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The Ugly Rules:

Constitutional Design and Welfare State-Building in Brazil and Thailand

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Abstract

This article examines how the two promising, but failed, developmental states – Brazil and Thailand – have fared upon reaching a new era of democratisation and facing the challenges of welfare provision. It begins by reviewing the competing explanations for successful emerging welfare states, and finds the ‘revisionist embeddedness’ account – which attributes such success to the relationship between ruling parties and civil society – most convincing. However, I then point out that this structuralist account, while explaining comparative outcomes with deep-rooted causes, largely ignores the role of institutions in shaping within-country dynamics. By comparing Brazil and Thailand after democratisation was heralded in the late 1980s, I argue for the causal importance of constitutional design as an intervening variable in shaping political changes amid the long process of structural evolution. Brazil has thrived on democratic welfare state-building thanks to its ‘ugly’ 1988 Constitution, which came to light amid messy political conflicts and laden with incoherence and ambiguity. However, in the long run, its open-ended design in which key actors took part in the bargaining process proved to have incentivised more conducive party–civil society relations towards democratic deepening and welfare progress than Thailand’s ‘beautiful’ 1997 Constitution, which was characterised by its technocratic design and anti-politics mentality. Yet, after all, the task of welfare state-building is more structural, and requires a more broad-based alliance, than developmental state-building. However, institutional design is also instrumental in redirecting or reinforcing such a structurally determined path.

Keywords: Emerging Welfare States; Constitutional Design; Brazil; Thailand; Social Policy.
Introduction: From Developmental to Welfare State-building

Since ‘third-wave’ democratisation was heralded in the late 1980s, developing states have been confronted with new sorts of political economy challenges. Externally, the increasingly intense level of international competition has brought higher levels of vulnerability to firms, workers and citizens in developing countries. Internally, the democratisation process has rationalised the demands of voters for income redistribution and public provision from political leaders. Unlike developmental state-building during the Cold War era, economic growth alone is no longer a sufficient legitimacy, human capability expansion has become a new overarching legitimacy. What determines the success and failure of emerging welfare state-building, particularly among middle-income, newly democratised countries? Compared to the previous project of developmental state-building, is this task less attainable? These questions form the main thrust of this article.

To shed light on the debate over emerging welfare state-building, this article examines how the two promising, but failed, developmental states – Brazil and Thailand – have fared upon reaching a new era of state-building. Among alternative explanations, I find the ‘revisionist embeddedness’ argument most convincing. This account is further developed from a group of developmental state scholars led by Peter Evans. It attributes the success of emerging welfare states to the strong relationship between ruling parties and civil society. However, I then point out that this structuralist account, while able to explain comparative outcomes with deep-rooted causes, largely ignores the role of institutions in shaping within-country dynamics. Through a comparative analysis of Brazil and Thailand since democratisation, I argue for the causal importance of constitutional design as a more proximate cause of political change amid the long process of their structural evolution. Constitutional design matters in two dimensions. First, the drafting of a new constitution is a process that reflects the site of political struggle. Who could participate, and through which channels, are crucial questions in terms of shaping not only the contents but also, and more importantly, the political landscape, as well as the longevity of that constitution. Second, constitutional design is an instrument that could either transform or confine forthcoming political competition through electoral rules and institutional settings. Party institutionalisation, civil society development, and the interaction between party and civil society have been reflected from the very process of constitutional drafting and then directed by its ultimate design.
Ending the developmental era as an ‘intermediate’ state that failed to upgrade its technological capability of East Asian calibre, Brazil has grasped the ‘second chance’ extremely well by being an outstanding example of successful democratic consolidation with a good record of welfare provision in the mid-2010s. In contrast, despite emerging as a rising star in the late 1980s, Thailand became ground zero for the 1997–8 Asian financial crisis and reached the mid-2000s with political turmoil and coup conundrum. These contrasting paths are not determined solely by structural factors. Constitutional design has played a crucial role along the way, since it shapes political realignments that could either foster or hinder the productive ruling party–civil society relationship, which, in turn, determines the progress and direction of emerging welfare states.

The discussion is organised into seven sections. Section I provides a brief review of existing explanations for emerging welfare states, discussing the strengths and weaknesses of each strand. While I mostly agree with the revisionist embeddedness strand, Section II demonstrates its structuralist limitations and takes a step further by arguing for the role of constitutional design as an intervening variable in shaping party–civil society relationships in newly democratised countries. Sections III and IV elaborate on this conceptual argument through the case of Brazil, beginning with the study of constitutional design as process, followed by constitutional design as instrument. Brazil’s 1988 Constitution is our focus here. Sections V and VI trace the case of Thailand in the same manner, with the 1997 Constitution being a focal point. Yet, after all, the task of welfare state-building is far more structural, and requires more broad-based alliances, than was developmental state-building. However, institutional design is also instrumental in redirecting such a structurally determined path, as will be discussed in the Conclusion.

