “due attention to micro foundations” (communications of actors, such as those who served on the CDC and CDA) also includes paying attention to “the potential causal importance of political mistakes, misperceptions, and unintended consequences … on both strategic behavior and institutional outcomes” (Capoccia and Ziblatt 2010:937, 938). For example, the discussions and explanations on the CDC and in the CDA were not always helpful in clearly defining the alternative options, their respective strengths and weaknesses, and their potential political consequences. As one member of the CDA exclaimed with frustration when the decisive CDA vote on the election system had already been urged to be taken, “The more I listen [to the explanations], the more I am confused about how I should decide” (Chali Kangim, CDA 29:206). Another CDA member added, “I have listened, and I am still confused” (Akkharat Rattanachan, *ibid.*:207). After Winat Manmungsin had added that, “If you allow the vote to take place, I am afraid that it will not be based on our shared understanding” (*ibid.*:209), Sunthorn Chanrangsi cautioned, “I confirm that the majority of CDA members does not yet understand [the election system issue]. Since we do not yet understand it, how can you force us to make a decision?” (*ibid.*:210). Given the long, unsystematic, and confusing debate in this decisive CDA meeting, such statements were not surprising. Siva Saengmani suggested, “if there is somebody who really does not understand, he should abstain when voting” (*ibid.*). Sakchai Unchittikul was concerned about the image of the CDA saying, “Moreover, I think since there is still confusion, I do not want this confusion, and neither a decision based on a lack of understanding. This would make outsiders see us in a bad light” (*ibid.*:213). After some more (but not very enlightening) explanations regarding the election system design, the chairperson of the meeting, Seri Suwanphanon, noted,

See, there are still members who do not understand [the proposed election systems]. Therefore, it is difficult to vote on them, right? ... How can we decide when members do not yet understand [the issue]? (CDA 29:216)

Shortly afterwards, Seri followed up by asking, “Do you understand better now?” His own answer suggested that this was not the case: “Everybody makes a cloudy face” (ibid.:220). A short while later, Seri added, “Dear members, is there anybody who does not yet understand [the two alternative and competing election systems]? Is there anybody? If they are understood already, we will vote” (ibid.:224), and “The more explanations are given, the bigger is the confusion. Do not do this. I want explanations that settle [the issue]” (ibid.:231). This was an important issue that needed reason as a principle of decision-making (ibid.). Eventually, Montri Phetcharakham, became impatient,

Those who do not understand will understand afterwards. If they do not understand it now, they will understand it later. ... If I was a teacher teaching primary school students, everybody would fail. One hundred people have already explained, and there are still members who do not yet understand. Therefore, just vote. (CDA 29:235)

Given the situation briefly described here, one might well wonder what the final narrow vote of 45 to 39 in favor of the mixed-member *majoritarian* system, and against the mixed-member *proportional* system, meant in terms of the quality of this institutional “decision.”⁴ This question includes the reasons and other motivational factors that made members vote for one of the options rather than for another. On the occasion of drafting the 1997 constitution, the then-secretary general of the CDC, Borphornsak Uwanno, viewed the decision-making behavior of members in a rather critical light, when he referred to the “patronage system” and said,

You would expect them [well-educated and economically well-off middle-class elite members of the CDC/CDA] to be guided by principles, but they are not. If they are asked as a favor to vote a certain way, they will be guided by their personal relationships. And this is under the full attention of the press. It reflects the understanding that their relationships with those in power stand above all else. (*Bangkok Post*, July 21, 1997)

The actual communication process as reflected in the minutes of the CDC and CDA meetings made the supposedly clear-cut “intention of the constitution” about its elec-

tion system look rather messy (and this includes neither the informal discussions and negotiations held outside the formal meetings nor the relationship issue raised in the Borwornsak quote). Nevertheless, subsequently, the Thais had to act out and bear the consequences of this institutional “choice” of the election system, be it as politicians, political parties, or voters.

Before I enter into an analysis of the CDC minutes, it might be useful first briefly to describe the election systems that were principally available for selection. This will make it easier to locate the system adopted in Thailand in the worldwide institutional context.

Electoral systems: a very brief overview

Electoral systems are normally divided into two main pure types, namely plurality/majority and proportional.⁵ In the first type, voters cast one single ballot for a candidate who runs in their local constituency. In plurality systems, the candidate with the highest number of votes wins, irrespective of whether he or she has gained an absolute majority or not. This system is also called “First past the post” (FPTP). A typical case of such a system—usually employed in single-member constituencies (SMC)—is the lower house in the United Kingdom. Some other countries require that the winning candidate achieves an absolute majority and thus perform a run-off election, in which only the two candidates with the highest number of votes can run (France), or they integrate such a run-off into the first round of voting, called “alternative vote” or “preferential voting” (Australia).

In proportional election systems, voters cast their single ballot for lists of candidates that were prepared by the political parties. Some countries feature national party lists (such as Israel, The Netherlands, and Slovakia), while the great majority employs some variant of regional or local lists (for example, Argentina, Finland, Spain, Denmark, or South Africa). Some countries combine these two pure election models into mixed systems, thereby creating a third major variant.⁶ This, in turn, takes two major forms, the mixed-member *majoritarian* (MMM) and the mixed-member *proportional* (MMP) systems. The MMM system emphasizes the majoritarian/plurality element by using the two different systems separately for different sets of MPs, and by setting the number of plurality constituency MPs considerably higher

than that of the party-list MPs. It is therefore often described as a “segmented” or “parallel” system. Typical examples in Asia are Japan, South Korea, and Taiwan.

The MMP system, on the other hand, emphasizes the proportional component. Although there are also two kinds of MPs, the overall distribution of seats in parliament solely depends on how many votes the political parties received on their party lists. The MPs elected in local constituencies merely add a personalized element to this system. The total number of MPs a party can claim in parliament depends on its overall share of votes, making the number of a party’s seats proportional to its voter share. If a party’s number of constituency MPs does not reach its proportional claim, the number is filled up from the party list. Therefore, this system is also called “compensatory” or “corrective.” Typical examples are Germany and New Zealand (which essentially copied the German system and first applied it in 1996).

According to statistics presented in the IDEA’s handbook on *Electoral System Design*, of the 199 countries covered, 91 had a plurality/majority election system, 72 had a proportional election system, 30 countries had mixed systems, and six had other systems. Of the 30 countries with mixed systems, 21 featured parallel systems (MMM), while nine had adopted MMP.⁷ As for recent electoral change, the handbook notes,

As Table 1 shows, the trend is rather clear. Most countries [of 27] that have changed electoral systems have done so in the direction of more proportionality, either by adding a PR [proportional representation] element to a plurality system (making it a parallel or MMP system) or by completely replacing their old system with List PR. The most common switch has been from a plurality/majority system to a mixed system, and there is not one example of a change in the opposite direction.⁸

Locating Thailand in this overall scheme of electoral systems is now easy. “Table 1” mentioned in the quote lists Thailand as a country that had moved (since the adoption of the 1997 constitution) from a plurality/majority system (multi-member constituencies, or bloc vote) to a mixed “parallel” system (or MMM). Thailand had thus joined 20 other countries, among them, as mentioned above, Japan, South Korea, and Taiwan. The 1997 constitution had introduced a *segregated* or *parallel* election system (mixed-member *majoritarian*, or MMM) with 400 MPs elected in single-member constituencies (SMC), complemented by 100 MPs elected in nationwide closed and blocked party lists. This included a threshold of five percent. That is, only those polit-

ical parties that received at least five percent of the total party-list vote received a proportional share of the 100 party-list MPs.

Thus, the constitution-drafting assembly and committee of 1997 succeeded in significantly reforming Thailand's time-honored plurality election system,⁹ while their successors in 2007 failed to push this reform substantially further by changing the emphasis of the mixed system from a majoritarian to a proportional approach, though this really was a near miss by merely six votes. The purpose of this paper is to describe how the idea of proportional representation developed, how it was discussed, and how it finally fell through.

The CDC proceedings regarding the election system

The overall process of drafting the 2007 constitution, including the election system, comprised the following major steps. First, the three thematic sub-committees mentioned above discussed constitutional design issues and provided the results of these discussions as input to the CDC, which performed its debates concurrently with the discussions separately taking place in the sub-committees. Second, a draft of the constitution as prepared by the CDC was disseminated to the public for feedback, and formally organized hearings were held.¹⁰ The draft was also presented to the CDA so that its members could form their views and possibly join groups that could initiate amendment motions (*prae yatti*). In order to get even more feedback, the draft was given to twelve organizations for providing comments from their perspectives.¹¹ Third, concerning the part on the election system, this was taken up again on June 1, 2007, following the public hearings, and after almost two and a half months had elapsed since the first round of decision-making. Fourth, the CDC held meetings with those members of the CDA who had initiated amendment motions to make changes to the CDC's draft constitution. The election-related debate took place in the 38th CDC meeting on June 6, 2007. Fifth, in the following meeting on June 6, the CDC discussed which motions the members accepted, and which they rejected. Sixth, and finally, almost the entire CDA meeting on June 21 was spent to debate and decide on parliamentary system issues, in particular the election system (these issues cover 259 pages of the 279-page minutes of this meeting).

I will now provide a sequential narrative of what happened between the first and the last step of deciding about Thailand's election system.

The initial stage

Early on in the drafting of the constitution by the CDC, some members started pushing for abolishing the national-level party lists, which would have left the election system with only constituency MPs, as was the case before the 1997 constitution came into effect. In the ninth CDC meeting on February 15, 2007, Jaran Pakdithanakul¹² reported on the deliberations of the sub-committee on political institutions, of which he was the chairperson (CDC 9:14ff.). According to his report, the number of MPs was to be reduced from 500 to 400. Moreover, all of them were to be elected in multi-member constituencies or districts (MMD), while the party-list component of the election system would be abolished altogether. Many members of Jaran's sub-committee saw the party lists as giving too much power to the party leaders and their executive boards in selecting the candidates to be placed on the lists. It was thought that this would indebt those selected to their selectors, and thereby limit the MPs' freedom in making legislative decisions (the experience with Thaksin's TRT provided part of the background for this approach). Furthermore, rather than following the intentions of the 1997 constitution to put knowledgeable and capable people from various fields on the party lists, parties (mainly referring to TRT) had allegedly stacked them with their financiers. However, Jaran added, some sub-committee members had defended the party lists as useful. Yet, these supporters wanted to replace the single national party lists by a number of regional lists covering a number of provinces.

Thus, at this early point in the drafting process there were two main proposals regarding the design of the election system. One represented a return to the pre-1997 system, while the other wanted a modified version of the 1997 model. Six weeks later, however, in the CDC's eighteenth meeting on March 28, 2007, Krirkkiat Phipatseritham¹³ suddenly (though there seemed to have been some talk on a proportional election system at the CDC's informal brainstorming sessions in the seaside resort town of Cha-am in Petchaburi province, from March 5-10, 2007)¹⁴ proposed the introduction of a proportional compensatory system. This proposal was expressly based on the German model. This would have meant a switch from a mixed-member *majoritarian* to a mixed-member *proportional* election system (CDC 18:49). Krirkkiat suggested what he henceforth would stick to, namely a House consisting of 400 MPs, with 200 elected in single-member constituencies and 200 elected from party lists. This pro-

posal thus still reflected the original intention of most CDC members to reduce the number of MPs from 500 to 400. However, in Krirkkiat's model, the number of seats a political party could claim in the House would have been in direct proportion to the number of votes it had received on its party list alone. Krirkkiat clearly stated, "The number of MPs a political party receives is according to the number of votes cast for it. Every vote cast by the people counts [*mi khwammai*]."¹⁵ In more concrete terms, a political party that had received 40 percent of the vote could claim 160 seats in the 400-seat House of Representatives. If this party had won only 120 constituency MPs, the remaining 40 seats would be drawn from the party list. This is why the MMP system is called "compensatory."

Interestingly, Krirkkiat did not come up with the initial idea by himself, nor did he have any preceding knowledge about the proportional election system (according to his own statements). Rather, he had been approached and briefed by an interested party from outside of both the CDC and the CDA.¹⁶ The origin of his proposal, Krirkkiat said, went back to their meeting in Cha-am. An expert group of lecturers had come to see him and suggested the idea of proportional elections. "At that time, I did not yet know anything much [about it]. However, when I read the various documents, I became interested, and thus studied the issue further" (CDC 26:4). This "expert group of lecturers" (CDC 35:100) seemed to have comprised German-graduated professors of law from Thammasat University, amongst them Kittisak Prokati.¹⁷ Parinya Thewanarumitkul of the same faculty contributed a paper on the German election system with (flawed) recalculations of the 2005 election results.¹⁸

A few days later, in its twentieth meeting on April 3, 2007, the CDC worked on the preparation of the first draft constitution to be disseminated to the public for comments. There were two main models—400 constituency MPs (without any party list element), and 480 MPs, comprising 400 constituency MPs and 80 party-list MPs. In addition, Krirkkiat provided a fuller explanation of his proportional model. He stated,

I would like to ask permission of the meeting to propose the idea to establish a completely new proportional election system. The 400 MPs would be divided into 200 constituency MPs and 200 MPs according to proportion. This system will completely change the face of the election system (CDC 20:64).

At this point, therefore, the number of models for the design of Thailand's future electoral system had increased to three. In the same meeting, Pisit Leeahtam¹⁸ summarized this situation by pointing out that, at the beginning, the *krop* (second sub-committee) had wanted only 400 MPs, without party lists. He pointed out that there had been little discussion in the sub-committee, simply because the decision to drop the party list had been made at the very beginning of the proceedings already. However, in their six-day retreat in a Cha-am hotel, about ten CDC members had insisted on keeping the party list MPs, which had led to the drafting of article 90/1 (an alternative version of the original article that excluded party-list MPs, presumably comprising 400 constituency MPs and 80 regional party list MPs). Finally, Krirkkiat had proposed a proportional system modeled after that of Germany (CDC 20:75).

