

Charter-Change in the Philippines: Lessons from the Thai Experience (1997-present)

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Reasons to look at Thailand

The broad picture

- Somewhat comparable in size and population
- Country with similar socio-economic conditions in the 1960s and yet very different outcomes forty years later
- Case of a parliamentary system reform



Reasons to look at Thailand: The Governance Component

In contrast to the constitutional drafting in 1987, the current Cha-Cha debate is about improving governance, specifically about:

- Increasing the effectiveness of the political system
- Enhancing the stability of the institutional environment
- Strengthening good governance, service delivery and competitiveness
- Increasing the role of the local (and potentially) federal level
- While maintaining the protection of individual and civil rights, and through the Rule of Law

**The Thai constitutional reforms
were precisely guided by these
concerns – so what can we learn?**



Thai constitutional-political history

- Since 1932 a constitutional monarchy with a bicameral parliamentary structure of government governing a unitary state
- History of weak and unstable civilian governments, creating a vicious cycle of military interventions in politics. As a result:
 - Popular demand for democracy was violently suppressed by military in 1973, 1976 and 1992;
 - Constitution-making has often been misused as a tool for giving legitimacy to the authoritarian regime in power
 - 15 constitutions alone were drafted between 1932 and 1997, most of them lacking any democratic process, making Thailand the country with the most constitutions in the region

Hence, key questions to be addressed by the constitutional drafters were...

- How can we make the political system more stable and more efficient?
- How can we increase accountability, participation and transparency in process of governance?
- How can we curb corruption among political and bureaucratic actors?
- How can we bring services closer to the people?

Constitutional reform was seen as a “tool” for wider political-administrative reforms



Guiding Assumptions

1. *“The process of drafting matters as much as the constitutional outcome”*
2. *“Institutional arrangements matter, because they give incentives/ disincentives to actors and therefore shape their behavior in the future”*



Therefore, we need to look at process and outcome of the constitutional reform exercise

I. The Process

The Process: The background

- Push for constitutional amendments started with the popular democracy movement in 1992;
- However, the amendment process left to parliament was perceived as unsatisfactory by the public;
- As a result, civil society pushed parliamentary actors to agree on an amendment that would allow for the constituency of a Constitutional Drafting Assembly (CDA);
- The CDA would be independent from parliament; most of its members would be popularly elected and current MPs would not be allowed to run for the seats of the CDA;
- Once the CDA has produced a draft within 240 days, parliament can make no changes to it, but is left with accepting or rejecting the entire document;
- In case of a rejection, a public referendum will be held



Question: How to select the drafters?

The Process: Selecting the Drafters



The Process: Organizing the Drafting

- Tight time frame: 240 days for drafting; no possibility for extension (fixed agenda)
- Committee Structure to facilitate the drafting
 - Drafting Sub-Committee (later scrutiny committee)
 - Public Relations Sub-Committee
 - Provincial Public Hearing Sub-Committee
 - Academic Sub-Committee
 - The archive and house affaires committee
- Three readings and vote by the simple majority
- In parallel manner: public consultations in the provinces, questionnaire research, letters etc., feeding into the committee work

The Process: The Approval Procedure

- The final draft is handed over to parliament which could not modify the draft but only approve or reject the entire document;
- In case of rejection through parliament, a public referendum would have to be organized;
- In case that the constitutional draft is approved by parliament or referendum, constitutional amendments are excluded for 5 years

- **Constitution is overwhelmingly approved by parliament and promulgated in December 1997**



- **Yet, in practice support in parliament for the draft must be seen as the result of strong civil society pressure for approving the constitutional document (“green flag movement”)**

II. The Content

The Constitutional Content:

Enhancing Stability I: Exec.-Legislative Relations

- **Strengthened role of the PM**
 - MPs cannot be cabinet member and vice versa
 - PM can dissolve parliament (and fresh elections must be held within 60 days)
- **Disincentives for party switching**
 - Candidates must have been members of the political party under which banner they intend to run for at least 90 days before registering their candidacy
 - In addition MPs must vacate their seats when leaving the party under which they were elected
- **Limits to the vote of no confidence/censure debate**
 - Requirement of constructive vote of no confidence
 - Censure procedure requires parallel filing with NCCC