I. Competing Explanations for Emerging Welfare States

There are four contending explanations for the formation and performance of welfare states: the logic of industrialism; the statist account; the power-resource account; and the revisionist embeddedness account. This section condenses and critiques each strand of literature and maintains that revisionist embeddedness is most relevant to the experience of emerging welfare states, in terms of not only cross-country comparison but also within-country dynamics.
**A. The Logic of Industrialism**

This is a classic explanation for the formation of welfare states in Western European countries. The so-called ‘logic of industrialism’ considers the emergence of the welfare state as a by-product of economic development. All industrialised nations, irrespective of historical, political and cultural differences, would reach a similar destination through an evolutionary process resulting from economic and technological development. By lessening the traditional role of family in taking care of the young, old, sick and disabled, industrialisation would inevitably create new demands for public spending (e.g. Wilensky 1975; Pampel and Weiss 1983). Its famous dictum is ‘strong economies produce strong welfare states’ (Pierson 1996: 148). Yet, while this account might explain a general trend towards widespread social policy, and the disparity between rich and poor nations, it is unable to explain differences within industrialised democracies, not to mention those among emerging welfare states. Moreover, the relationship between economic growth and welfare provision does not prove to be linear, as this theory predicts, due to the fact that economic recession has not caused welfare retrenchment (see Pierson 1996).

**B. The Statist Account**

The second strand of literature focuses on state bureaucracy, considering the structure of the state and the policy-making process of bureaucrats as the primary sources of international differences in welfare policy across countries. This account treats welfare-state formation as partially autonomous from class structures, elite pressure groups, or even the structural prerequisites of industrialisation. It therefore focuses on either the state structures or preferences of bureaucrats, which are driven more by geopolitical or organisational concerns (e.g. Weir et al. 1988; Immergut 1992). States with better administrative and financial resources tend to build more expansive social policies, in contrast to states with fragmented structures and entrenched minorities. Compared to the logic of industrialism, this account better explains the differences among industrialised democracies, for example, between Sweden and Britain in the early post-Second World War period. However, it cannot capture their subsequent dynamics.

**C. The Power Resources Account**

The third contending explanation is a power resource account, which puts cross-national variations in social provision down to the differing distribution of political resources within a
country, largely among classes. The extent of working-class mobilisation and the strength of leftist parties are argued to be the prime determinants of the welfare’s level and distribution. In other words, welfare states are institutionalised class relations. It is the bargaining power and organisational strength of workers, in relation to other classes, that shape the welfare landscape of the country (e.g. Huber and Stephens 2001; Korpi 2006). A subtly different view that may also be classified in this group is the argument that sees the rise of the modern welfare state as an expression of ‘class compromise’ between capital and labour (e.g. Przeworski and Wallerstein 1982).

Apparently, this account is more sophisticated than the previous two. It sheds light on cross-national variations in social provision among rich nations during the three decades following World War II. However, while the power of organised labour has significantly declined from the 1980s, cutbacks in social programmes have been far more moderate than the power resource strand predicted (Pierson 1996: 150). Likewise, this account could capture the emergence of welfare state-building among middle-income countries where the left-wing party took office, especially among Latin American countries in the 2000s. Nonetheless, when examined in the longer term, the impact of right–left politics on welfare schemes becomes obsolete. Having a labour-based party in power does not guarantee the implementation of welfare provision, as illustrated in the case of Argentina, of which the major retrenchment was propelled by the PJ (the Justicialist Party), a labour-based party. Meanwhile, East Asia has witnessed increasing welfare provision in countries ruled by right-wing, even semi-authoritarian parties, as exemplified in the case of the Kuomintang (the Chinese Nationalist Party) in Taiwan (Lee 2012).

D. The Revisionist Embeddedness Account

This fledgling strand of literature is built upon the previous scholarship on the developmental state. In essence, it is a state–society account, since it deems the role and capacity of the state to be determined by the way the state is organised and tied to society. The recent work in this tradition is led by Peter Evans, whose previous concept of ‘embedded autonomy’ epitomised the scholarship on the developmental state (Evans 1995).

1 Note that the term ‘revisionist embeddedness’ is my invented label. Peter Evans and others do not call themselves this way.
In contrast to technocratic politics or the state–business relations that defined developmental state-building, the success and failure of emerging welfare states rest upon the more broad-based alliance, usually cross-class, that shapes the way the state apparatus is connected to a set of actors referred to as ‘civil society’. While building a successful developmental state requires the ‘embedded autonomy’ relationship between the state and leading business actors, the success of emerging welfare states requires embedded autonomy between political parties and civil society. The state would not be able to formulate and implement a set of social policies that enhance human capabilities without multiple channels to source accurate information and continuous feedback loops for policy corrections (Evans and Heller 2015: 4). Active participation by citizens through civil society organisations has played a key role in a wide range of successful social policies, such as education reform that is co-produced by students and their families or health policies that are co-produced by patients, their families and communities (see Ostrom 1996).

In a comparative study by Lee (2012), the key to welfare-enhancing relations between state and civil society lies in the construction of political networks that bring political activists, whose origins involve connections to formal political and professional networks, into close relationships with marginalised grass-roots groups for extended periods of time in order to develop shared loyalties and new identification. Such close networks usually began in the authoritarian regimes. Under a dictatorship, if progressive activists and civil society organisations took advantage of working at local level with marginalised groups, this would unintentionally lead to democratic politics regarding welfare provision. Most Latin American countries follow this historical trajectory.

From my inductive research, I find this account to be most relevant in understanding the divergent paths of welfare-state building of Brazil and Thailand, in terms of not only cross-country comparison but also within-country dynamics. Moreover, this revisionist embeddedness account also has great potential to develop further as a general explanation for emerging welfare states, as well as providing a platform for impactful policymaking – had its

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2 Evans and Heller (2015: 18) define civil society as: ‘the full range of voluntary associations and movements that operate outside the market, the state, and primary affiliations and that specifically orient themselves to shaping the public sphere. This would include social movements, unions, advocacy groups, and autonomous non-governmental organisations (NGOs) and community-based organisations (CBOs).’
structuralist flaws been remedied through an intervening variable of constitutional design, the topic of our next section.