Creating confusion about “proportionality” at the retreat in Bang Saen

The next step in this struggle about Thailand's next electoral system came in a series of six meetings (nos. 22 to 27) held between April 6 and 11, 2007, at a hotel in the seaside resort town of Bang Saen, Chonburi province, in order finally to decide on the content of the hearing-version of the constitution. The decisive 26th meeting on April 10 started with Krirkkiat right away again describing the proportional system. Others, like Jaran, Vicha Mahakhun,¹⁹ Chuchai Suphawong,²⁰ and Komsan Pokhong²¹ also spoke in favor of this approach, though they differed in some detail. On the other hand, Nakharin Mektrairat,²² Phairote Phromsan,²³ and Woothisarn Tanjai²⁴ were critical of this proposed new system. All of these CDC members could be categorized as belonging to the administrative and academic stratum of the *aphichon*. However, this did not mean that they always shared the same opinion. Thus, in the context of debating the election system, one could distinguish between “reformers” and “conservatives” within the same socio-political stratum.²⁵ Their relationship was not always without tension. The “reformers” insinuated that the “conservatives,” in rejecting the adoption of a mixed-member proportional system, somehow ignored the best interests of the country. The “conservatives,” on the other hand, accused the “reformers” that they did not properly understand Thai political culture and structures, and had therefore proposed an election system that was “inappropriate” for the country. In a later meeting (No. 35 of June 1, 2007), Pisit Leeahtam apparently felt the need to take up this issue saying that he had detected a problem of fairness regarding the criticism

brought against those whom I have labeled “conservatives.” He pointed out that he was convinced that everyone on the CDC wanted the country to be better, and wanted to search for a system that was best for Thailand. Therefore, that a person proposed something, and others did not agree with it, did not mean that they did not love the country, or did not want the best for the country. That Vichit, Woothisarn, Nakharin, and Pairote—who were all political scientists²⁶—did not agree with the proposals of the other side did not mean that they did not want to solve Thailand’s political crisis. Pisit added that he wanted to put this on record, because this tactic had already been used in the sub-committee, and he had talked about it there as well (CDC 35:89). Later in the same meeting, Woothisarn, a key defender of MMM, thanked Pisit for his intervention saying,

I have to thank Khun Pisit who has spoken on my behalf that I also love the country. It is not that I do not look for an opportunity for change. But I want change that is moderate (*phodi*). (CDC 35:102)

A vocal proponent of the MMP side, Chuchai Suphawong, alluded to this issue when he claimed that not adopting MMP would be a serious loss of opportunity, and lead to trouble for the country. Yet, he added that his words were not intended negatively to affect anybody. He merely wanted to express his personal belief—though in doing so he could apparently not resist to blame the other side for a possible “blunder” in case they did not agree with the MMP system. In his own words:

Today, it is clear that we do not have the same understanding. If we blunder again in the design of the system, like in 1997, we will have trouble. Yet, that I say so does not mean that I scold Ajarn Woothisarn. (CDC 35:103)

In a later meeting, Chuchai again tried the act of massively attacking the MMM proponents while at the same time insisting that he did not scold them. “I want it to be recorded that I do not want to participate in writing this page of history that will take the country on the way to parliamentary dictatorship.” The majority proposal confirmed the 1997 (MMM) system, which had suffered from “party-list buying.” However, this did not mean that those who had spoken before him (against MMP) would take the country towards “parliamentary dictatorship.” His words did not mean that his view was only positive, while that of the others was negative (CDC 38:135).

Still, it was obvious that the competing camps in the CDC did not have “the same understanding.” Unexpectedly, however, this did not only concern the two main models of election systems—MMM and MMP—but also the question of what actually had been decided when they voted on the election system in their 26th meeting on April 10 in Bang Saen. This vote was of particular importance, because it determined the content of the draft constitution, and therefore the stipulations about which the views would be sought in the subsequent period of public hearings. That there was indeed a problem became apparent—and resulted in a debate of confused CDC members—only in their 35th meeting more than six weeks later, when the CDC returned to its debate of the election system after the public hearing phase of the draft constitution had been concluded.

Thus, the question arises how the options that the CDC members had to vote on at their retreat in Bang Saen were framed. In turn, these options involved concepts that denoted their key characteristics. In meeting No. 26 of April 10, 2007, Nakharin Mektrairat (a proponent of MMM), recalled the CDC’s informal retreat in Cha-am (March 5-10) saying that it had been clear at that time that his group “did not want the Party list [English in the original] system. We wanted the proportional system” (CDC 26:10). In Nakharin’s view, the word “party list” denoted the national-level lists with a five-percent threshold that were introduced by the 1997 constitution, and used in the elections of 2001 and 2005. His use of “proportional system,” on the other hand, denoted a number of regional party lists without any threshold. Just before the sentence quoted above, Nakharin had said, “I was in the minority that wanted to keep the proportional system in the election.” What he meant was that his group had rejected the initial idea of sub-committee two to have an election system with only 400 constituency MPs, that is, without any party-list or proportional component. Rather, Nakharin’s group wanted to keep the proportional element of the previous segmented MMM election system, in parallel with the constituency MP component, but in revised form. Looking at the German-style mixed-member proportional system as proposed by Krirkkiat, Nakharin pointed out,

Thais have not been used to this. If we really use this system, it would be too complicated. ... The mixed system means that we should have a number of constituency MPs, and a number of proportional MPs. (CDC 26:11)

To leave no doubts, he emphasized, “I believe that the details of the proportional system—I confirm, not the party-list system—should leave out the German system” (*ibid.*).

The meeting moved towards the decisive vote when the secretary of the CDC, Thammasat University law professor Somkhit Lertpaithoon (Nakharin’s fellow key member in their informal academic-political clique), noted

I understand that the meeting agrees with having proportionality; we do not have to vote on it. ... Concerning the number [of MPs], I understand that we agree on 400, including both the proportional and the constituency. I understand that we agree on 320 plus 80, right?” (CDC 26:15)

By using the word “proportionality” in this way, Somkhit obscured the fundamental difference of the two opposing options of MMM or MMP. Since there was deep disagreement on this issue, it seemed odd that he wanted to prevent a vote precisely on the most contentious point of the institutional design of the future election system. The way Somkhit phrased the relationship of the two kinds of MPs—that the 400 MPs would include a constituency and a proportional element—gave the impression that he referred to a segmented MMM system (of which he was a proponent). He then seemed to have looked around in the meeting room, because he added,

We do not yet agree about the number [of MPs]. If so, can we agree on the following? 1) We will have proportionality. 2) The total number is 400. ... I understand that the majority favors 320 plus 80. (CDC 26:16)

Somkhit mentioning the ratio of 320 constituency MPs to 80 proportional (or “list”) MPs prompted Komsan Pokhong from the MMP camp to note correctly,

If we adopt the 320 to 80 formula, we will eventually return to the old election system. ... we will immediately return to the election system of 1997 that we have been using. (CDC 26:16f.)

Therefore, he favored the ratio of 200 to 200. Krirkkiat added that, in the proportional system, the number of MPs needed to be equal, 200 to 200, or 300 to 300 (he did not say way, though) (CDC 26:17). Again, Somkhit tried to reduce the decision to the question of how many MPs should be in the two categories by claiming that there was agreement that there would be proportionality, meaning 400 MPs that included re-

gional lists. Only the precise number of MPs was still open (*ibid.*). Woothisarn Tanjai, a leading member of the MMM group, followed this up by saying that he was in favor of proportionality (in the way this word was used by Nakharin and Somkhit, namely MMM, not MMP). Yet, the “behavior of the Thais must be changed gradually. Sudden and strong change will lead to confusion.” Therefore, he was in favor of the 320 to 80 formula, and the 80-MP element could be divided into four or five regional lists (*ibid.*).

Somkhit, who had for some time already been concerned that they were behind schedule in passing articles, again asked whether they could vote now (*ibid.*:18). Yet, Chuchai Suphawong of the MMP camp was still dissatisfied with the state of the debate. He did not believe that all the 35 CDC members had the same understanding (quite true). They needed more details before they could vote. If they voted now already, there would be problems for sure (*ibid.*). At this point, the CDC’s chairperson, Prasong Sunsiri,²⁷ intervened with the words, “As far as I have listened to everybody already, in principle, I think, the issue of *proportionality* is accepted by the meeting” (my italics). Only the number of MPs—320 to 80, or 200 to 200—was still open. “Therefore, since the majority thinks that the proportional system should be used in the next elections, only the numbers have not yet been agreed upon. Thus, I call the decision” (*ibid.*).

In fact, as has been pointed out already, the majority did not think in this clear way at all. Rather, one camp used the term “*proportional system*” by having in mind a revamped 1997 party-list system, thereby keeping the *segmented* system. The opposing camp also used the term “*proportional system*,” but its members thought that it involved a fundamental restructuring of Thailand’s election system along proportional lines by introducing a German-style *compensatory* MMP. Thus, Vithaya Nganthawi²⁸ was actually right when he responded on Prasong by saying, “Both the numbers and the method are not yet clear” (*ibid.*).

Nevertheless, Prasong returned to his decision-making mode saying,

I want the principle first. In principle, we all agree that we will have the *proportional election system instead of the Party list* [English in the original, my italics]. We do not want the Party list [English in the original]. We all agree with this. Only the numbers [of MPs] are still open. (CDC 26:18)

He added that they did not need a vote on the proportionality issue, because the majority already was in favor of proportional voting. In the quote above, the phrase “instead of the Party list” suggested that, contrary to the fundamental system change that the proponents of MMP had in mind, proportionality would only apply to the previously 100 “party-list” MPs, and precisely not to the entire election system. What the CDC members voted for afterwards was indeed nothing more than a modified party-list system, which was merely re-labeled as “proportional voting.” At this point of the struggle about an election system change, the CDC’s decision kept intact the mixed-member *majoritarian* system (MMM) of the 1997 constitution, which substantially differed from Krirkkiat’s proposal of a mixed-member *proportional* system (MMP). Thus, contrary to what the CDC’s chairperson assumed, the decision was not simply about the number of MPs in the two categories—constituency, and list. Rather, the CDC members were called on to decide between two fundamentally different options for the country’s future election system. However, the way the discussion was conducted obscured the choices by the mixed-up usage of the term “proportional system.” In this way, the choice seemed to be merely whether the ratio of constituency and list MPs should be 320 to 80 or 200 to 200. Ironically, although Prasong stated that he wanted to decide about “the principle” first, this principle was indeed ignored by the way the vote was framed. One could perhaps have seen the two different ratios as indicating the alternative of MMM and MMP, as I did when I read the minutes. Yet, in the meeting itself, the choice situation was not framed in this straightforward way, and “the principle” merely referred to the re-labeling of the party list as “proportional voting.”

As it turned out, 21 CDC members voted for a 320 to 80 split of constituency and regional party-list MPs, denoting (not only in my view) an MMM system. Only nine members were in favor of Krirkkiat’s 200 to 200 model, which (not only in my view) stood for MMP. Chairperson Prasong summarized this decision with the words,

This means 320/80 has 21 votes, while 200/200 has nine votes. Therefore, the meeting resolves that there will be 320 [MPs] in the constituency elections and 80 in the proportional [election]. I think that we can talk about the details later. (CDC 26:19)

This summary sounded rather like the 1997-style segmented or parallel system, applying two different election principles separately to two different sets of candidates, and

not like the integrated proportional one proposed by Krirkkiat. Moreover, the basic decision between these two systems could certainly not be described as a “detail” to be dealt with at a later point, all the more since the proportional approach would have run into calculation problems (as Krirkkiat had pointed out just before the vote was called) if the number of MPs were fixed at 320 to 80. Thus, logically, there should have been a decision about the fundamental character of the election system first, with a search for the most appropriate relationship between constituency and proportional MPs coming afterwards.

As a consequence of this confused process of discussion and decision making by the members of the CDC, section 91 of the draft constitution published on April 26, 2007 for the public-hearing process provided for a House of Representatives comprising 400 MPs. Article 92 divided these 400 MPs into 320 MPs elected in multi-member districts.²⁹ In principle, these MMD should comprise three MPs, representing a return to the pre-1997 system. In addition, there should be 80 MPs called “proportional” (*satsuan*, in Thai, “proportional” simply replacing the expression “party list” from the 1997 constitution) elected in four electoral zones with roughly the same population numbers. Each zone would thus have 20 MPs. They would be allocated proportionally to political parties according to the number of votes they had received in the respective zone.³⁰ The CDC offered a number of reasons for their changes to the 1997 constitution, as required by the interim charter. Unfortunately, almost all of them were invalid so that, in fact, they could not support the draft stipulations. Most certainly, these reasons for any changes made did not include any hint that the mixed-member *majoritarian* system of 1997 had been changed to a mixed-member *proportional* system in 2007.

Trying to determine which election system won the vote in Bang Saen

This first draft of the 2007 constitution was only an interim product. A new round of discussions in the CDC followed after the hearing results had come in. In the minutes of the CDC’s 35th meeting on June 1, 2007, fifty pages are about the election system. Interestingly, the CDC’s confusing decision from about seven weeks earlier now returned to the meeting with a discursive search by the committee members for what they had actually decided about on April 10, 2007. On the one hand, Woothisarn Tanjai reiterated that he supported the 320 to 80 formula for two reasons. First, the system

closely resembled the previous version (of 1997), and the people were familiar with it (after all, they had used it in the elections of 2001, 2005, and in the annulled 2006 elections). Second, the proposal in the draft constitution had gone through public hearings. While the newly proposed system (MMP) had been presented in some localities, it had not at all been put up for discussion countrywide. Therefore, Woothisarn saw it as difficult to justify if the CDC suddenly came up with a new election system that would change what they had written in their original draft constitution produced for the hearings. Moreover, the CDC was now already close to the time of its final decision-making (CDC 35:78). Some time later in the meeting, he warned that one should not interpret the existence of two ballot papers as meaning that the entire system had to be proportional (ibid.:94).