The Constitutional Content: Enhancing Stability II: Electoral System

- 200 Senators are directly elected by provincial constituencies on a non-partisan basis
- Out of 500 MPs in the Lower House, 400 are elected by plurality election and 100 (25%) are elected through a party list system
 - The system of plurality elections was changed from multi-member to single member constituencies, in order to decrease factionalism
 - The new PR component opted for a closed party list system
 - 5% minimum threshold for political parties
- Majoritarian component generates strong parties
- PR component strengthens influence of party leadership over candidates and encourages a national, programmatic orientation of parties



Reason

The Constitutional Content:

Improving Efficiency

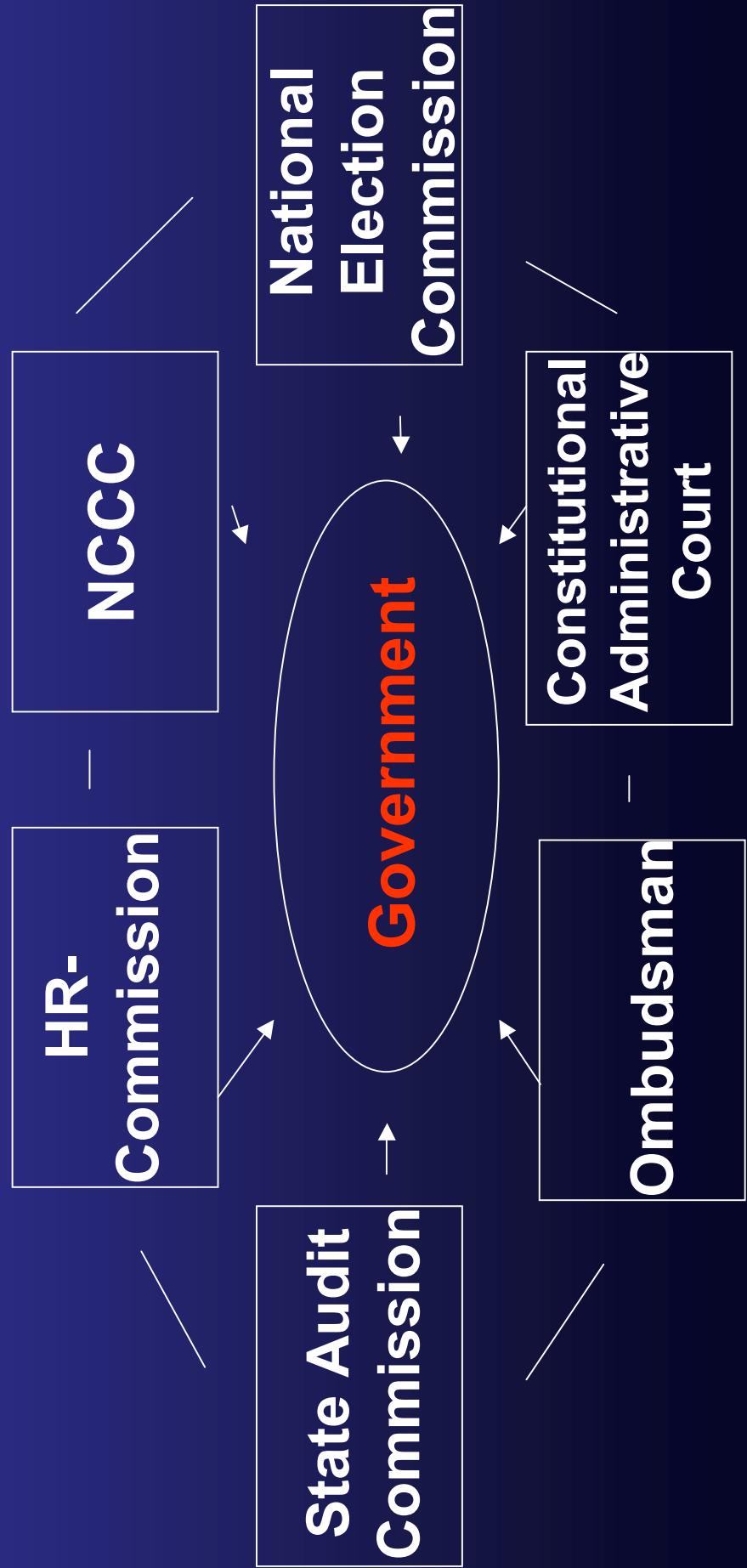
- **Executive Branch – increase executive power by:**
 - Strengthened role of PM vis-à-vis parliament (i.e. dissolution power; emergency decrees) and cabinet (i.e. lose MP status)
 - Cabinet limit to a maximum of 36 cabinet positions, from formerly 48 (currently 20)
- **Legislative branch – increase law-making function by:**
 - increasing time for legislative session to 240 days, of which 120 are reserved for deliberating bills during the legislative general debate
 - Streamlined committee structure
 - Institutionalized Research Support (i.e. KPI)
 - Educational requirements for MPs (i.e. Bachelor Degree)
- **Bicameralism – maintaining an asymmetric structure**
 - The Lower House is the “managerial body”
 - Senate is the nonpartisan “control body” with only limited role in the law making process