II. The Missing Link: Constitutional Politics

This section summarises the analytical and empirical argument of this article. It begins with a comparison of developmental and welfare state-building from a viewpoint of developing countries. It then illustrates the contribution of this article, which is based on, but goes beyond, the revisionist embeddedness account, by incorporating the analysis of constitutional design into the dynamics of party–civil society relations. A comparative sketch of the diverging paths of Brazil and Thailand follows.

A. From Developmental to Welfare State-Building

Between 1960 and 2008, only 13 countries starting from low- and middle-income status managed to reach high-income level. Most of them had been stuck in the middle-income category for over half a century. Yet, at the present time they have been confronted with new sorts of opportunities and limitations that differ significantly from the post-war period. In this article I perceive ‘emerging welfare states’ as countries of middle-income level that have to meet the challenges of democratic deepening and inclusive economic development since the democratisation process began in the late 1980s.

With these fresh challenges, an old paradigm of developmental state-building has become antiquated. However, the insight into welfare state-building can still be built upon the previous scholarship on the developmental state, albeit with a certain conceptual departure – starting from a rethinking of the definition of ‘development.’ Following Amartya Sen’s (1999) capability approach to development, Evans and Heller (2015) argue that human capabilities should be considered both the paramount goal of development and the leading means of achieving economic growth. Industrial development may already be a strenuous

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3 They were Equatorial Guinea, Greece, Hong Kong (China), Ireland, Israel, Japan, Mauritius, Portugal, Puerto Rico, the Republic of Korea, Singapore, Spain and Taiwan Province of China (World Bank 2013).

4 The status of middle-income countries is defined by the World Bank as those who had a GNI per capita of between $1,036 and $12,615 in 2012.
task for developing countries, but enhancing human capabilities is even more difficult because:

[C]apability-enhancement is about removing unfreedoms, it butts up directly against the forms of traditional authority and organised power of clans, castes, and patriarchs, and challenges the political hegemony of capitalist elites, as well. A state that can deliver such services is one that must have both significant ‘infrastructural power,’ the power to reach into society and deliver things, as well as significant ‘authoritative power,’ the power to get individuals and groups to willingly obey commands (Evans and Heller 2015: 3).

The role of state–society embeddedness can be applied to a fuller understanding of welfare state-building. Not just in the case of latecomers, the literature on European welfare states demonstrates a strong correlation between embeddedness – the degree, scope, and encompassment of working-class mobilisation – and the size and depth of welfare schemes and equitable outcomes (see Huber and Stephens 2001).

For the expansion of human capabilities to be the ultimate goal and primary means of development, Evans and Heller (2015: 12) argue that the kind of conductive embeddedness to support this implies three things: (a) links to a plurality of social groups; (b) multiple points of contact with the state that reduce the costs of transaction between state and society; and (c) modes of intermediation that promote co-production and coordination over domination, coercion or dependency. As a result, the embeddedness between the state and leading business actors that determines the success of developmental state-building (Evans 1995, but also Amsden 1989; Wade 1990) is no longer sufficient, and could even do more harm than good.

On the one hand, institutionalised political parties play a crucial role along the democratisation process. Welfare state-building demands institutionalised channels that link the grass roots with the policy arena and a consistent focus on a programmatic agenda. Without institutionalised parties, a state may be able to achieve economic growth, but it will lack the political power and the links between state and society that are necessary to drive through deeper structural change (Kuhonta 2011: 9). On the other hand, a civil society in which unprivileged groups have developed effective means of engaging parties and the state serves as a countervailing force to the deficits of representative democracy. The multiple associations, media, issue networks and public that constitute civil society are expected to function as sensors that transmit information to states, and about states and state actions back
to society (Evans and Heller 2015: 5). Table 1 summarises the contrast between developmental and welfare state-building.

Table 1 Comparing developmental and welfare state-building

<table>
<thead>
<tr>
<th></th>
<th>Developmental state-building</th>
<th>Welfare state-building</th>
</tr>
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<tbody>
<tr>
<td>Overarching goal</td>
<td>Economic growth</td>
<td>Growth and equitable development</td>
</tr>
<tr>
<td>Key relationship</td>
<td>State–business relations</td>
<td>Party–civil society relations</td>
</tr>
<tr>
<td>Ideal kind of embeddedness</td>
<td>State bureaucracy autonomously embedded in society</td>
<td>Institutionalised coordination between ruling parties and civil society</td>
</tr>
<tr>
<td>Favourable political settings</td>
<td>Either democratic or authoritarian, but authoritarian more favourable</td>
<td>Democratic far more favourable</td>
</tr>
</tbody>
</table>

Source: Author’s conclusion based on Evans and Heller (2015).

**B. The Mediating Role of Institutions**

Still, even though I find the ‘revisionist embeddedness’ argument most convincing in explaining emerging welfare state-building, I argue that it suffers from being overly structuralist. The account provides deep-rooted insights into the issue, but mostly ignores the role of institutions in shaping within-country dynamics. In other words, it is devoid of more proximate causes of political change amid the long-term process of structural evolution, which also leads to the lack of concrete policy implications at the end of the analysis.