On the other hand, Jaran Phakdithanakun noted that they had come up with the 320 to 80 formula in the constitution draft, calling the latter component *banchi satsuan* (proportional list). However, they did not say at all what this proportional list meant. “Therefore, people have totally misunderstood it.” He wanted to ask whether *phuak rao* (our group, meaning the CDC) agreed that, “The proportional list that we have proposed in the first draft is not like that in 1997. It is a proportional list according to the world model (*baep khong sakon*), only that our ratio is still 80 to 320” (ibid.:89). Thus, while Woothisarn thought their decision on April 10 was for an election system like that in 1997, Jaran rejected this notion. His reference to the “world model” indicated an MMP system, only that their decision did not go as far as including the “world model’s” equal numbers of constituency and proportional MPs. Vicha Mahakhun added that, at the beginning, they had suggested such equal numbers of 200 to 200, because that would be the “complete system.” Yet, they had compromised and resolved for a ratio of 320 to 80. “There has not yet been much understanding of the proportional election system. Therefore, this understanding will probably have to be created amongst the people for some period of time” (ibid.:91). Krirkkiat had been the leader in this direction, and he had studied the issue seriously. Thus, he had pointed out that the 320 to 80 ratio “was not really proportional.” They had always tried to look for opportunities to explain the proportional system so that their fellow members on the CDC would “change their minds” (*plian chai*) in this matter. The *prae yatti* phase (in which motions for the change of the CDC’s constitution draft would be deliberated and decided upon by the CDA) would provide another opportunity. Moreover, the chairperson had asked them to study the issue well. Krirkkiat and his group

had variously explained the issue, yet “there are many committee members who are still confused, and thus cannot decide” (*ibid.*).

Finally, the main advocate of a switch to the German-style mixed-member proportional election system, Krirkkiat Phipatseritham, also intervened. According to his recollection, the first question at Bang Saen had been whether they wanted the proportional system or not. And the meeting had confirmed that it wanted the proportional system. The second question, Krirkkiat continued, was whether they wanted the 200 to 200 formula, or the 320 to 80 formula. The result was that they wanted the latter (*ibid.*:95f). Indeed, Krirkkiat’s recollection regarding both points was correct. Yet, as shown above, the understanding of “proportional system” amongst the CDC members differed fundamentally, and with it differed the meaning that the members attached to the two formulas. While one side thought that the 320 to 80 formula represented a reformed 1997-style MMM system, the other side felt victorious, because they assumed that they had pushed through a substantial change of the Thai election system, namely the switch from a mainly *majoritarian* (MMM) to a mainly *proportional* (MMP) system. Krirkkiat, seemingly puzzled about how this renewed discussion could have occurred, said he still remembered that Jaran, after the vote had been taken in Bang Saen, had congratulated him that he had secured the CDC members’ support for the proportional election system that he had proposed. Krirkkiat further noted that he had responded to Jaran’s congratulations by saying that the CDC’s decision was good only at a certain level, because the 200 to 200 formula had been rejected (*ibid.*:96). At a later stage of drafting the 2007 constitution, when Krirkkiat explained his MMP model to those CDA members who had initiated motions for changing the draft (June 6, 2007), he mentioned that he had proposed his model first in Chalong (March 5 to 9, 2007). In Bang Saen (April 6-11, 2007), he had lost the vote. However, he insisted, “I was happy to an extent because the meeting at Bang Saen accepted the proportional system, only that the numbers that I suggested lost” (this referred to the formulas of 200 to 200 and 320 to 80) (CDC 38:96).

One could well agree with Pisit Leeahtam who stated, on June 1, 2007, “In fact, this issue should long have been concluded already, because we have talked a lot about it” (CDC 35:99). One might also add that, at this point, every member of the CDC should have had enough time (two to three months) to attain a proper understanding of what the two basic and fundamentally different options concerning the election system were, in which key respects these options of MMM and MMP dif-

ferred, and what effects a switch would have on election results. Thus, a clear and rational decision should have been possible. Pisit recalled that the CDC had two big meetings (multi-day retreats) at Cha-am and at Bang Saen. First, in Cha-am, sub-committee 2 had suggested that they should not have a “Party list” (English in the original), while the CDC thought that they should keep it, because members did not only want to have constituency MPs in the House. Rather, they had wanted a system that one might call “proportional,” without calling it “Party list,” simply “in order not to confuse it with the *national* list” (my italics) of the election system contained in the 1997 constitution (*ibid.*).

Thus, from Pisit’s recollection, one can conclude that the terms “party list” and “proportional (MPs)” in fact referred to the same thing (MMM), though the 2007 version introduced a number of changes. The term “proportional” merely had been adopted in order to signal these changes to those who had rejected the 1997-style *national* party lists, and had strongly wanted to change this component of Thailand’s election system. Unfortunately, though, this replacement of “party list” by “proportional” subsequently confused those members of the CDC who had wanted to adopt a genuinely proportional election system (MMP) for Thailand. One result was that both sides equally used the term “proportional system,” while in fact having fundamentally different election systems in mind. Thus, the process of designing Thailand’s election system (as contained in the 2007 constitution) by the CDC and CDA suffered from unnecessary confusion right until the final vote was taken on June 21, 2007.

Pisit seemed to contribute to this confusion when he turned to summarizing the result of the discussions in Bang Saen. He correctly pointed out that they had voted against the 200 to 200 formula, and in favor of the 320 to 80 formula. However, then he added that it had not yet been clearly confirmed *which method* would be applied to the 80 seats, meaning whether the number of constituency MPs would be “subtracted” (*ibid.*). Pisit’s last sentence sounded like MMP, because using the word “subtract” in relation to constituency MPs would only make sense if it referred to a political party’s proportionally based overall seats claim. For example, if a party had an overall proportionally calculated seat claim of 230, while it had already won 200 constituency MPs, then this number of constituency MPs would be “subtracted,” giving it an additional 30 seats from the “proportional list” of 80 MPs. If Pisit had a segmented system in mind, there would not have been any relationship between the 200 constituency MPs and the 80 “proportional” MPs. Both systems would have been ap-

plied entirely separately, making it impossible to establish a relationship between them via “subtraction.” In that case, the reference to “which method” could only be applied to the eighty proportional seats with regard to the question of whether they would be allocated via national lists or a number of regional lists.

Pisit continued his statement by saying that this point of “subtraction” was still open for looking at the “details,” and “what was appropriate or not appropriate.” On the one hand, he said, many CDC members had explained that they wanted to “subtract.” If they subtracted, there might be the problem that Komsan had mentioned, namely that a political party might have won too many constituency seats already (meaning overhang or surplus mandates—*Überhangmandate* in German—in excess of its overall proportional seat claim), “which is very difficult.” On the other hand, many CDC members wanted to stick to the 1997 system. They preferred two ballots, whereby 20 seats would be allocated according to the proportional ballot (*bai khong satsuan*) in each region (at that time still thought to be four). In order not to increase the confusion, he had coordinated with the CDC’s secretary about the “Wording” (English in the original) used in the hearing draft. The secretary’s response had been that they had not written the respective articles in the draft in a way that would finally stipulate the use of subtraction or exclude it (ibid.:99f.).

In a hairsplitting sense, this might have been true. As for myself, from reading the draft constitution with the 1997 system in mind, I always understood that the CDC had passed the 1997 system in a modified version. It never occurred to me that this would merely be a preliminary formulation, which did not yet determine the fundamental form of the country’s election system as MMM. Nothing indicated, certainly not to most people who read the draft, that what was written in it could be turned into a proportional election system. In general, the comparison to 1997 was clear enough: the formula of 320 to 80 replaced that of 400 to 100, thereby reducing the total number of MPs by 100; the party-list component was changed from one national list to four regional lists; the threshold was abolished; and multi-member districts were reintroduced. Both the draft stipulations on the election system in article 92 and the reasons that the CDC had provided in its book distributed for the public hearings regarding the changes it had made over the 1997 constitution clearly confirmed the mixed-member majoritarian system of the 1997 constitution. Nowhere did the text indicate that all this, after the public hearing process had ended, could possibly be fundamentally changed into a mixed-member proportional system.³¹ This situation was the

background for the argument of the MMM proponents, as in the case of Woothisarn Tanjai mentioned above, that what had been presented at the countrywide public hearings was the MMM system. Thus, it would be rather strange, and difficult to justify, if the CDC/CDA suddenly came up with an entirely new election system in the final constitution, which had never undergone any public consultation.

In fact, Posit conceded as much saying that the CDC's published draft text said that people would vote for constituency candidates, and for proportional lists. Regarding the proportional element, no connection had been made in the sense that, "The calculation of the numbers [of proportional MPs] must be mixed with the constituency vote, which would have caused confusion" (CDC 35:100). Another CDC member, Atchaphon Jarujinda (*ibid.*:102),³² described their decision at Bang Saen, and the meaning of the respective stipulations in the draft constitution, very clearly by noting,

The draft was written with the *understanding* that [the components] would be separate (*yaek kan*). That is, the system would be similar to the model of 1997, only that the national List [English in the original] would be divided into regions so that the votes would not be clustered. This is what is currently written in the draft. But *afterwards*, sub-committee 2 might have had additional considerations about the proportional system. (CDC 35:100; my italics)

Still, Jaran Phakdithanakun, the chairperson of sub-committee 2, could not agree with what seemed to be an accurate assessment by Atchaphon. He insisted that, as early as in Cha-am, their system was not the same as the 1997 model. Rather, they had come up with what was called a "Mixed Member Proportional Voting System" (English in the original). Moreover, he even asserted that the CDC members had been "o.k." with it. This meant that they had progressed well beyond the 1997 system. Then, in Bang Saen, Jaran continued, they had rejected the 200 to 200 formula in favor of the 320 to 80 formula. Thus, the question arose whether, if they divided the proportional element into four or eight regions (or zones), they could still calculate according to the proportional model. The answer was yes, they could (*ibid.*:100f.). He provided an example and pointed out that if a party had already won more constituency MPs than its proportional seat claim allowed in the respective region, then it would not receive any more MPs from its respective regional list. This statement immediately prompted Atchaphon to ask Jaran whether, in this case, the constituency MPs also had to be included in the regions together with the proportional lists. Yes, this was correct, Jaran

answered. This was the “Proportionality” (English in the original) that they proposed (ibid.:102). In other words, the mixed-member proportional system would not have been applied at the national level. Instead, the country would have been divided into four or eight electoral zones (the German model applied MMP at the state, or *Länder*, level), with each zone having twenty or ten proportional MPs, respectively. Since the zones had to have roughly the same number of inhabitants, they would also have had roughly the same number of constituency MPs. In the case of altogether 400 MPs (320/80) and eight zones, or “groups of provinces,” as they were also called, each zone would have had 50 MPs, divided into 40 constituency MPs and 10 list MPs. The calculation method of the MMP system would then be applied separately in each zone. Jaran also explicitly added a new element to the design of the regional zones. He pointed out that another difference to the 1997 system would be that candidates on the party list could—at the same time—be candidates in the constituencies. This would not be obligatory; the political parties could decide this by themselves.³³

From the perspective of the MMM (1997 version) advocates, Woothisarn also tried to reconstruct the way their standpoint had developed. He thought that they had started from the idea to reduce the number of MPs to 400, without having any party list, only those from constituencies. Moreover, he remembered that he himself and Nakharin had said that the party list MPs also had good points, only that the national-level list was problematic. They had worried that party financiers could be fielded, and then become ministers. Yet, they had already solved this problem by also allowing constituency MPs to be appointed cabinet members (the 1997 constitution stipulated that ministers had to be drawn from the party lists only). “I understand that the issue of proportionality had not yet crystallized at that time [in Cha-am], and they [its proponents] had not yet talked about it.” Afterwards, many CDC members had agreed with keeping the party list, because there had been some debate about its good points. For example, it enabled capable people, who did not want to stand in the constituency contests, to become MPs. This would in turn also strengthen the legislature. “But it did not yet go as far as the regional proportional system.” In addition, he thought that the number of party list MPs only “crystallized” later at their meeting in Bang Saen (CDC 35:94).

Woothisarn’s outline made clear again that the CDC’s starting point was indeed the 1997 version of the national-level party list. This list was seen as a key flaw of the 1997 election system, and the CDC merely set out to reform those points the

members saw as problematic.³⁴ That is, at the beginning of the discussions, they had no idea whatsoever principally to change this election system. Members in the MMM camp later even positively contrasted their “gradual” and “moderate” revised 1997 version with the “sudden” and far-reaching change the MMP advocates were so proud of. Thus, when Woothisarn and others, in the meeting on April 10, voted for the 320 to 80 formula, they certainly understood this to mean the MMM system, and by no means the MMP approach. Consequently, when Chuchai Suphawong, an insistent proponent of MMP speaking after Woothisarn, opined that they had already accepted the proportional system, only that they still needed to choose between the 320 to 80 and the 200 to 200 formulas, and stated, “There is nothing else” (*ibid.*:103), he expressed counter-factual hope rather than being realistic. Posit Leeahtam immediately confronted Chuchai’s perception by a simple reference to the facts saying,

I think that the issue of 200 to 200 had been dropped since Bang Saen already. We have already raised our hands [in favor of the 320 to 80 formula] the issue of 200 to 200 should have ended at Bang Saen already. (CDC 35:104)

This statement made Krikkiat unhappy. Regarding the question of whether the 200 to 200 issue was closed already, the chairperson had said that they could talk about these issues. (Prasong Sunsiri, had pointed out that Krikkiat’s proposal had been made *after* the sub-committee and the CDC had made their decisions by coming up with a model, and *after* this model had gone through public hearings. However, he had added that it was nevertheless possible that they could turn around again and change the model, *ibid.*:88.) It was therefore not right to use the resolution reached in Bang Saen to “close our mouths” (*pit pak*) (*ibid.*:104). In other words, whatever the CDC had formally voted on in Bang Saen in producing their draft constitution for the public hearings, if the losing side on any issue was dissatisfied with the outcome of that vote, it could still promote their positions, try to recruit a majority in CDC and CDA, then have a new vote, and perhaps win.

In concluding this step of designing Thailand’s election system by the CDC and the CDA, the CDC’s chairperson, Prasong Sunsiri, stated that he had remembered their earlier resolution but wanted to give an opportunity to review their thinking and opinions. After all, they still had time. If he had violated the earlier resolution, he accepted [responsibility]. Yet, since he thought that various ideas might be useful, he

had opened the discussion again. All resolutions could always be revised. If they had to vote again, they would do so. “I merely want to make the observation that all things, if they are new, and if the citizens and others do not yet understand them, will have many repercussions” (ibid.:105). To put it another way, Prasong warned members to be careful with coming up and implementing innovations when they could not fully determine their practical consequences. Earlier in the meeting Prasong had already warned,

This [MMP] is something new. It has been proposed, and we have talked about it. I believe that many committee members do not yet understand what this is all about. Even the political parties and politicians [do not yet understand it]. It is true that we must think up new things that are better. At the same time, however, we must always consider whether something new and better is appropriate for the nature of our country’s politics, its economy, and society. How much has the people’s knowledge foundation developed regarding what we want them to use, or what we determine what they must use? (CDC 35:86f.)