The Constitutional Content: Enhancing Accountability I

- **Separation of powers**
 - Strengthening the judicial branch
 - Separation of MP and Cabinet positions
 - Non interference clause of MPs in civil service appointments
- **Checks and balances**
 - Power of House to launch vote of no confidence vs. dissolution power of PM
 - Bicameralism with the Senate as a non-partisan “control-organ” and “gatekeeper”
 - Different election cycle and terms for Lower House and Senate

The Constitutional Content: Enhanced Accountability II

- Introduction of new or strengthened oversight and watchdog institutions:



The Constitutional Content: Fighting Corruption & Vote Buying

- **Constitution equips the oversight agencies with powerful means to investigate, constraint and punish officeholders**
 - The **National Counter Corruption Commission (NCCC)** has power to:
 - Evaluate the mandatory asset and liability declarations that cabinet members must file upon assuming office, upon leaving office, and one year afterwards
 - Constraint MPs and senior bureaucrats from receiving state concessions and makes ministers hold their corporate stock in blind trusts
 - Investigate any allegations of officials' financial improprieties and in case that a cabinet member has concealed or falsified information, it can seek to bar him from political office for a period of five years
 - The **Election Commission (EC)** has power to:
 - Regulate private and state support in the form of money and other assistance to political parties and has power
 - To issue “yellow” and “red” cards to electoral candidates
- **Constitution makes vote buying expansive by introducing:**
 - compulsory voting, absentee voting, and the extension of franchise to Thai citizens residing in foreign countries

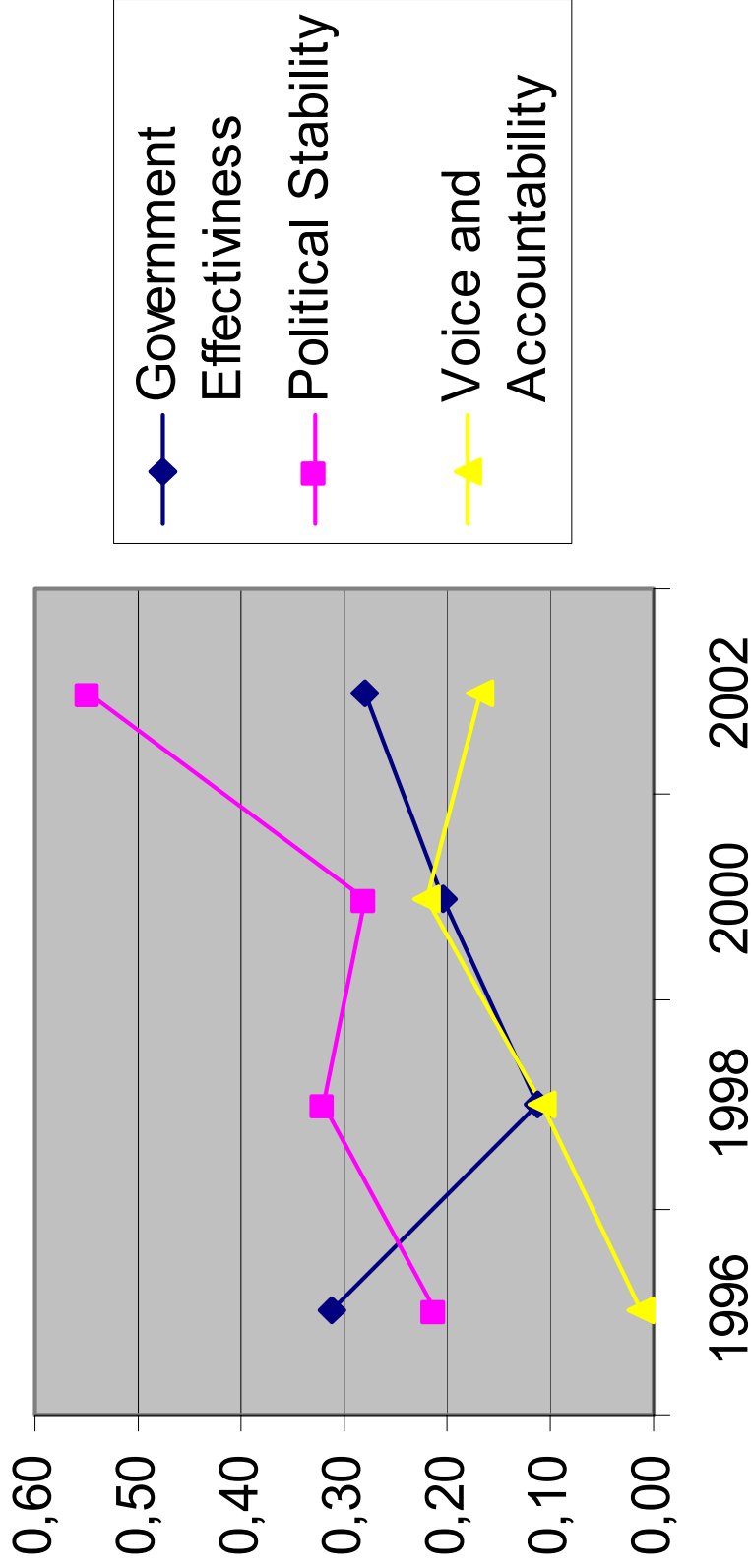
The Constitutional Content: Enhancing People's Participation