To improve this analytical approach, this article takes a step further by arguing for the causal role of constitutional design in two dimensions: constitutional design as process, and as instrument. First, at the onset of constitutional design, drafting is a *process* that reflects the site of political struggle – determining who can participate, and through which channels. It therefore shapes not only the contents but also, and more importantly, the subsequent political landscape, as well as the longevity of that constitution. Second, the content of constitutional design, once promulgated, is an *instrument* that could either transform or confine forthcoming political competition through electoral rules and institutional settings.
Put together, as Hewison (2007: 929) summarises: ‘Constitutions are both a site of social and political conflict and a means to structure and limit political participation.’

From the viewpoint of key actors in a society, their inter-temporal incentives, potential collective actions and enforcement mechanisms have been affected by constitutional design. Given the state–society structures, constitutional design has played a crucial role in directing, and redirecting, the incentives of actors towards party institutionalisation, civil society development and interaction between party and civil society, all of which, in turn, have defined the success and failure of emerging welfare state-building, as the revisionist embeddedness account maintains.

C. Constitutional Design and Welfare Paths in Brazil and Thailand

Studying the evolution of welfare state-building through the politics of constitutional design is instrumental in understanding both the divergent paths and within-country dynamics of Brazil and Thailand.

Brazil’s Democratic Welfare State-building

After the first democratic spell in 1946, Brazil was under military rule from 1964 to 1985. The advent of the New Republic in 1985 was followed by the new Constitution, which was promulgated on 5 October 1988 after a two-year process in which it was written from scratch by a Constituent Assembly elected in 1986. It has been in use until now, and, as of March 2012, the constitution has been amended 70 times and has 250 articles. Brazil has a federal presidential representative system. Its legislative body is called the Chamber of Deputies, which is composed of 513 members and elected by a proportional representation of votes to serve a four-year term. Under the New Republic, Brazil has had six presidents: José Sarney (1985–90); Fernando Collor (1990–2); Itamar Franco (1992–4); Fernando Cardoso (1995–2003); Lula da Silva (2003–10); and Dilma Rousseff (2011–now).

From the very beginning, Brazil’s 1988 Constitution was dubbed an ‘ugly constitution’, characterised by its birth amid messy political conflicts and laden with incoherence and ambiguity in the texts. All the key actors played a part in the drafting process, which featured contentious political negotiations and realignments from time to time. Initial electoral rules

\[5\] Tancredo Neves won a presidential election in 1985 but passed away before taking office.
are not conducive to party institutionalisation. However, decentralisation was the most transformative outcome from this constitution and over time has generated political and administrative ‘innovation’ at local level. Political parties started from below and have been strengthened with time. Judicial reviews in the mid-2000s helped promote party discipline further. Democratic deepening and welfare provision reached a milestone under the presidency of Lula da Silva (2003–10) and his Worker’s Party (PT). Established in February 1980 under the authoritarian regime, the PT won a number of local executives before winning the federal presidency in 2002. Lula succeeded in becoming one of the most popular presidents in Brazilian history and, by the end of his second term, approximately 90% of the population approved of his presidency (Montambeault and Ducatenzeiler 2014: 3). His regime was marked by an important rise in the minimum wage and pension, as well as the expansion of social policies centred around the flagship programme called Bolsa Família.

Brazil’s economic growth is not particularly high, but it is a pro-poor one. Between 2001 and 2008 the country’s average growth rate was 2.8%; however, for the bottom 20% the increase was 7%. Between 1995 and 2009 income growth for the top 20% was 54%, compared to 127% for the poorest 20%. The real value of the minimum wage rose from around 7% per year between 1995 and 2005 to 10% between 2005 and 2011. Extreme poverty fell by more than half from 12% to 4.8% between 2003 and 2008. All these developments were sufficiently significant to enable Brazil in 2007 to achieve its Millennium Development Goal of reducing poverty by a quarter of its 1990 level (all data from Burton 2013). Income inequality may still be relatively high. However, the Gini coefficient fell sharply from 0.61 in 1990 to 0.54 in 2010, equivalent to an average annual decline of 1.2% (The Economist, 1 November 2011).

**Thailand’s Democratic Welfare State-building**

Thailand has been a country of constitutional monarchy since 1932. The parliament was established with a bicameral system. Between 1932 and the 1970s, Thai politics was characterised as a ‘bureaucratic polity’ in which the bureaucratic and military cliques controlled the country (Riggs 1966). The so-called ‘semi-democratic’ regime emerged as a compromise between democratic movements and the monarchy–military alliance from 1980 to 1988. Since 1988 the country has been mostly ruled by elected governments, but has been periodically interrupted by military coups and coup-installed governments (1991–2; 2006–8; 2014–present). Although each prime minister can serve a four-year tenure, the average
duration of each government in practice was approximately two years in the 1980–2014 period. The single-party government was successfully formed only once in Thai political history. Multi-party governments along with intra-party factionalism have been almost natural events, while strong governments are exceptional cases.

The 1997 Constitution, popularly known as the ‘people’s constitution’, marked a watershed in contemporary Thai politics. It was the country’s first ever constitution to be drafted by an elected drafting assembly and is widely hailed as a landmark in Thai constitutional history because of its progressive character in terms of civil rights. As will be elaborated below, this constitution was instrumental in driving Thaksin Shinawatra, a tycoon-turned-politician, and his Thai Rak Thai Party (TRT) into power between 2001 and 2006. Thaksin’s historical single-party administration has been followed by the country’s most violent political conflicts and coup conundrums until the present time.