Prasong added an easier version by saying, “If we cut a new dress for our people to wear, it must also be suitable for our conditions” (ibid.:88).

This was the state of affairs in the CDC before they went into the meeting with those members of the CDA that had submitted motions (*prae yatti*) for changes to the CDC’s constitution draft, as published for the public hearings.

Listening to the amendment motions from the CDA

In the CDC’s 38th meeting on June 6, 2007, seven groups of CDA members who intended to present motions for amending the CDC’s constitution draft outlined their proposals. Chermsak Pinthong, who had been an important anti-Thaksin crusader,³⁵ was the first main speaker supporting the German-style mixed-member proportional election system. According to Chermsak, the proposal of his *prae yatti* group no. 5 was unlike the party list of the 1997 constitution, because “the people have much criticized that the party list system of 1997 enabled people who did not know the constituencies, who did not know the people, but had money, entered the party-list system” (CDC 38:74f.). Besides trying to derive justification for his group’s position on the electoral design from as nebulous an entity as “the people,” Chermsak also reproduced the preference for localized MPs, and the contra-factual cliché that candidates

on the party lists were mostly financiers of their parties (this accusation was mostly directed against Thaksin's Thai Rak Thai Party).

Leaning towards Krirkkiat's key argument for the introduction of the MMP system ("all votes must have meaning"), Chermsak pointed out that, "The system that our group proposes is a system that prevents that votes of the people are being lost" (ibid.:76). However, his initial example looked more like one in support of run-off elections (like in France), or the alternative or preferential vote (such as in Australia). According to Chermsak, there might be the following constituency-level result in the election system then in use (MMM based on the 1997 constitution).

Candidate A received 50,000 votes. (winner)
 Candidate B received 40,000 votes. (loser)
 Candidate C received 30,000 votes. (loser)

Both losers together would thus have gained 70,000 votes, while the winner only achieved 50,000 votes. Consequently, the 70,000 votes cast for the two losers would be "lost." In general, Chermsak's example seemed to be a rather unusual result for a plurality system with single-member constituencies. Indeed, almost all constituency races in Thailand's 2005 election were decided by clear advantages for one of two main candidates. This could also be seen from the shares of constituency level votes that the main parties gained. The Thai Rak Thai Party could hardly have achieved its countrywide vote share of 55.71 percent if Chermsak's example, giving the winning candidate only 41.67 percent of the total vote, was correct. Moreover, the Democrats had only gained 24.96 percent of the total constituency vote, while Chart Thai received 10.52 and Mahachon 7.50 percent. Therefore, Chermsak example was rather unrealistic, as far as the 2005 election was concerned. Normally, an example such as Chermsak's would lead to objections on the grounds that the winning candidate did not receive the absolute majority of the votes, and thus represented only a minority of the voters—thus the solutions in France or Australia. Indeed, he noted that the voters did not give candidate A more votes than candidate B and C combined. Chermsak continued saying that the result in his example was correct according to the rules—"But do the rules provide [electoral] justice?" (ibid.).

In order to make the election system more just, Chermsak then switched from a constituency or candidate-centered view to a national and political party perspective. In the model of his, the votes for "party A in the entire country would be summed up."

The same would be done for parties B and C. “When we have the number [of the parties’ national vote totals], they are allotted numbers of MPs that are equivalent to the proportion of MPs that we have determined, that is, 500 or 400 MPs.” For example, if party A had gained 50 percent of the votes, it would receive the “sure” number of 250 MPs, if the number of MPs in the House were 500. If party B received 25 percent of the total vote, it would receive 125 seats of the 500 MPs. Party C, which might have got 10 percent of the vote, would receive 50 seats. Chermsak concluded his example with the statement, “This is very clear.” Yet, the question remained who would then be the individual MPs (*tua khon*)? First, they would be those who had won in their respective constituencies. All winners in their constituencies were assured of their seats. Second, if seats remained [relative to the overall number of MPs that a political party could claim based on its proportion of the vote total], they would be drawn from the lists. Chermsak’s last sentence expressed the *compensatory* nature of mixed-member proportional election systems. Overall, what he had described looked very much like the German system of personalized proportional representation (*personalisiertes Verhältniswahlrecht*). Chermsak even added another component of the German system by saying that constituency candidates could also be on the party lists (this point had been mentioned a few days earlier by Jaran and Komsan in the CDC’s meeting on June 1). If they lost in their constituencies, but their parties recognized those persons’ political importance, then they could still become MPs by being taken from the party list, provided their parties’ number of compensatory seats reached those candidates’ position on their parties’ list.³⁶ Finally, the ratio of constituency MPs and proportional MPs suggested by Chermsak’s *prae yatti* group also followed the German example in that the numbers of both kinds of MPs should be 250.

Following on Chermsak, Surachai Liangbunlertchai, speaking for *prae yatti* group no. 6, wanted the party list or proportional element of the election system abolished altogether. Public hearings, he claimed, had shown that the people did not understand the 80 regional MPs in the draft, because this element lacked clarity. Surachai also showed his adherence to a local conception of the representative by saying that the party-list MPs of the 1997 system were not directly connected to the people (though he did not say why such a direct connection was necessary for all MPs). Reproducing another well-known (but unproven) cliché from the preceding debate, he also accused the political parties of having used the party-list MPs for mobilizing funds. All of the political parties’ party-list candidates were their financial supporters

(one could wonder whether Surachai included Chuan Leekpai, Banyat Bantadtan, and Abhisit Vejjajiva, who occupied the first three positions on the Democrat's party list, in his statement). Moreover, those who had given much money to the respective party were also placed higher on the lists. Thus, their position on the party list reflected their financial contribution. This use of the party list component had prevented its goal from being realized, which was the development of the political party system (CDC 38:80).

Another speaker for group no. 6, Suraphon Phongthatsirikun, gave a particularly surprising reason for rejecting the party list by claiming, “The previous party-list MPs were not in harmony with our governmental culture.” So, what could this “governmental culture” be that had supposedly been violated by the existence of 100 party list MPs in the 1997 constitution, and that would be violated by the proposed 80 regional party list MPs? Suraphon seemed to have thought about the existence of a king in the Thai political system. He explained that the total national number of votes accrued by the parties had led to talk like,

our party has gained 16 million votes, 14 million votes. This was like saying that they were already supreme in the country, although in reality we still have an institution that we have to respect, or that we have to admire and to praise. ... This [references to the total number of votes that a party had received on the party list ballot] was similar to the presidential system. (CDC 38:82)

In other words, Suraphon thought that a party that had received an overwhelming number of votes on the party list ballot, and which referred to these votes in order to stress its degree of popular political support, and thereby legitimize the actions of its elected prime minister, would compete with King Bhumiphol for the admiration of the people. This situation then would make the prime minister of Thailand's parliamentary system look like a “president” (all this, of course, was a direct reflection of what certain political quarters thought about Thaksin Shinawatra and his Thai Rak Thai Party alone).

To understand the context of the above perception, it might be helpful to keep in mind that since the crackdown on the students in Thammasat University (October 1976), all prime ministers had been close to the king (Prem Tinsulanonda, subsequently the chairperson of the king's Privy Council, see McCargo 2005, Anand Panyarachun) or very weak (Chartchai Choonhavan, Suchinda Kraprayoon, Chuan

Leekpai, Banharn Silapa-archa, and Chavalit Yongchaiyudh). As a result, the monarch, with his traditional sources of legitimacy and comprehensive means of public relations, could never be overshadowed by anybody in the political realm claiming popular support as his or her source of legitimacy. Only with Thaksin Shinawatra had a political leader appeared on the scene, who had the overwhelming electoral support of the Thai people. To make things worse from a royalist perspective, Thaksin was also a very strong prime minister, who implemented many policies that directly benefited the people (naturally, on a much larger scale and with a much greater degree of visibility than the royal projects could do). Moreover, he had equally strong public-relations support at a time when the king had been waning from public view due to his advanced age and fragile health. Thus, for people such as Suraphon, it might have seemed as if the loyalty of the Thais towards the king was endangered, and risked to be replaced by the loyalty of the voters towards Thaksin. In fact, such a conflict should never arise if one takes the Thai constitutional system seriously, because the king and the prime minister are supposed to rely on different kinds of admiration and different points of reference. The prime minister is located in the sphere of electoral democracy, in which he has to be responsive to the people's wishes. Consequently, he will reap the electoral benefits and popularity if he performs well. The king, on the other hand, being a remnant of an earlier social and political order in Thailand, who has nevertheless been retained to a certain extent, and for certain reasons, is designated as a national symbol above the political system in the narrow sense, but under the constitution, meaning the political order understood more broadly. That Suraphon could see Thaksin as having threatened the supremacy of the king, in fact, only illustrated how much, in some quarters of the population, the ideological position of this particular king had developed far beyond the standing that one would "normally" expect from a constitutional monarch.

Suraphon also assumed that a division existed in the House between the party-list MPs and the constituency MPs.³⁷ The villagers, he asserted, did not know what the party list MPs were doing. He knew this, because he resided in *phuenthis* (locality). In sum,

And we saw that the ministers were rich businesspeople. Well, this is not a defect. But the truth is, how much do they care for and love the people? How much can we trust them that they would work for the nation (*chat*

banmueang)? Therefore, regarding this point, I must ask permission to *prae yatti* to cut out [the party-list MPs]. (CDC 38:82)

After Chermsak had advocated the new mixed-member proportional system, and Supraphon had wanted the party list MPs abolished altogether, Siva Saengmani argued for the return to 400 constituency MPs and 100 “party list MPs, or the proportional system.” A brief moment earlier, he had already said that, “I think that both systems are actually not entirely different,” making one wonder whether he understood the fundamental difference between MMM and MMP. However, his main concern seemed to be the return to the number of 500 MPs. His following statement also contains a critical remark about the use of public hearing results in the deliberations.

We do not see why the number of MPs should be reduced. What is the flaw so that we must reduce their number from 500 to 400? Some say, we follow the voices of the people. Well, there are many issues that the people have said we should do. Then, we have said that we cannot quite listen to some people, or sometimes we cannot listen to them. It seems to depend on the mood. If the mood is good, we say that we listen to the voices of the people. If the mood is bad, it is said that sometimes it is hard to listen to the voices of the people. Therefore, we confirm that there should be 500 MPs as before. (CDC 38:84)³⁸

Siva called on former election commissioner Sawat Chotiphanit to add further explanations. Sawat pointed out that the Interim Constitution stipulated that they had to give reasons when they wanted to deviate from the 1997 constitution.³⁹ That is, the 1997 constitution had to be their starting point in drafting the 2007 version. Against this backdrop, he did not see any reason for changing the electoral system from the 400 to 100 formula used in the 1997 constitution. The MPs, after all, did not have any much part in creating the situation that had led to the coup (CDC 38:85).⁴⁰ Thus, there were three proposals by the *prae yatti* groups. One wanted to switch the election system to MMP, another wanted to abolish the party list leaving the election system with only constituency MP (a pure plurality system), and the final group wanted to keep the elections system of the 1997 constitution (MMM) intact.

After the *prae yatti* groups from the CDA had finished their presentations, Prasong Sunsiri, the chairperson of the meeting, asked the CDC members to comment on them. For the proponents of MMM, Woothisarn pointed out that the important principle for their 320 to 80 formula was that, “it makes the legislative system stronger, because the MPs from the party lists are perhaps another group of people who have

different experiences" (CDC 38:87). Since their proposal was little different from the 1997 election system, it also had little effect on the knowledge and understanding of the people, and neither on the electoral administration, both of which was important, because elections were to be held quite soon (after the constitution would have been passed in a referendum) (ibid.:88). Pairote Promsan later in the meeting added that introducing something new, such as the 200 to 200 or the 250 to 250 formulas, was difficult to do and hard to explain. Moreover, this (MMP system) was really very new. "The country is not a tool for us to experiment with new things, while the time is so limited" (ibid.:119).

This remark came after Woothisarn's counterpart, Krirkkiat Phipatseritham, had delivered a spirited defense of the MMP system. At the beginning, he pointed out that many elements of the MMP were similar to what Chermsak had said. Regarding the past two elections (2001 and 2005),

the election system that we have used created governments with absolute majorities in the House two times in a row. That we have had governments with absolute majorities subjected our political system to a dictatorial use of power. (CDC 38:88f.)

One might wonder whether Krirkkiat did not actually want to say that one single party, Thaksin's Thai Rak Thai, had won absolute majorities "two times in a row" (though in 2001, it did not, but needed to form a coalition government). Besides, governments in a parliamentary system are normally thought to need absolute majorities in the House for being stable. Such absolute majorities are not usually equated with a "dictatorial use of power" (see also his quote on the next page) Krirkkiat added,

I think that the election system of 1997 was the reason that a government with dictatorial powers occurred. If we use the proportional system, we will get a government with a majority, but it would not dare using its power to deviate [from the right path]. (CDC 38:90)

Given these statements, it is not surprising that Krirkkiat could not agree with Woothisarn's proposal to readopt the 1997 election system, though with small changes. He anticipated that this system would again lead to the "parliamentary dictatorship" that he and his group had been trying to exorcize from the Thai polity. "If we want to see political change in our country in a way that is better and constructive ..., then, I think, the election system is an essential element that must be changed [to-

wards MMP]" (ibid.). According to Krirkkiat, there were two main reasons for supporting the introduction of an MMP system. First, it was more democratic.

If we use the proportional system, every vote will be included in the calculation of the number of MPs [for the political parties in the House]. The MPs in the House will be representatives according to the intentions of the voters [as expressed in the vote totals cast for the parties' lists]. Therefore, regarding the principle of democracy, this proportional election system is the best system that reflects the intentions of the voters. This point is the highlight of this system. (CDC 38:92)

Second, a mixed-member proportional election system would prevent "parliamentary dictatorship."