- The Thai people are given the right to have public hearings and to vote in a referendum
- 50,000 people who are eligible to vote can move to have a bill
 - regarding Chapter 3 (Rights and Liberties) and 5 (State Policies) of the charter to be submitted to the Parliament
 - and to seek for an impeachment of public office holders (i.e. Politicians and Senior State Officials)
 - Similar provisions apply for the local governments
- New Right to Information Act
- Mandatory participation in natural resource management
- Decentralization provision

III. Evaluating the Outcome

Evaluating the Outcome: Success in Improving Governance I

WB Governance Indicators



Evaluating the Outcome: Success in Improving Governance II

- **Economic and public key indicators have significantly improved**
 - Sustained GDP growth of 5-7%
 - Inflation rate kept at manageable level of 2,4 %
 - Downward trend of unemployment rate (2,2%)
- **Public Finances have equally improved**
 - Balanced budget proposed for 2005, two years ahead of time
 - Improvements in tax collection by nearly 20% (direct taxes)
 - Debt service ratio kept at 14%
- **New policy and reform focus of the government**
 - Unprecedented government efforts in launching pro-poor policies as part of PM Thaksin's declared "war on poverty"
 - Major efforts in launching civil service reforms, aimed at improving good governance of the civil service

1997 constitution clearly a driver for reform and an "enabling" environment



Evaluating the Outcome

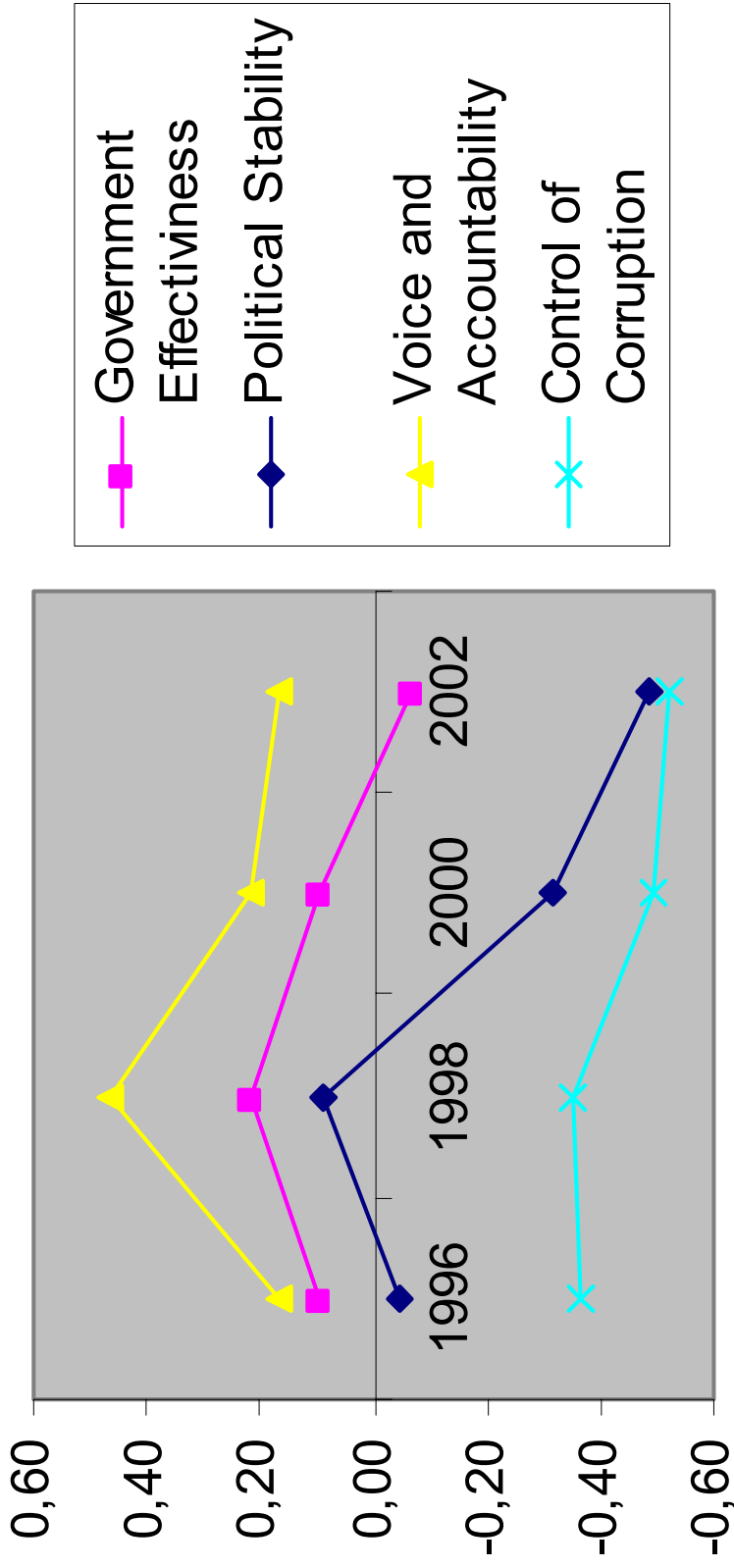
Problem Areas