An average growth rate of 9% between 1985 and 1995 set Thailand as one of the most high-performing countries before the 1997 Asian financial crisis. In contrast to the Brazilian trend, Thailand’s Gini coefficient rose continuously from 0.44 in 1980 to 0.53 in 2010. The distribution of land is more staggering, with a Gini of 0.88, as the top tenth own 61% of all the land (Pasuk and Baker forthcoming). By and large, Thailand’s democratisation has been accompanied by a lower economic growth and continuous rise in income inequality.

In summary, after almost three decades from the late 1980s, the developmental paths of welfare state-building in Brazil and Thailand provide a striking contrast that is worth examining in detail. Brazil departed from military rule, structurally, with high inequality and a poor economic record and, institutionally, an ugly constitutional design, but developed over time to reach a relatively impressive condition of democratic deepening and social development in the mid-2010s. Thailand has never departed from military rule, despite a more promising start, politically and economically, in the late 1980s. State-building in its post-developmental era has led Thailand to an increasing social and economic divide. Constitutions have been re-designed again and again, and still cannot serve a long-term,

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6 Note that Thailand’s Gini coefficient is of fluctuation. It was 0.43 in 1975 and peaked at 0.54 in 1992. It had dropped to 0.51 in 1999.
credible social contract. The following sections explore their divergent paths through the politics of constitutional design – as process and instrument – beginning with Brazil.

III. Brazil: Constitutional Design as Process

Most institutionalist studies incline to conduct constitutional analyses with the promulgated ‘rules of the game’ that determine electoral and legislative systems. However, if constitutions are also regarded as a site of political conflict, we should rather begin from the very process of drafting and negotiations. The politics of constitutional drafting that would eventually result in Brazil’s 1988 Constitution exhibits two essential characteristics, particularly when compared with the Thai case. First, it is political in nature, with the rough-and-tumble process standing in stark contrast to Thailand’s technocratic nature of constitutional drafting. Second, the final draft that would be promulgated represents grand compromises among different social forces, and, hence, inconsistent texts and regulations, rather than a domination of certain forces and ideas, as in Thai constitutions.7

A. Political in Nature

The New Republic’s first presidential election in 1985 was followed by the unexpected death of president-elect Tancredo Neves and resulted in José Sarney becoming the first civilian president in two decades. Members of a newly elected legislature were also elected to draft a new constitution, of which the Brazilian Democratic Movement Party (PMDB) was the largest party.

The process of constitutional drafting lasted for 20 months after the official establishment of the National Constituent Assembly (Assembleia Nacional Constituinte: ANC) in February 1987. The ANC rejected the proposed idea of an ‘exclusive’ assembly comprising jurists, notables and representatives of societal organisations. The early debate emerged over whether it should have a ‘constitutional blueprint’, such as the 1967 military constitution, or create a new, transformative one from scratch (constitution de novo). The struggle between the progressives and conservatives began here. What we may generally call the ‘conservative force’ was initially weak and divisive, as they disagreed over whom to

7 Unless stated otherwise, the following sections on Brazil’s constitutional drafting draw on Martinez-Lara (1996) and Reich (1998).
nominate in the 1985 presidential election. The ‘progressive force’, who prefer more radical reform, started in a relatively united fashion. However, shifts in the balance of power and political realignments were observed during this 20-month drafting process.

Owing to the conservatives’ internal division, the progressives dominated the early rounds of constitutional bargaining. They pushed for a radical decentralisation that departed from previous constitutions. Nonetheless, radical reform agendas observed in the interim version of the constitution precipitated a coalitional realignment between June and November 1987. The progressive-dominated draft provoked a reaction outside Congress. Business leaders and large landowners mounted a stand against the document’s economic provisions, which sought to grant wider state intervention to redistribute land, guarantee strong job stability to both public and private workers, and prohibit foreign investment in several sectors. Moreover, President Sarney and the military strongly objected to provisions for a transition to a parliamentary system, of which the draft constitution aimed to transfer most of Sarney’s authority to a prime minister and to shorten his term in office. The military was further distressed with the constitutional provisions that sought to eliminate its prerogative to intervene in national politics for the sake of ‘national security’, as specified in the 1967 Constitution.

Consequently, the conservatives improved their bargaining position by mobilising an opposition coalition inside and outside the ANC, as well as trumpeting warnings from the president and the military coup. These events encouraged a new alliance formed by approximately one hundred members of Congress, later called the Centrao (or the big centre). They drew up an ‘alternative constitution’ and petitioned the Supreme Court to allow it to change the ANC’s internal rules. Outside Congress, domestic and foreign business elites founded the National Front for Free Enterprise, aired one-minute television spots, and distributed 200,000 letters to oppose the draft constitution. The members of the Ruralist Democratic Union, a landowners’ lobbying organisation, expanded from 50,000 to 230,000 between 1986 and 1987, and was effective in mobilising public demonstrations in the fight against land reform provisions.

The conservatives, in tandem with the military, presidential supporters, and the collective action of business and landowners, succeeded in pushing the ANC’s centrist members to support the change in the ANC’s internal rules. Such a change had profound consequences for the emerging constitution, as it allowed the Centrao to supplant key provisions of the
interim draft with its own agendas. The progressive forces became increasingly divided throughout late 1987 and early 1988. Yet, even though the conservatives seemed to gain the upper hand in the final stages, they were not united about their ideal constitution because of the diverse range of interests and motivations within the grand coalition. Cross-cutting coalitions and smaller collective action groups emerged across constitutional issues as a result. This rough-and-tumble play of constitutional drafting is delineated in constitutional texts that satisfied no one.