The proportional election system is a means to prevent political dictatorship. It creates a balance between the political powers, because with this election system, political parties will have hardly any opportunity to win majorities and absolutely control the House, and form a single-party government. ... We need a strong government to administer the country. But we do not need a dictatorial government. (CDC 38:92)⁴¹

Similar to Woothisarn, Krirkkiat also argued that his system would not require much effort on the voters' side in terms of learning. As in previous elections (2001, 2005, and in the 2006 poll that was subsequently annulled by the Constitutional Court), the voters would have received two ballots, one for the constituency candidate, and another for the party list. Indeed, the electoral procedure would have remained the same with the adoption of MMP. However, voters would most certainly have had problems understanding the outcome of the elections, such as an increase in MPs by the Democrats, and a decrease of MPs by TRT. For example, in the chart on the next page, the outcome of the 2005 elections, as proportionally recalculated, looks quite different from the actual election result (the details depend on which proportional formula is used).

Given that even many members of CDC and the CDA had tremendous problems understanding the logic of MMP, one cannot help but wonder how the Election Commission of Thailand would have dealt with the task of explaining the new election system to the average voter. Certainly, this task would have been made more complicated by the fact that the constituency candidates would also have occupied the first positions on the party lists, "while those who do not stand as constituency MPs must come at the end of the list" (CDC 38:96). Many voters would probably have

been confused to see that, in their constituency, a candidate was defeated, while he or she still made it to parliament through the party list. Though this phenomenon was familiar to the German voters, their Thai counterparts might well have been puzzled.

Election result 2005: proportional recalculation

(results differ according to the formula used)

Thai Rak Thai Party

18,993,073 votes (61.17 %)

Actual number of MPs 377 (75.4 %)

Proportional recalculation 336/320/306

Democrat Party

7,210,742 votes (23.23 %)

Actual number of MPs 96 (19.2 %)

Proportional recalculation 128/122/116

Up to this point in the discussions, there were statements in favor of a revised 1997 system (Woothisarn), the elimination of party-list MPs (Suraphon), and the introduction of a mixed-member proportional system (Chermsak, Krirkkiat). Then the time had come for the lone crusader Karun Saingam (a former senator and avid follower of the People's Alliance for Democracy—PAD, or “yellow shirts”) to reject these three options. To him, the revised 1997 system and the one proposed by Chermsak and Krirkkiat were “little different.” Karun attacked the other *prae yatti* groups claiming, “You have nothing new that is worth trying. You change only a little bit... And if you do not have anything new, how will you solve the four big problems that you have determined?” (CDC 38:109). He then proceeded to dismantle the solutions for these four problems, as he interpreted them.

1. “Vote buying and cheating in elections.” Will the three proposed election systems solve these problems? No. “They will be there just as before.”

2. “Will you be able to solve the problem of husband and wife assembly, or family assembly? If you have this kind of MPs and senators, your *prae yatti* will not solve anything. It will remain the same.”
3. “The legislature is too much under the power of the executive. It can order it around.” There were the powers of the party chairperson, those with *baramee* [a great degree of social recognition, and thus influence] in the parties, and those who provided money. They determined the direction of the party. These directions would become the directions of the party, and the executive. Your proposals would not solve any of these problems.
4. “The balancing system has disappeared. The balance between the legislature and the executive has been damaged; it has become weak and has failed. Can the systems you proposed ameliorate a single problem? No, they cannot” (ibid.:109-111).

In conclusion, Karun somewhat immodestly suggested,

It is only my proposal that changes everything. Maybe, I am the only evil person, or the only smart person, or the only intelligent person—but it is only me [whose proposal can change Thai politics for the better]. (CDC 38:111)

Karun’s solution was radical indeed. The Thai parliament as a representative body directly elected by the people should be abolished altogether. Instead, “a single assembly elected from occupations” should be created. Consequently, politics would completely change. The old politicians would have to run under the occupational categories of business, industry, or trade. These groups would not have more than about 10-20 members in the assembly, “according to their proportion in the population.” It had been said, Karun complained, that his proposal had no representatives, and was not the voice of democracy. But why not? The election would concern representatives of occupational groups. “If you want politics to change, my proposal will change it 100 percent. … Do you dare to really do it, do you dare to make a big change?” (ibid.). Karun claimed that he had conducted 21 hearings in Buriram province (his area of political influence, where he used to be an MP and elected senator), and some more in Korat. Everyone, he said, had supported his proposal. Yet, it seemed that few members in CDC and CDA supported it. Afterwards, however, the PAD would use its prolonged occupation of the Government House compound to impose a debate of a similar proposal on the public (Nelson 2010).

After the lengthy debate about the future election system between CDC and CDA members, one of the latter, Withaya Khotchakhuean, concluded with some res-

ignation that they were trying to change politics, and to eliminate vote buying. Nevertheless, he felt that they sometimes went into a dead end. From the “rural perspective,” he wanted to say that, “we can accept all systems, but we must understand them first. … At the same time, I think that many CDC members themselves do not yet understand the [MMP] system” (CDC 38:151). He asked Krirkkiat and Komsan for more information. In particular, since this system was taken from abroad, he wanted to know what its effects would be in Thailand (ibid.:152). As will be briefly described below, this problem of understanding even persisted in the decisive vote-taking meeting of the CDA two weeks later, on June 21, 2007.

The CDC's electoral design decisions

One day after the above meeting with the *prae yatti* groups from the CDA, the CDC met for its 39th meeting briefly to discuss the issues again in order finally to determine its position ahead of the debate of the draft in the CDA. When its deliberations had reached the issue of the election system, the CDC's secretary, Somkhit Lertpaithoon, put the alternative this way.

I understand that we confirm 400 members, right? We have two groups with different views. The first group is 320 to 80, as in our draft, while the second group [wants] 200 to 200, the German system. (CDC 39:87)

Of course, the two different views Somkhit tried to characterize had actually been about MMM versus MMP. What he called the “German system,” after all, was not merely about equal numbers of constituency and list MPs (versus the CDC's original 320 to 80 formula), but denoted a mixed-member *proportional* election system (versus the CDC's decision for a mixed-member *majoritarian* system).

Kirkkiat Phipatseritham said that had talked with Phairote Phromsan about a compromise. The idea was to have a transitory provision according to which they would use the 320 to 80 formula in the first election after the constitution had been approved, while they would use the 200 to 200 formula in the subsequent election. They could also talk about it in the CDA, because he did not want the CDC to waste time (CDC 39:88). It seemed that, somehow, Kirkkiat still assumed that the 320 to 80 formula was to be applied with an MMP system. Otherwise, it would have made little sense to have a “compromise” by applying MMM in the 2007 election, and then

switch to MMP in the following one. Jaran seemed to think in a similar direction saying that the 320 to 80 formula was “our first step” (*kao raek*). It was not a party list like in 1997, but “a proportional model,” the details of which still needed to be debated.

Can we write the 200 to 200 formula in the transitory provisions? We can write in the transitory provisions that after having used this model for five years already, the proportion will be changed from 320 to 80 to 200 to 200. If the CDA does not want this, they can delete this transitory provision. (CDC 39:89)

Jaran saw this procedure as implying a move to the “complete” (*temrup*) 200 to 200 model at that later point. He seemed to look at the 320 to 80 model as a diminished MMP formula, the complete form of which would be 200 to 200 (or 250 to 250). In fact, however, and certainly to the majority in the meeting, the 320 to 80 formula had precisely the meaning that Jaran rejected—a modified 1997-style party list model. Thus, Somkhit Lertpaithoon, in his capacity as the CDC secretary, bluntly countered, “I understand that the majority does not want 200 to 200, neither in the main text nor in the transitory provisions” (*ibid.*). However, Somkhit also added to the conceptual confusion by saying that he understood that in the seven *prae yatti* groups of the CDA, the majority wanted to have party lists,

meaning the proportional system, never mind what word they might use. I use proportional, proportional system. We agree already that we should have a proportional system. Therefore, there are only two remaining points, namely 320 to 80 and 200 to 200. (CDC 39:91)

This quote illustrated again the fundamental misunderstanding in much of this discussion. Of course, one could make the proportional element of the mainly majoritarian system (the party list) comprise 80 or 200 MPs—in the same way that the number of 80 party list MPs in the 2007 constitution was increased, by a constitutional amendment passed during the Abhisit government, to 125 for the 2011 election (Nelson 2012:8-16). Yet, Krirkkiat and his group did not fight so hard merely to have a greater number of party list MPs in the MMM system. Rather, they wanted to apply proportional voting as the founding principle of the election system altogether, that is, they advocated a switch from MMM to MMP. Again, as so often already, the point was about the difference between a mixed-member *majoritarian* and the mixed-member

proportional system. Yet, for some reason, and despite all the preceding discussions, this supposedly simple, but fundamentally important, design difference did not seem to have reached the CDC debate, even at this late point in the constitution drafting process, with sufficient clarity, leading to much redundant and confusing debate.

Pisit Leeahtam added an objection to the MMP system that resulted from its envisaged application by using the 320 to 80 formula. In this version of the proportional system, he pointed out, if a party had already received as many constituency MPs as it could claim according to its proportional vote share, then nobody from the party list would become MP. In other words, those candidates who stood on the party list part of the election system would be eliminated.

This contradicts our intention for having the proportional system, because we want people with different characteristics, who have mainly national orientations and not mainly provincial or constituency orientations, to do political work. We want people of this kind to get into [the political system]. Therefore, we think that we should have a proportional system or the Party list [English in the original]. (CDC 39:96)

In fact, the 80 MPs mentioned in the formula could not disappear, but would be given to those parties that had gained fewer constituency MPs than their proportional seat claim would suggest.⁴² In any case, Krirkkiat could not go along with the direction the discussion was taking, making the accurate observation that,

What had just been said entirely returns to the year 1997. This is for sure, irrespective of what you might think. It is the same as before. You do not think [in terms of] proportionality. (CDC 39:97)

Before Krirkkiat made this statement, he had reiterated that, in Bang Saen, they already had adopted a proportional voting system, only that they still needed to decide about the formula (320 to 80, or 200 to 200). Therefore, he must have perceived that the direction the CDC discussion was taking represented a regression behind what he mistakenly assumed had already been achieved in Bang Saen. From the other end of the spectrum, Nakharin actually confirmed Krirkkiat's impression by saying that what both Pisit and Phairote had talked about differed very little from the 1997 system. In addition, he contrasted their position with that of Jaran, stating,

But if we use the entire country as a constituency, and only mark one number, that will be another system. We can perhaps call it proportional

system. It will be a compensatory system. What Jaran has proposed is such a system. (CDC 39:99)

Nakharin's own position had been clear for a long time. He reiterated, also reproducing the conservative vocabulary, "If I should choose, I think moderate change would be better." He was in favor of 320 single-member constituencies, combined with 80 proportional MPs. "I think that supporting this is better. It is a change that can be understood easily" (ibid.:99f.).

In order to deal with the persisting differences regarding the election system design, Phairote Phromsan suggested establishing a working group with Jaran, Pisit, Krirkkiat, and himself. Somkhit's response was clear: "There is no time" (ibid.:104). Phairote tried again, prompting Somkhit to ask him, "It is the same, right? That is, the system of 1997, right?" Yes, Phairote responded, it was the same, only that their model did not have the national party lists any longer but regional lists (ibid.:105). Jaran followed by framing the alternative from his perspective,

We must chose which model we want. If we want to have a strong government, and have the opportunity for a party to gain a huge majority, then I think we should use the model that Phairote has proposed. [This would make us] think like the model of 1997, of which *Ajarn* Nakharin had said that it was supported by academic principles. However, if we say that we do not want a political party of this kind become a parliamentary dictatorship again, we must distribute the votes on the party list to medium and small parties. We would need the model that I have proposed. The broad lines of thinking that we have to decide about are like this, I think. (CDC 39:107)

Kirkkiat then withdrew from further debate in order to save the CDC's time. Instead, he wanted to use the CDA debate, which would lead to the final decision, as another occasion to speak about the models. Somkhit followed straight away by calling the vote about the two models. This point finally arrived after Praphan Naikowit had briefly distracted the meeting with an intervention about the regional zones and the threshold, Chuchai Suphawong had remarked that an election system that could lead to a "parliamentary dictatorship" "would move in an entirely wrong direction" (ibid.:110), and after Phairote had made another attempt to get support for establishing a working group.

CDC secretary Somkhit Lertpaithoon said that he understood that there were two models.

1. 1997, adjusted to have four or more regions, and using a lower threshold than the previous 5%. This model had been proposed by Phaireote, Posit, Nakharin, Woothisarn, “*arai phuak ni.*”
2. A new proportional system. This was supported by Jaran, Chuchai, Wicha, Khomsan, Krirkkiat, and many others.

“Those who agree with Khun Nakharin, please raise your hands.”

- 15 votes

“Those who agree with Jaran, please raise your hands.”

- 12 votes.

Somkhit: “15 to 12 *na khrap*” (ibid.:110f., result on p. 111).

Therefore, the proposal to introduce a mixed-member *proportional* election system was defeated, at this CDC level, by the proposal for a mixed-member *majoritarian* system by only three votes. Thus, the proponents of the MMP had made considerable progress since the CDC’s retreat in Bang Saen two month earlier, where their proposal had been more clearly defeated when they lost by 21 to 9 votes. After this vote had been lost, they had two weeks time for lobbying CDC and, especially, CDA members until the final and decisive vote would take place in the CDA, to which the CDC had to submit its completed constitution draft.