- **The strengthened role of the PM**
 - Has puts limitations on transparency and accountability (especially when combined with large majority for PM in parliament)
- **The role of the Senate remains unclear**
 - Overly idealistic (i.e. directly elected but non-partisan; non-political nomination process)
- **The fragility of the constitutional oversight agencies**
 - Independence vs. political interference and pressure
- **The persistency of corruption**
 - Shift from direct forms to more subtle forms (i.e. “policy corruption”)
- **New tendency towards populist policies?**
 - Sustainability of the pro-poor programs/household debt

IV. Lessons & Choices for the Philippines

The need for reform? Philippine Governance Trends

WB Governance Indicators



Lesson 1:

The Importance of Process: Trade-Offs



ConAss

- Is cheaper
- Allows to limit discussions to amendments
- Might lack legitimacy

How much public participation?

ConCon

- Is expansive
- Might open up debates
- Potentially high legitimacy

Thai case shows

- 1) You can think outside the box!
- 2) Be aware of the consequences of your choice!

Lesson 2: Form of Government: Trade-offs



Parliamentarism



- Fusion of Power
- Importance of strong parties
- Creates flexibility and consensus orientation

Presidentialism




- Separation of Power
- Less dependence on strong parties
- More rigid and more adversarial

Thai case
shows

- 1) Fusion of Power needs to be counterbalanced by horizontal agencies of accountability!
- 2) A parliamentary system requires strong parties !