B. An ‘Ugly’ Compromised Constitution

The messy drafting process in Brazil represented complicated political negotiations ‘in which society’s most important actors argued, cajoled, and threatened one another, finally arriving at an ugly set of compromises that nevertheless skirted the explosive issues surrounding the transition from the military’ (Reich 1998: 6). Yet, with hindsight, it also established a vibrant and meaningful forum to provide subsequent institutional and regulatory amendments in the coming decades.

The ANC’s 20-month duration witnessed thousands of amendments, proposals and popular petitions that led to renewed drafts. Then came 1,021 roll-call votes on final amendments between June and September 1988, producing a final document of no fewer than 245 articles (Power 1997: 4). No one ultimately romped home, however. Both conservative and progressive forces prevailed in different areas. The conservative forces won on such issues as: the elimination of job guarantee in the private sector, the limitation of the state’s authority for land redistribution, the creation of a five-year presidential term and the preservation of the military’s right to intervene for the sake of domestic order. Meanwhile, the progressives were able to maintain: the protection of job security in the public sector; the constraints on foreign ownership in certain economic sectors; and the advancement of civil liberties. The key issues that would have profound implications in succeeding decades were the transformative decentralisation – direct elections were re-established for all levels of government – and the removal of most barriers to the formation of political parties, including the possibility of Marxist or radical left-wing political parties.

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8 For example, the newly elected members of the PMDB (the *anjinhos* ‘little angels’), the *evangelicos* (Protestant members), the *nordestinos* (delegates from the North Eastern states) and a smaller offshoot of the *Centrao* called the *centrinho* (‘the little centre’), for example.
At the same time, such compromises formed the roots of the inconsistencies in the final document, which was one of the world’s longest, at over forty thousand words (Ginsburg et al. 2009: 215). The eventual version of the 1988 Constitution was, and still is, deemed a ‘badly written, internally inconsistent, and transient constitution that, a decade after its promulgation, still generates debates about institutional design’ (Reich 1998: 5). After all, the 1988 Constitution appeared to be ‘ugly’, judged by either legal or political science scholars at the time it was unleashed. As Rosenn (1990: 801) put it: ‘The new Brazilian Constitution is very much a mixed bag. It has serious problems of both form and substance that make it difficult to live with.’ The ANC recognised the shortcomings and provided a means to revisit all these issues after five years, specifying that Congress should convene a special session (in 1993) in which revisions could be passed by an absolute majority vote.

In sum, the process of constitutional drafting that brought Brazil’s 1988 Constitution to life was political in nature. It started without a clear blueprint and was thereby contingent upon the balance of power among social forces. All key actors inside and outside Congress played their parts in negotiating and threatening their enemies. As expected, the final result was a product of compromise and ugly texts, according to political and legal experts. Nonetheless, amid this messiness, and long before the recent rise of Brazil, Gary Reich (1998: 20–21), a political scientist, reminds us that it succeeded in yielding a bargaining equilibrium among key actors:

In light of these complications and dangers, the [Brazilian] Constituent Assembly accomplished the most important thing it could have done for democracy under the circumstances: it yielded a bargaining equilibrium in which society’s important actors accepted both an initial set of compromises that regulated their pursuit of power, and a peaceful method for amending those compromises.

IV. Brazil: Constitutional Design as Instrument

While the drafting process reflects the site of political struggle, once promulgated, the content of constitutional design is an instrument that could either transform or confine forthcoming political competition through electoral rules and institutional settings. In this regard, Brazil’s 1988 Constitution is far from having a perfect design. Seen from today’s vantage point, the most transformative change was decentralisation, which unleashed civil society organisations and their innovative participatory mechanisms at municipal level. Still, electoral rules from
the same constitution have clearly impeded development towards party institutionalisation. However, the subsequent amendments and judicial reviews from the early 2000s helped remedy the shortcomings of the original rules. Moreover, even though institutions shape human interaction, the role of agency should not be overlooked. The strategic responses and evolution of the Workers’ Party from a local, far-left group to a national party with a moderate, catch-all leaning that steers the success of the Bolsa Família programme is a case in point.

A. Decentralisation and Civil Society Blossoming

Under military rule, Brazil’s political system was highly centralised in federal government and based on the junta’s network of political appointees in each state and city. The 1988 Constitution re-established direct elections for all levels of government and attempted to remove any barriers to party formation. Marxist or far-left political parties have been permitted to run for elections. At the same time, the autonomy of municipalities, the country’s smallest politico-administrative division, was recognised for the first time in Brazilian history in the 1988 Constitution (Fenwick 2009: 107).

The 1988 Constitution decentralised the country, comprising 26 states plus 5,562 municipalities, with states and municipalities having greater control over resources and social service provision. Municipalities were given access to increased levels of funds from the upper levels of government, along with the tools to implement their newly granted responsibilities. In general, Brazil’s federal system provides municipalities with nearly 15% of all public spending (Wampler 2012: 345). Municipal governments are in turn responsible for providing a range of public services, such as health care, primary education and transportation. Furthermore, the constitution made participatory mechanisms a necessary condition for the implementation of public policies at the three levels of government.