The CDA’s final decision for a mixed-member majoritarian system

The final step in deciding about the country’s election system arrived on June 21, 2007 with the “special” (*phiset*) 29th meeting of the CDA, in which the assembly deliberated the remaining contentious issues jointly with the CDC. If differences could not be solved amicably, votes had to be taken. In the minutes of this meeting (CDA 29), the discussions on the election system start on page 58, while the final vote on the MMM/MMP issue is recorded on page 249. The pages in between are filled with serious deliberations, misunderstandings, quarrels, struggles amongst the contending groups and individuals, and votes. The procedure started with Pakorn Priyakorn outlining the CDC’s election system proposal. It included a reduction of the number of MPs from 500 (as in the 1997 constitution) to 400. They should comprise 320 MPs

elected in single-member constituencies (this was a reaction on the public hearings; the CDC had originally wanted multi-member constituencies), and 80 “proportional MPs” elected in eight (up from the originally envisaged four) “groups of provinces” with ten MPs each (CDA 29:58). Later in the meeting, Praphan Naikowit added to this CDC model saying, “In fact, the principle is similar to the previous [1997] list MPs, only that we [the CDC] spread them according to groups of provinces” (CDA 29:158). He rejected the proposed mixed-member proportional system with the words, “If we adopt it at this time, there will be considerable confusion.” Even the members of CDA and CDC had still problems understanding this system, and he added,

We are drafting a new constitution in a time of crisis. If we change the [election] system to one that is very complicated, then the first issue would be that it is difficult to explain. The people might not understand it, and the various works [connected to elections] might encounter problems. (CDA 29:158)

From the same camp as Praphan, Woothisarn Tanjai sounded very similar when he pointed out that the considerations of his group were based on the fact that,

in political development, it is very necessary to use time. Therefore, if in the development of politics changes are made frequently while the people are still familiar with an existing system, then this might lead to problems and to confusion about Thailand’s political system. [For this reason, the CDC had adopted an] election system that is similar to the election system in the 1997 constitution. (CDA 29:161)

Moreover, according to Woothisarn, the CDC’s proposal,

is the most appropriate answer for the current Thai political system. There will not be much change, and it will not cause too much confusion in politics. Moreover, it takes into account the culture and reality of our country. (ibid.:166)

After Pakorn had spoken for the CDC, every CDA and CDC member who wanted to debate issues had ten minutes time to make his or her points. For the proponents of a mixed-member proportional election system, the discussions started badly when its major advocate, Krirkkiat Phipatseritham (expressly speaking in his capacity as CDA member, not as a member of the CDC), started talking without proper focus prompting the chairperson, Seri Suwanphanon, to remind him what the purpose of this meet-

ing was. After some more babbling by Krirkkiat, the chairperson interrupted him again with the words, “Your ten minutes are up, *Ajarn* [teacher, lecturer, professor]” (CDA 29:63). Krirkkiat responded by saying, “Oh, let me talk just a little bit more.” While another CDA member protested against Krirkkiat, the chairperson asked for how much longer Krirkkiat wanted to talk. His answer of “15 minutes” led to some more exchanges of words, and a baffled Seri asking how he could administer the meeting under these circumstances. Anyway, he offered five minutes. Krirkkiat said that this would not be enough, and somebody else should talk first.

After this rather bizarre episode had passed, other CDA members made their proposals that mostly concerned support for a 400 to 100 formula. Uthit Chuchuay was a leader in this group (though his group originally wanted only 400 constituency MPs, they also accepted to have party list MPs, as long as the number of constituency MPs was not reduced below the number of 400). He argued against MMP saying,

We do not have time any longer to take examples from this or that country, and then try to use it in our country. I respect the CDC members who have tried to propose a proportional system with 200 and 200 MPs, 200 constituency and 200 proportional MPs, or 250 and 250 MPs. I understand, sympathize, and respect the views of these members. However, these things are not in harmony with our society, our country. Our country does not have minorities, or federal states. We are a unitary state with 76 provinces. I believe that we should continue developing our politics. That we have stumbled in the latest phase was not due to the system. Rather, it was due to that special person [this was a reference to Thaksin Shinawatra]. What can we do to prevent this [from happening again]? (CDA 29:72)⁴³

Seri Nimayu later supported an important aspect against the introduction of MMP in Thailand from Uthit’s quote pointing out, “Do not adopt too much foreign culture and values. Sometimes, they are not in harmony with the people who live in our present up-country Thailand” (CDA 29:85). Montri Petcharakhum added to this line of reasoning saying that he did not want to refer to any foreign countries in arguing for an election system.

I think that the Thais must have Thai identity. Why do they have to copy things from other countries? Those other countries should also emulate Thailand. [Thailand should] proceed according to the customs of the Thai people. Do not think about other countries. Do not at all use examples from other countries. (CDA 29:139)

Directly following on Montri, Phairote Phromsan added that, for the future development of Thai politics, it was necessary and most important to have a constitution that was “appropriate” (*mosom*) to the conditions in Thailand—it should be “*baep thai thai*” (Thai style). Thus, it was not necessary to design the constitution according to models from this or that country (CDA 29:141). Obviously, one could wonder whether Phairote intended to suggest that people such as Krirkkiat, Khomsan, Chermsak, Somchai, Jaran, or Chuchai were somehow less Thai than Phairote considered himself to be, or that they simply did not adequately understood what “*baep thai thai*” implied, leading them to propose and push for an “inappropriate” election system, namely MMP.

Proposals for 400 constituency MPs without party lists were also made. Surachai Liangbunloetchai stated that the “party list had not created any benefit for the development of politics and government of the country. … [Therefore] Get rid of the party list” (CDA 29:77). At the other end of the spectrum, however, Chermsak, Somchai Ruchuphan, and Khomsan lengthily defended the mixed-member proportional election system. With their system, Chermsak stressed, “not even one single vote of the people would be wasted” (CDA 29:89) in allocating MPs to the political parties. With some understatement, he claimed that their proposal differed only “a little” (*nittiew*) from that of the CDC. Chermsak urged the audience, “Please, listen carefully” (to his explanation) (CDA 29:91). Indeed, he made the alternative very clear. Both the CDC and his group envisaged two ballot papers, one for the constituency MPs, and another for the MPs on the party lists. But the CDC would use the party-list ballot only to calculate how many of the 80 seats would proportionally be distributed to the parties (meaning in proportion to their votes on the party-list ballot). In the model proposed by his group, however, the party-list vote would be used to calculate the entire number of MPs that the political parties could claim in the House. Thus, their model would concern all 400 MPs, and not merely the 80 standing on the party lists (*ibid.*). Chermsak concluded by saying, “Let’s take the principle first. Do we want the proportion applied only to the party lists, or to the proportion of MPs altogether?” (*ibid.*:92).

At one point, Winat Manmungsin proposed what the CDA finally would adopt as Thailand’s new election system: 400 constituency MPs, and 80 regional party-list MPs, elected in eight regions with ten MPs each (only that he still wanted a small

threshold, and did not mention the single/multi-member constituency issue) (CDA 29:129f.). Wichai Rueankroengkunlakrit proposed a similar model, namely 400 constituency MPs elected in multi-member districts, and 80 party list MPs (CDA 29:146). Earlier, Karun had insisted on his model of representation in the form of “occupational groups according to their proportional share of the population” (CDA 29:118). This would have lead to a dramatic change in the occupational backgrounds of MPs, because the dominance of businesspeople in the House would have been broken.

After the members of CDA and CDC had finished a one-hour dinner break, the proceedings resumed at 18:40. The chairperson of the CDA, Noranit Setabutr, noted that they had had a wide debate already. Therefore, the CDC should provide its summary (in preparation for taking votes on contentious issues). Atchaphon Charuchinda posed the seven issues as follows (CDA 29:167f.).

- 1) There should be two systems, namely constituency and proportional (he combined “proportional” and “party list” by referring to *rabop satsuan baep banchi raichue*, approximately “the proportional system of the party-list kind”).
- 2) The original proposal of the CDC regarding the number of constituency MPs was 320. However, the committee had no objections against increasing this number to 400, as advocated by many speakers.
- 3) There should be single-member districts.
- 4) There should be 80 “list” MPs.
- 5) There should be eight provincial groups with 10 list MPs each.
- 6) As for the counting of the PL votes, it should be done only for candidates on the party lists, without taking into consideration the constituency results.
- 7) There should be two ballot papers, as in 1997.

These were the seven points for which decisions would have to be made.

The first question that arose was whether, in fact, everybody agreed with having two kinds of MPs. Atchaphon therefore noted that some groups still wanted only constituency MPs. In a comment that indicated the hidden dynamics of this exercise in Thai constitution drafting, Somkiat Rotcharoen remarked that there were not so many people present in the chamber at this point, because negotiations for compromise solu-

tions were going on outside of the meeting room. They were looking for ways out (of the disagreements). They were in the process of agreeing. Could they perhaps wait for ten more minutes? They would then return to the chamber. Noranit asked Suraphon Phongthatsirikun, whom he addressed as “[provincial] governor,” whether his group would withdraw their proposal of only having constituency MPs. After all, the trend was clearly for having two kinds of MPs. His group had not yet withdrawn its proposal, Suraphon answered (CDA 29:171). Noranit wondered aloud what they should do now, which prompted some more deliberations about the voting procedure. At this point, Uthit declared that his group withdrew their proposal of having only 400 constituency MPs. Thus, only Suraphon’s group still insisted on having only 400 constituency MPs. Had they changed their minds, Noranit asked him. No, not yet. Could Noranit wait a minute? His group was still deliberating what it wanted. Could he wait for two minutes? Yes, yes, Noranit responded.

While the groups were still negotiating, Jaran expressed his dissatisfaction with the trend of increasing the number of MPs beyond the originally envisaged number of 400, that is, a reduction of 100 over what the 1997 constitution had stipulated. All their surveys and hearings had shown that the people wanted this reduction. If they could achieve this by omitting the party list altogether, he would not object. If there were only 400 constituency MPs, all right. “But do not make the [number of] MPs betray the people by making them 480 or 500 again, just like in the past” (CDA 29:173).

One remaining obstacle was eliminated when Surachai declared that his group had wanted to *prae yatti* for only 400 constituency MPs; they did not want the proportional system. However, since they had listened to the debate, his group had decided that, “we are pleased to have a proportional system” (here certainly denoting MMM; CDA 29:175). This left only Karun Saingam with his proposal of occupational representation as the lone obstacle to agreement on this issue. Eventually, he also conceded. The chairperson, Karun said, had twice been kind to him by allowing him to explain his position. “Therefore, I agree. I withdraw as well” (CDA 29:176). With Karun’s withdrawal, there was no *prae yatti* group left that still wanted to have only one kind of MPs. Thus, the CDA was left with only one option, namely an election system that comprised both constituency and party-list MPs. With this, the first point on Atchaphon’s list quoted above was finished.

After this issue had been resolved, the CDC's secretary, Somkhit Lertpaithoon, noted that they now had to deal with the question of how many constituency MPs they should have. The CDC, he said, was undecided between 320 and 400, although their draft envisaged 320. Yet, the CDA wanted 400. Therefore, this issue needed a decision (CDA 29:176f.). Similar to the statement of Jaran above, Chali Kangim referred to the public hearings favoring 400 MPs altogether: “We must not cheat the people. This is an important point” (ibid.). This warning was followed by Wichai, who repeated his earlier proposal of having 400 constituency MPs, and 80 party list MPs. Uthit reiterated his insistence on 400 constituency MPs (this was probably not surprising since his background was in constituency-level politics). Afterwards, they could vote on the number of MPs on the party lists (ibid.). Surachai then suggested that they should decide first whether they would adopt single or multi-member districts (because this would influence his group's decision on 320 to 80 versus 400 to 80), which was no. 3 on Atchaphon's list above. After a brief discussion about the procedure, they took the vote about SMD or MMD. This vote turned the CDC's proposed SMD into MMD by 48 to 28 votes (CDA 29:183). It should be noted here that the number of votes only reached 76, although the meeting was supposed to be attended by 95 members, according to the attendance list printed on pages one to four of the minutes. Since no abstentions were recorded, one might thus wonder what had happened to the remaining 19 members.

Shortly after this vote had been taken, the meeting opted, with no further debate, in a 50 to 32 vote, for 400 constituency MPs and 80 party-list MPs (the majority position in the CDC was 320 to 80). Chairperson Noranit summarized the result by saying, “Therefore, it is 480” (CDA 29:186). There was no vote on the increase from the originally envisaged four electoral zones for party-list MPs to eight zones, because there were no dissenting voices. Thus, Somkhit called on the next point, which was about the method of calculating the proportional groups of MPs. The CDC had suggested calculating them separately from the constituency MPs (MMM), while Chermsak and others of the CDC minority wanted to calculate them together (MMP) (CDA 29:187). Thus, this was the point where the choice between a mixed-member majoritarian versus a mixed-member proportional election system re-entered the debate. The meeting, therefore, did not deliberate the proportional system as such, but rather treated it as a variant of the question of how the 80 proportional MPs should be calculated. Consequently, the meeting also did not arrive at the question of whether,

for the MMP to work, they could ever use a formula such as 400 to 80. In terms of the electoral design logic, a decision should first have been made about the preference for MMM or MMP. If CDA and CDC had opted for MMP, the next design issue would have been what ratio of constituency and proportional MPs this system needed to work in (Thai) practice. Praphan seemed to have sensed this problem when he wondered how the proponents, given the preceding decision in favor of 400/80, could calculate the votes. After all, their proposal from the beginning had been to have half the number of MPs standing in constituencies, while the other half would be drawn from the party lists. In this context, Praphan also pointed to the texts of the motions (*prae yatti*) of the MMP supporters. “You will see that both of them have the half/half system. … These are totally different concepts” (CDA 29:200). It seemed that the *prae yatti* included the 50/50 split of kinds of MPs, according to Krirkkiat’s original proposal, based on the situation in Germany. Yet, the way the vote was organized in the present meeting, participants had to vote for the kinds of MPs first, and arrived at 400/80. Nevertheless, the two *prae yatti* groups in favor of MMP did not want to concede defeat that easily, and thus still insisted on trying to push through their proportional approach, which would have meant to adopt MMP based on the existence of 400 constituency MPs and 80 party least MPs, and one question is whether this could have ever worked.

Nevertheless, Chermsak Pinthong went ahead with explaining their system once again, saying,

The system that my group proposes is a system that, when the calculation is being done, uses the proportion of all 480 [MPs], while your system calculates only from the 80 [MPs]. We want to use only the party ballot paper to calculate the entire country. The parties’ votes are summed up for the entire country. Then, it [their proportional seat claim] is calculated from the 480 seats. They will get the grand total (*yotruam*) from that. (CDA 29:188)

Thus, if a party won 50 percent of the vote, it would get 240 of the 480 MPs (CDA 29:190; this approach led to some more confusion, because, in Chermsak’s model, constituency MPs could also stand on the party lists). Similarly, Chuchai Suphawong noted that, “The calculation method of *ajarn* Krirkkiat and *ajarn* Somchai uses the party preferences [for determining] the entire number of MPs.” For example, if the Thai Rak Thai party got 40 percent of the vote, it would receive 200 MPs if the House

comprised 500 MPs altogether (CDA 29:198). Chuchai thought that this approach would lead to stable governments, without getting “parliamentary dictatorships” again (supposed to have existed under Thaksin Shinawatra). He added, “We are lucky that we still have something that can save the country from crisis” (CDA 29:199). With this “something,” Chuchai referred to the military and its coup of September 2006.