Lesson 3: Electoral System: Trade-offs



Proportional Representation (PR)



- Tends to create a multi-party systems and most likely coalitional governments
- Emphasizes broad constituency concerns

Plurality Elections (SB)



- Tends to create fewer but stronger parties and most likely single-party governments
- Emphasizes particularistic concerns

Thai case
shows

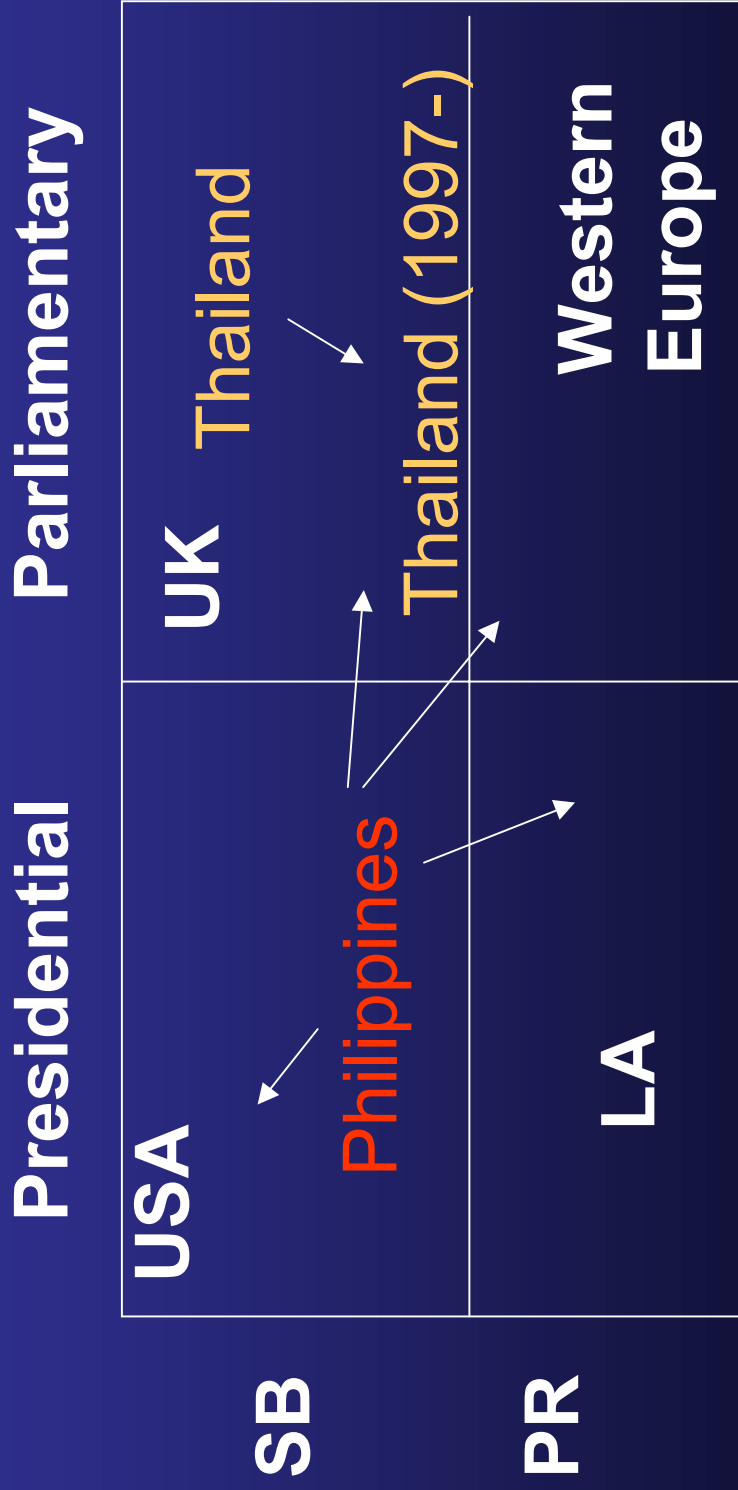


1) Powerful impact of electoral engineering in terms of party system, candidate selection and policy outcomes!

Conclusion

Where do you want to be?

1. Dimension: Form of Government



2. Dimension: Unitary vs. Federalism

Additional safeguard, yet constitutionally challenging

Conclusion

Three “Golden Rules” from a Thai Drafter

1. *“Those who are to be reformed cannot reform themselves. Vested interests and an unwillingness to diminish their own basis of power prevent parliamentarians from making significant changes to the political systems that gave rise to them. Those who design political reforms must come from outside the halls of political power”*
2. *“The success of reform depends on technical support for the drafters and leadership. Accurate information is needed so that the correct problems can be addressed and so problems can be addressed usefully; to this end, strong studies of the existing political system and of alternate political models are indispensable“*
3. *“Finally, the success of reform depends on circumstance. Conditions in the polity must be right if political reform is going to proceed. Even if it is too much to hope that all of the actors will be ready to reform, a sufficient number of actors must be anxious enough for reform that they will press those that are reluctant to pursue it”*

End