Formed and worked since under the authoritarian regime, civil society organisations have officially blossomed in Brazil from the democratic outset. Notable groups include Church-affiliated groups, landless peasant movements, rural unions and cooperatives and neighbourhood associations. Data from the Johns Hopkins Comparative Non-profit Sector Project indicates a sharp increase in Brazil’s civil society organisations. The number was estimated at 107,332 organisations in 1996 and 338,162 in 2005 (Koga 2012). Recent research suggests that in cities across Brazil, millions of citizens are participating in a wide range of novel institutions of participatory democratic governance that confer control over
municipal investments, urban planning, health care, community development and other areas of local public life (e.g. Avritzer 2009; Baiocchi et al 2011). In comparative perspective, the density of civil society in Brazil was among the top countries in terms of the overall density of associational life (Encarnacion 2003: 106).9

Participatory governance programmes, invented over the course of decentralisation, have institutionalised party–civil society interactions in public deliberation and decision-making venues. Among numerous examples, participatory budgeting stands out as one of the important democratic innovations in Brazil. It was initiated in 1989 in the municipality of Porto Alegre, Alegrê, a municipality of 1.2 million inhabitants in southern Brazil, by the Workers’ Party administration, in which citizens can take part in discussions about the distribution of public goods. Although the total number of adopting municipalities (169 at the last available count in 2000–4) seems small, in 2000 the 169 municipalities, governed by different political parties, adopted a version of participatory budgeting in total accounting for approximately 27% of Brazil’s 175 million inhabitants (Goncalves 2014: 97). A recent systemic evaluation made by Goncalves (2014) finds that adoption of participatory budgeting at municipal level is significantly associated with increased expenditure on basic sanitation and health services (such as water and sewage connections, waste removal), usually an urgent demand in participatory forums.

In addition to participatory budgeting, there are other key forms of participatory mechanism at local level, namely, public policy management councils (conselhos) and thematic conferences that provide opportunities for hundreds of thousands of Brazilians to be directly involved in policymaking deliberations and decision-making (Wampler 2012: 359). Put in comparative perspective, what is distinctive about Brazilian civic organisations is that ‘they demand not just policies that benefit their members and constituents but also processes of participatory governance, as opposed to just momentarily advantageous political relationships, as the terrain of allocative decision making’ (Fung 2011: 867).

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9 Note that the World Values Survey does not make particular judgements regarding the strength or weakness of civil society. It only provides raw data about patterns of participation in voluntary associations in each of the nations studied.
B. Incentives against Party Institutionalisation

While transformative decentralisation has fostered civil society development, electoral rules from the 1988 Constitution have hindered the institutionalisation of political parties. Until the mid-1990s Brazil was seen as a country of undisciplined and dysfunctional political parties with ineffective governance, together with Bolivia, Ecuador and Peru, a group of Latin American nations with much less developed economies. Brazilian largest parties were considered a loose coalition of regional factions motivated by parochial and clientelistic interests, with scant concern for national issues (e.g. Mainwaring and Scully 1995). Nonetheless, the subsequent amendments and judicial reviews in the mid-2000s helped remedy the shortcomings of the original rules.

The Brazilian electoral system contains a number of incentives to discourage party institutionalisation, particularly the rules used for the Chamber of Deputies, that is, an open-list system of proportional representation (henceforth open-list PR), in which party leaders have no influence over the rank order of candidates on party slates. In most PR systems, parties present closed and ranked lists of candidates for a given number of available seats, and voters choose among the party lists. Seats are awarded to the parties in proportion to the share of votes received by each list. For Brazil’s open-list PR, a candidate’s position on the party list is a function of the number of votes obtained, thereby causing candidates of the same party to compete against one another. Voters therefore go for individual candidates rather than for parties. These individual votes are summed to determine the number of seats won by each party, thereby the election of a given candidate also depends on his/her performance relative to other members of the same party or coalition.

As noted in Power (1997), the implications of this system are obvious. First, the role of party organisations is weak in the absence of an ex ante ranked party list. The system promotes intraparty as much as interparty competition, and hence individualism predominates over programmatic concerns. Legislators are likely to behave in an undisciplined manner because their electoral winning or losing is not due mainly to their parties. As a consequence, Brazil’s open-list PR functions as institutional structures that ‘weaken the parties, undermine linkages of accountability, and alienate voters’ (Power 1997: 9). It generated the relatively high effective number of parties (around 8.0), as well as high rates of party-switching (about...
25–32% of migrants) from the 1980s to the late 2000s.\textsuperscript{10} Manwaring (1991: 26) even concludes that: ‘No democracy grants politicians as much autonomy with respect to their parties as Brazil does.’

However, even under the same rules of the game, not all parties behave alike. A study in the mid-1990s also found that anti-party orientations are much stronger for parties on the right and in the centre, whereas the smaller left parties exhibit far greater degrees of internal cohesion and discipline, especially the Workers’ Party (Power 1997: 11). Moreover, it was this system that helped support the small parties at local level. It was the left parties and small parties who allied against a complete overhaul. They fear that their candidates may not survive vis-à-vis larger parties – if the electoral rules are changed either to single-member districts, as in the United States, or a German-style electoral threshold that would exclude small parties from Congress. Furthermore, while the practice of party-switching is rampant among elected officials since party fidelity was abolished in 1985, the Workers’ Party has been the only major party to practise party fidelity voluntarily (Figueiredo and Limongi 2000) – this was part of the reason why the Workers’ Party has become the most institutionalised after two-decade development (more on this below).