Noranit then accepted the call by some members, who had asked the proponents to explain their models once again. For the CDC position, Woothisarn provided a brief and precise explanation, emphasizing that their model was similar to the one stipulated in the 1997 constitution (CDA 29:192f.). Jaran Phakdithanakul’s explanation of the MMP stance was not as clear. In a subsequent explanation Woothisarn also reacted on Chermsak’s model when he pointed out that, “It would be very difficult for us to explain to the people why this candidate who did not win in his constituency nevertheless became Member of Parliament” (CDA 29:197). Eventually, chairperson Noranit tried his luck again. He stated that they had two models, one from the CDC, and another from Krirkkiat, Chermsak, and Somchai. “Therefore, if we cannot agree, then we will have to vote” (CDA 29:201). However, Chuchai still felt he needed to explain some aspects of MMP, as did Jaran. The latter expressly confirmed that Krirkkiat’s calculation method could be applied, although they had resolved for a 400 to 80 ratio of MPs. From the opposing camp, the CDC’s secretary, Somkhit Lertpaithoon, countered by saying that their version of the MMM system already resulted “in considerable political reform,” while the newly proposed system was difficult to understand, and they still debated how the MP numbers in it could be calculated (CDC 29:205f.).

Given that a number of CDA members did not yet understand the differences of the two systems, the proceedings went back and forth for a while, followed by Khomsan and Jaran trying again to explain their election system model. Somkhit and Woothisarn tried the same for their model. The former could not resist the temptation to dig at Jaran remarking, “Listening to *Ajarn* Jaran, things are still very complicated” (CDA 29:221). Some time later, Somkhit added, “The minority on the CDC has not yet been able to define their own [MMP proposal] at all” (CDA 29:247). Pisit Leeahtam criticized the advocates of MMP on the ground that this model was used in some rich countries. He added,

Germany uses this system, because the characteristics of MPs in the constituency and party-list systems are hardly any different. ... In fact, they should not have any constituency system at all. They should only have the proportional system. (CDA 29:226)

Eventually, the signal was sounded calling the CDA members into the assembly hall to take the vote. Seri Suwanphanon, now acting as the chairperson of the meeting, said that he thought that there had been enough debate, and all sides understood already. Still, this did not prevent members from further questions. Chuchai confirmed one contentious issue saying,

Party leaders can stand both in the constituency and on the party list. If they cannot make it in the constituency, they can make it on the list. Therefore, in this system, the party leaders are very secure, and it is difficult for them to fail in an election. (CDA 29:239)

The chairperson clearly had been impatient for a while. Now, he uttered, “Dear members, please decide for yourselves” (CDA 29:240), which was directly followed by Sawet Thinakun saying, “I do not understand. I really do not understand. Since I have little knowledge, I just want to ask a little bit” (ibid.). Seri then gave the word to Komsan (for MMP) and Praphan (for MMP), adding that their statements would conclude the debate. In his statement, Praphan noted that the proponents of MMP had continuously added more elements to their proposal, for example, that candidates could stand both on the constituency and on the party list ballot (which had also surprised me when reading the minutes). “With all due respect, but what had been debated about is not at all included in the frame of the *kham prae yatti* [the formal motion necessary to initiate an amendment of the constitution draft];” their *kham prae yatti* spoke only of the 250 to 250 ratio (CDA 29:243f.). Atchaporn Charuchinda also noted that the *kham prae yatti* of both Chermsak’s group and the minority on the CDC figured one national constituency, both for the constituency MPs and the party list MPs. Moreover, they used equal numbers of 200 for both. After the meeting had decided to have 400 constituency MPs and 80 party list MPs, and after they had divided the latter into eight provincial groups, the MMP proponents’ *kham prae yatti* had not been adjusted (CDA 29:246).

Indeed, it seemed that the various groups advocating MMP were not well co-ordinated, and lacked a clear strategy, except for trying to delay the final decision by

“explaining” their models repeatedly, thereby only adding to the confusion. They might have changed their tactics after the meeting had voted for the 400 to 80 ratio, thereby rejecting the 250 to 250 or 200 to 200 options originally seen as necessary for adopting a mixed-member proportional election system. Besides, the idea of national party lists had given way to lists in eight provincial groups. Following this double rejection, the advocates of MMP seemed to have tried to save their proposal by reintroducing it in the vote about how the 80 party list MPs would be calculated. This included their attempt to draw the constituency seats into the provincial zones (like in the German federal states, or *Länder*), moving from a national-level 200 to 200 or 250 to 250 ratio to a regional-level 50 (constituency MPs) to 10 (party list MPs) ratio. Yet, the 400 to 80 formula approved in the earlier vote did not connect the two kinds of seats at all—after all, that model was designed as a “parallel” or “segmented” system, with no relation between the 400 constituency MPs and the 80 regional party list MPs.

Finally, the decisive moment had arrived when Seri repeated that the members should decide by themselves, and they should do it now. He thought that everything was understood already. Again, he sounded the signal announcing the taking of a vote. If you agreed with the CDC (majority), then press “agree” (*hen duay*). If you agree with the *prae yatti* group, press “disagree” (*mai hen duay*). Now, please vote. The result was as follows.

- Agree: 45 votes.
- Disagree: 39 votes.
- Abstentions: 2 votes.
- Did not vote: 1 vote.

Seri: Therefore, it is according to the CDC (majority) (CDA 29:249).

Thus, the attempt to introduce a mixed-member proportional election system in Thailand had failed—by six votes, with eight votes missing, given the attendance list according to which 95 members participated in the meeting.

Conclusion

The unplanned and non-teleological construction of representative structures in Thailand’s political system—replacing the strictly top-town and exclusionary character of

the previous monarchical system—started in any practically significant sense only with the elitist revolution of 1932. It combined indigenous ideas of political participation with the adoption of foreign models of a constitutional political order. Ever since, there has been an interplay of remnants of the old system (monarchy, military, civil bureaucracy), newly-introduced political positions and structures (politicians, political parties, voters, elections, parliament), political events and processes (be they military coups or popular protests), political culture (in the sense of sets of political ideas or themes), changes in the environment of the political system (such as an increased popular interest in politics, and the role of the mass media) that translate into the development within the political system of an audience that actively observes those in political positions,⁴⁴ and legal codifications (mainly the constitution, including organic laws). The present paper has tried to illuminate one instance of legal codifications, concentrating on the CDC and CDA of 2007, and here specifically on the decision-making process concerning the election system (election system design issues raised during the proceedings of CDC and CDA will be dealt with in a separate paper). More precisely, the task was to show how the CDC and CDA, during the course of their deliberations between January and June 2007, opted for a revised version of the mixed-member *majoritarian* election system, which had been introduced with the 1997 Constitution, rather than follow the proposal of and persistent push for the introduction of a mixed-member *proportional* election system.

In analyzing the decision-making process, the author has relied on the word-by-word minutes of the meetings, mainly those of the key drafting body, the CDC. Informal discussions and negotiations as well as documents distributed in the meetings have not been used since they have not been accessible, while additional interviews have so far not been conducted because of time limitations, and the fact that such interviews will be useful only after the available written sources have been exhausted. Relying on the formal records had the advantage of having a large body of text about what the participants really said in the meetings, rather than what they thought they remembered years after the events when asked specific questions. Moreover, these texts were generated unobtrusively. In making their statements, the participants neither reacted on question incentives posed by an interviewer nor did they seem overly to speak to an imagined external audience (such as in meetings of the House), although most deliberations were broadcast on closed-circuit TV to a reporters' room, and although the committee members were well-aware that every word ut-

tered in the meetings was recorded by the staff of the stenographic services section of the House of Representatives.

Therefore, a reasonably accurate description could be constructed of what happened during the deliberations aimed at determining the 2007 Constitution's election system (participants might well see this claim differently). It is clear that two main groups existed that advocated a revised mixed-member majoritarian and a mixed-member proportional election system, respectively. This includes the identification of the main advocates in each of these two groups, and the perspectives they adopted in arguing for their respective cases. Nevertheless, these declared advocates comprised only about nine people, and only they left traces in the meeting records. It cannot be determined what the remaining 26 CDC members thought about the two main options for the future election system, and what reasons led them to decide one way rather than the other. This point became even more problematic when the decision-making process moved up to the CDA, especially in their decisive meeting with the CDC on June 21, 2007. A number of assembly members, as demonstrated in the introduction of this paper, did not really seem to grasp what was at issue in casting their votes for one of the two main options. Moreover, these were only those members among the 95 people listed in the attendance list of that meeting who dared speaking out. What their silent colleagues thought, we cannot tell. We can certainly say, though, that the constitution-related deliberations on the CDA were considerably less intensive compared to those on the CDC. This, in turn, might have accounted for a lower level of understanding complex constitutional issues, and their political consequences, on the part of the CDA members. Thus, looking at the "micro foundations" of the Thai constitution drafting in 2007, "mistakes" and "misperceptions" might have had an important role in determining "institutional outcomes" (Capoccia and Ziblatt 2010). In the important case of the election system, this outcome, as it turned out, could have almost gone either way—MMM or MMP—, given the final vote of 45 in favor of MMM and 39 in favor of MMP. For this reason, there remains some dissatisfaction that we could not get any closer to the complex dynamics of the decision-making process than has been presented in this paper.

Endnotes

¹ This paper was presented at the research colloquium of Mainland Southeast Asian Studies, University of Passau (Germany), on April 17, 2013. The author thanks Prof. Dr. H.-Rüdiger Korff for his invitation. For the PowerPoint presentation used during the lecture, please see <http://wu-th.academia.edu/MichaelHNelson>. This paper is part of a research project, started in late 2009 under the auspices of the King Prajadhipok's Institute (KPI), on one aspect of the construction of representative structures in Thailand's political order (in the wider context of both the development of constitutionalism and democratic political institutions in this country). The primary data base for this undertaking are the word-by-word minutes of the 1997 and 2007 Constitution Drafting Assemblies (CDA) and Constitution Drafting Committees (CDC). So far, the main outcome of this project is the second interim report, which mainly deals with the CDC of 2007, submitted to KPI in October 2011 (Nelson 2011). However, much work remains to be done, now in the context of the regional research unit at Walailak University under the project title of "The Construction of a System of Political Representation in Thailand: The Constitution Drafting Committees and Constitution Drafting Assemblies of 1997 and 2007."

² "Constitution of the Kingdom of Thailand (Interim). Buddhist Era 2549 (2006)." Unofficial translation prepared by the Department of Treaties and Legal Affairs. ราชธรรมนูญแห่งราชอาณาจักรไทย (ฉบับชั่วคราว) พุทธศักราช ๒๕๔๙. ราชกิจจานุเบกษา เล่ม ๑๒๓ ตอนที่ ๑๐๒ ก ๑ ตุลาคม ๒๕๔๙. A "Certified Translation" was published by the Office of the Council of State's Welfare Fund. It prints the Thai version and the English translation side-by-side. The Thai version was officially published in the *Government Gazette*, Vol. 123, Part 102 Kor, dated October 1, 2006. For the Thai version, see also กองบรรณาธิการมติชน [2006].

³ Sub-committee 1 dealt with rights and liberties, people's participation, and decentralization; sub-committee 2 prepared input on political institutions; sub-committee 3 debated independent accountability organizations, and the courts.

⁴ There were two abstentions; one member did not vote. Five CDA members were listed as absent in the attendance list. Thus, eight of the 100 members are unaccounted for. The decision is documented on page 249 of the minutes referred to in this paragraph.

⁵ For a systematic treatment, see Powell (2000). For overviews on the election systems outlined here, see Blais and Massicotte (1996, 2002). More details are to be found in Reynolds, Reilly, and Ellis (2005). A standard work on electoral systems in the author's native German is Nohlen (2007). For a systematic treatment of electoral change and system choice, comprising a systematic introduction and many country studies, see Colomer, ed. (2004). An assessment of the study of electoral reform is provided by Leyenaar and Hazan (2011).

⁶ Such mixed-member systems have gained increasing attention; see Shugart and Wattenberg, eds. (2001).

⁷ For the figures, see the chart in Reynolds, Reilly, and Ellis (2005:32). Pakorn Priyakorn presented these IDEA statistics in a CDC meeting, without, however, mentioning their source (CDC 26:12). Just before Pakorn presented the IDEA statistics, Nakharin

Mektrairat, in supporting a modified 1997 party-list system, had claimed, “Election systems with only constituencies [plurality/majority systems] … have declined. Nobody uses them any longer. In the United Kingdom, it has been abolished already. Thus if we want only the constituency system, I think that this is not in harmony with the modern world. It is also not democratic” (*ibid.*, p. 10). At the time he spoke these words, Nakharin was the dean of the faculty of political science of Thammasat University.

⁸ The quote is on page 23 of Reynolds, Reilly, and Ellis (2005), while the table follows on page 24.

⁹ For an overview of electoral provisions in Thailand that includes the changes made by the 1997 constitution, see Nelson (2001).

¹⁰ For observations on a set of such public hearings conducted in Chachoengsao province, see Nelson (2007).

¹¹ These twelve organizations were the National Security Council (the coup plotters), the National Assembly, the Cabinet, the Supreme Court, The Supreme Administrative Court, The Election Commission, the National Counter Corruption Commission, The Auditor-General of the State Audit Commission, The Ombudsmen, the National Economic and Social Advisory Council, and the institutions of higher education. This procedure was stipulated in the Interim Constitution.

¹² During his time on the CDC, Jaran was permanent secretary of the ministry of justice. Previously, he had served as a secretary to the Supreme Court President. He was an avowed enemy of Thaksin, and defender of the coup. In the crisis following the election of April 2006, stretching the constitution, he said, the “EC should resign for the sake of the country. Their resignation will allow the judicial authorities to supervise new election and recruit new EC members” (*The Nation*, May 9, 2006). After the coup period had ended, he was appointed to the Constitutional Court, thereby creating a conflict of interest.

¹³ Krirkkiat was a retired civil servant. He used to be a full professor of economics at Thammasat University, and a member of the first post-1997 National Counter Corruption Commission. He already participated in constitution drafting exercises in 1991 (after the coup by the so-called “National Peacekeeping Council,” NPKC), and 1997. This indicates how well connected Krirkkiat was in the Bangkok establishment, and his degree of seniority. Moreover, he was a former rector of Thammasat University.

¹⁴ As far as I know, no minutes were prepared of these six days of deliberations. Judging from the minutes, the CDC’s 13th meeting took place on March 1, while the subsequent 14th meeting only followed on March 13.

¹⁵ It would be interesting to draw up charts showing the networks of people from outside the CDC and CDA reaching into these two bodies, providing back up, information, and support services, and thereby exerting influence on the drafting of the 2007 constitution. However, this cannot be gleaned from the minutes of formal meetings.

¹⁶ In an informal talk with the author, Kittisak confirmed his participation.

¹⁷ See ឈ្មោះ (2550a [2007]; see also ឈ្មោះ 2007b).

¹⁸ Pisit was a former spokesperson of the National Bank of Thailand. He served as deputy finance minister in the second Chuan government (1997-2001). At the time of writing, he was the dean of the faculty of economics, Chiang Mai University, besides sitting on a number of academic committees. Pisit's doctoral dissertation at Erasmus Universiteit Rotterdam was published as *From Crisis to Double Digit Growth. Thailand's Economic Adjustment in the 1980s*. Bangkok: Dokya Publishing House, 1991. He was also the president of the Netherlands-Thai chamber of commerce, and chairperson of Jardines Matheson (Thailand) Ltd., and many other state and private enterprises. His socio-political circles included Prem Tinsulanonda, Surayud Chulanond, Anand Panyarachun, Sanoh Unakul, Borwornsak Uwanno, and Visanu Kruangarm. In sum, Pisit was a good example of the technocratic section of the *aphichon*.

¹⁹ Vicha was a former chief justice of the Supreme Court's juvenile and family division. At the time of the CDC, he served on the National Anti-Corruption Commission (appointed by a decree issued by the coup plotters in September 2006). In 2006, he was a candidate to the ECT, but was not selected (reportedly because the Thaksin government considered him hostile, similar to Kaewsan Atipho and Nam Yimyaem, both of whom later served on the military-appointed anti-Thaksin Asset Scrutiny Committee). He was on the judiciary's side in its post-April 2006 fight against the supposedly pro-Thaksin ECT arguing that, "The judges are trying to protect our democracy and our political system..." He was in class 41 at the National Defense College, a key institution for the social and ideological reproduction of the *aphichon* or *ammat*. Vicha headed a number of charities, partly under royal patronage. When extremist right-winger Thanin Kraivichien was prime minister, after the massacre at Thammasat University in October 1976, Vicha was his personal secretary. He also co-authored a book on the interpretation of law with him.

²⁰ A medical doctor by training, Chuchai was a former secretary general of the National Human Rights Commission, before a conflict with the NHRC's then-chairperson, Saneh Chamarik, cost him his job. During the CDC, Chuchai served as a high-ranking advisor to the office of the NHRC. He was later reappointed to his previous position, only to be dismissed again by the second set of human rights commissioners.

²¹ Komsan used to work for the Election Commission of Thailand immediately after it was established (at that time, I met him a number of times, because I collected data on the ECT). At the time of the CDC, he was a lecturer in the faculty of law at Sukhothai Thammathirat University. He was one of the more junior members on the CDC. Komsan was later described by the critical blog "Thai Political Prisoners" as an "ultra-royalist and yellow shirt" (Thai Political Prisoners 2012). This assessment was based on his membership in a far-right political group, called "Sayam Prachaphiwat." During the PAD protests in early 2006, he was amongst a group of 96 academics that petitioned the king on March 4 to replace Prime Minister Thaksin Shinawatra by an interim premier (*The Nation*, March 5, 2006).

²² At the time of the CDC, Nakharin was dean of the faculty of political science at Thammasat University. He was a key member of a closely-knit and long-standing academic-political *phuak* (informal clique), of which Somkit Lerpaithoon, the secretary of the CDC, was another key member, while Noranit Sethabutr (the group's most senior member and leader, a former lecturer at the faculty of political science of

Thammasat University, a former president of this university, a former secretary general of the King Prajadhipok Institute, and the current president of Thammasat University's University Council), who was the chairperson of the CDA. This group had long helped the Democrat Party in various legislative processes.

²³ Pairote was retired high-ranking civil servant. He used to be provincial governor, director general of the community development department and deputy permanent secretary of the Ministry of the Interior. Pairote was later appointed to the Political Development Council, which had been established based on the 2007 constitution that he helped to draft.

²⁴ Woothisarn used to be a lecturer at the faculty of social administration of Thammasat University. At the time of the CDC, he was a deputy secretary general of the King Prajadhipok's Institute (KPI), whose college of local government development he had previously directed. He had been a long-standing and instrumental member of the decentralization committee since its inception following the 1997 constitution. In 2007, he was the editor of the fourth KPI yearbook, entitled *Exploring the 2007 Constitution*. This book collects public-relations oriented articles by constitution drafters Somkit Lertpaithoon, Noranit Setabutr, Pakorn Priyakorn, Choochai Supawongse, Paiboon Varahapaitoon, Vicha Mahakun, and Woothisarn Tanchai himself (Woothisarn, ed. 2007).

²⁵ The secretary of the CDC, Somkit Lertpaithoon, also belonged to the conservative camp. However, as the secretary he did not participate in the debates. Relying on the analysis of the meeting records, his position became clear only in the CDA meeting that deliberated and decided the issue (CDA 29:passim). Somkit used to be dean of the faculty of law at Thammasat University, and a deputy rector. He was the deputy secretary of the CDC in 1997, and has long been involved in the legislative politics of the House of Representatives, mostly in the Democrats' camp. He has also been a member of the decentralization committee from its inception (after he had helped drafting the decentralization act). At the time of the CDC, Somkit's stated goal was to become rector of Thammasat University, a goal that he shortly afterwards achieved.

²⁶ It is perhaps interesting to note that the main defenders of the MMM system had backgrounds in political science, while those who promoted the MMP system had backgrounds in accountancy, medicine, law, and economics.

²⁷ At the time of the CDC, Prasong was 80 years old, and had been involved with anti-Thaksin activities, including coup preparations, for some time. He "has long been politically active and is widely perceived as a staunchly nationalistic, somewhat right-wing, influential figure. It is widely recognized that he has a privileged relationship with the palace, mainly through his strong ties with Chief Privy Councilor Prem Tinsulanonda. It is said by palace insiders that he is viewed favorably by King Bhumibol as a true nationalist and pro-monarchist" (Tasker 2006). In meeting No. 27 of April 11, 2007 (p. 35f.), he stated, "As for the claim that I have been with the PAD [People's Alliance for Democracy, or "yellow shirts"], I confirm that I have been with them, because they have been a group without hidden benefits. Moreover, they fought for and demanded the right things, which I think are good and correct for the country. Therefore, I joined them. And if new problems occur, and the people think that they will have to fight again, I will join them in their struggle. I would like to inform [you] accordingly."

²⁸ He was the president of the Rubber Tree Association of Thailand, and referred to himself as being from “up-country,” meaning the southern province of Phuket.

²⁹ Shortly after the Thai-language draft constitution had been published, an English-language translation was circulated, though without attribution (Draft Constitution... 2007). The important parts of article 92 were translated as follows.

“Section 92: Election of members of the House of Representatives under Section 91 shall be carried out as follows:

(1) Three hundred and twenty members of the House of Representatives shall come from election held under constituency basis. ...

(2) Eighty members of the House of Representatives shall come through election held under proportional basis. There shall be four electoral zones, each of which shall have equal numbers of inhabitants and adjoining one another. Each electoral zone shall have 20 members of the House of Representatives by calculating the ratio [proportion] of the number of members of the House of Representatives from the vote ratio [proportion] of the political party list ...”

The final version of (now) article 93 says, “Section 93. The House of Representatives consists of four hundred and eighty members, four hundred of whom are from the election on a constituency basis and eighty of whom are from the election on a proportional representation basis” (Constitution of the Kingdom of Thailand, B.E. 2550 [2007]).

³⁰ คณะกรรมการอิทธิการยกร่างรัฐธรรมนูญ (April 26, 2007, p. 58f).

³¹ Ibid.

³² He was the secretary general of the Council of State, the government’s legal advisory body.

³³ Ibid., p. 94. Komsan seemed to have indicated this design element on page 80 already. This corresponded to the German MMP system, in which important figures of political parties might run in a constituency, but also on the party list. The purpose was to make sure that important political personnel made it to the House. These politicians were “secured” (*abgesichert* in German) on the party list.

³⁴ This could be done by abolishing the list altogether, by reducing the number of party-list MPs, by regionalizing the lists, by abolishing the threshold, or by allowing constituency MPs to become ministers.

³⁵ For his credentials as an arch-foe of Thaksin, see Chermsak’s book series เจิมศักดิ์ (2546, 2547 a-c, 2549 a and b, and 2551).

³⁶ CDC 38:76, including the citations. Chermsak reiterated this element *ibid.*, p. 148. Later in the meeting, Krirkkiat added one more feature that was similar to the German system. He defended the five-percent threshold by saying that it was designed to prevent “too many small parties” from entering the House. However, their proposal said five percent *or* one constituency MP (as in Germany). For example, if a party received only two percent of the vote, but one constituency MP, then this party would also be included in the calculation of the proportional seat claim (*ibid.*, p. 120). In the 2005 elections, this would have benefited the Mahachon Party. Earlier, Krirkkiat seemed to have been in favor of a two-percent threshold.

³⁷ This was quite possible, because the interests and working contexts of PL MPs and constituency MPs were often quite different. I add “often” here, because a number of

PL MPs had previously been constituency MPs, and moved up to the list to make way for family members to become constituency MPs. As for so many other areas of the Thai political system, we lack empirical data about this element of the operations of parliament.

³⁸ Later in the meeting, Pairote Promsan nevertheless still argued that an important element in the drafting of this constitution had been that the drafters had listened to the people, and let them participate in the drafting. The people wanted a reduction of the number of MPs to about 400 (ibid., p. 117).

³⁹ Section 26 of the Interim Constitution read, “Upon completion of the Draft Constitution, the Constitution Drafting Committee shall submit an explanatory note detailing to what extent the Draft Constitution differs from the Constitution of the Kingdom of Thailand B.E. 2540 (1997) as well as the reasons for the amendments...” (Constitution of the Kingdom of Thailand (Interim). Buddhist Era 2549 [2006]).

⁴⁰ Some CDC and CDA members felt too restricted by Sawat’s insistence on using the 1997 charter as the model for their 2007 document. For example, Sriracha Charoenphanit stated that the new constitution had to be able to improve the country’s political system. The CDC had been hampered by the Interim Constitution, which said they had to compare the new draft with the 1997 constitution. This had led many members to assume that the new constitution must be similar to the 1997 version. However, all of them should gather ideas “to make this constitution open up new political dimensions. ... I want to see change. The proposal of *ajarn* Krirkkiat is one dimension of change. If we still stick to a model that is close to that of 1997, then I do not believe that it can affect change in the election system” (CDC 38:102). If they did not achieve change now, Sriracha stressed, there would not be any movement for positive constitutional changes during the next four to eight years. Currently, the climate was quite good, because four political parties had already been dissolved (this had happened just a few days before Sriracha’s statement, on May 30, 2007, by the military-appointed “Constitutional Tribunal,” and by using a special retroactively applied decree of the coup plotters; the most important dissolution concerned Thaksin’s Thai Rak Thai Party). Therefore, “a number of *nakkanmueang namnao* [foul water politicians] cannot return [to the House].” He only regretted that the Democrat Party had not also been dissolved, because that way, more “foul water politicians” would have been removed from the Thai political system (ibid.:103). Sriracha, one of the more extremist members on the CDC, was a retired lecturer of the faculty of law at Sukhothai Thammathirat University, and secretary general of the office of the Parliamentary Ombudsmen. In addition, he was a committee member at the Council of State and at the National Research Council. This nicely reflected the *aphichon*’s network nature, as did the fact that, after having served on the CDC, Sriracha was selected to be an Ombudsman. Like Komsan Pokhong, Sriracha was amongst a group of 96 royalist academics that, during the PAD protests in early 2006, petitioned the king on March 4 to replace Prime Minister Thaksin Shinawatra by an interim premier (*The Nation*, March 5, 2006).

⁴¹ In a contribution to the debate, Watchara Hongpraphatson referred to a paper of twenty pages written by Krirkkiat about the election system. Unfortunately, I do not have this document (though I will try to acquire it). Given that he had read the paper, and considering the additional statements made by Krirkkiat in this meeting, it was surprising to read Watchara’s closing statement, ‘I would like to ask where is the dif-

ference between your proposal and the model in the 1997 constitution" (CDC 38:108). At this stage of the proceedings, the difference between a 1997-style MMM and Krirkkiat's MMP should certainly have been obvious.

⁴² With a 400 to 100 formula in the election of 2005, TRT would have gained 10 PL MPs, and the Democrats 26. In 2007, with a 400 to 80 formula, the People's Power Party would have gained 6 PL MPs, while the Democrats could claim 70. Finally, with the 375 to 125 formula applied in the 2011 election, Phuea Thai could have claimed 58 more PL MPs, while the Democrats would have gained 75 PL MPs.

⁴³ Uthit used to be the mayor of Songkhla municipality (thereby placing him firmly in the Democrat and Prem Tinsulanonda networks), and then moved up to become the directly elected executive chairperson of Songkhla's Provincial Administrative Organization (PAO). In late 2012, he made headlines for an alleged involvement in the murder of his successor as Nakorn Songkhla municipal mayor (Santiparp 2012).

⁴⁴ Some readers might prefer the word “public” to “audience.” The use of “audience” in the present context refers to Luhmann’s earlier distinction of three subsystems of the political system, namely administration, politics, and audience (Luhmann 1990; see also his posthumously published *The Politics of Society*, Luhmann 2000).

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