\textbf{C. Judicial Reviews towards Party Institutionalisation}

From the early 2000s Brazil has witnessed the pivotal, and controversial, role of judicial review in the consolidation of party institutionalisation. This trend is exemplified in the cases of verticalisation of coalitions and anti-party-switching.\textsuperscript{11}

The first case is known as the \textit{verticalisation of the coalitions}. From 1985 to 2001, Brazilian political parties were allowed to form alliances for state-level majoritarian elections (governors) regardless of the coalitions they made at the national level (presidential). This cross-alliance practice was common in the 1990s. In 2002, however, a year in which elections for president, governors, senators and state and federal representatives took place, the independent Supreme Electoral Tribunal (TSE) issued a ruling against this practice and stated that political parties must have a ‘national character’. Under this judicial decision, parties with presidential candidates could not form alliances with rival parties in the concurrent

\textsuperscript{10} There is also a rule called \textit{candidato nato} by which the elected representative automatically has the right to be on the ballot for the same position in the next election, thereby facilitating party-switching.

\textsuperscript{11} The following two cases are summarised from Marchetti (2012).
legislative and gubernatorial elections. The second case concerns party loyalty against the previously common practice of *party-switching*. In 2007 the TSE confirmed that parties have the right to preserve a seat obtained through the proportional electoral system, when there is a request for cancellation of an affiliation or the transfer of an elected candidate to another party.

The above two judicial cases have provoked a heated debate and not settled yet. But the direction is clear that there have been signals from the Brazilian judiciary to foster party discipline in terms of coalition formation and to hinder party switching, both of which could be considered as political incentives towards party institutionalisation.

**D. Agency’s Role: The Workers’ Party and Bolsa Família**

Even though this article attempts to make an argument for institutional incentives through the study of constitutional design, the role of agency should not be overlooked. More often than not, human agency (either individuals or groups) pursues choices that are not obvious according to structural conditions, or even tries to fight prevailing institutions. The strategic responses and evolution of the Workers’ Party from a local, far-left group to a national party with a catch-all leaning that steers the success of the Bolsa Família programme is an exemplary case.

**The Workers’ Party as the Hybrid of Party and Social Movements**

The Workers’ Party (*Partido dos Trabalhadores*, henceforth PT) was created in 1980 and, to the surprise of most Latin Americanists, evolved from a far-left to moderate-left, catch-all party in order to win the presidential race in 2002. Initially, the PT incorporated various branches of the radical left, including the labour unions, left-wing figures returning from exile, contentious student groups, and the progressive Catholic Church. In the 1990s the PT had been a minor party in the Northern and North Eastern states, and was extremely selective in allying itself with only small left-wing parties. In the 2000s the alliances between the PT and small right-wing parties have become common practice. The image of the party has also been transformed from a contentious party of radical democrats and an avant-garde of the working class to a party with a skilled and honest leadership, able to administer the big cities of the country (Goirand 2014: 110).
As discussed in Lee (2012), the PT has grown out of local, municipal-level community politics. The PT refused the accepted norm that political leaders should represent the demands of unions or social movements in conventional representative democracy. The party have tried to eliminate the dichotomy of ‘government versus movements’ and developed close organisational communication between party organs and grass-roots organisations. Over the course of these communications and electoral politics, the PT has been able to represent broader social bases beyond labour unions to encompass people of diverse classes and professions. In short, the local and central leaders of the PT have occupied the ‘bridging position’ between the formal sector and the informal civic sphere. As a result, the PT has become an exceptional case amid Brazilian disincentives for party institutionalisation. Despite most Brazilians do not consider themselves partisans of any party, the vast majority of partisans have traditionally been committed to the PT, with the preference increasing consistently from 6% in 1989 to 24% in 2004 (Samuels 2006: 5).

*From Party-Civil Society Embeddedness to Bolsa Familia*

At local level, the embeddedness between civil society and political party, especially the PT, has brought participatory budgeting into being. At national level, such embeddedness has generated Bolsa Familia (literally a family grant), one of the world’s most renowned social policies. Upon taking office, the PT introduced Bolsa Familia, a cash-transfer programme that is conditional upon a child’s regular school attendance and participation in vaccination and nutrition programmes and vocational training courses.

The World Bank commends the programme as ‘a global success story, a reference point for social policy around the world’. The programme has reached nearly 14 million households – 50 million people or around 24% of the population. Ten years after Bolsa Familia was first implemented, Brazil has reduced more than half of its extreme poverty – from 9.7% to 4.3% of the population. It has also increased school attendance and grade progression; for instance, the chances of a 15-year-old girl being in school increased by 21%. Qualitative studies have highlighted how the regular cash transfers from the programme have promoted the dignity and autonomy of the poor, particularly for women, who account for over 90% of the beneficiaries. Efficient administration and good targeting has enabled Bolsa
Família to achieve its success at a very modest cost of around 0.6% of GDP (all data from World Bank 2013).12

For a middle-income country with mediocre state capacity, the administrative restructuring matters. Bolsa Família was designed to unify several pre-existing schemes of family allowance programmes under the newly established Ministry of Social Development (MDS) in 2004. The programme could then use the centralised federal registry, Cadastro Unico, to store all of the information about lower-income families in Brazil, in contrast to inter-ministry responsibility in the past. The design and implementation of Bolsa Família also cut out the participation of the core federal subunits and focused on the programme’s implementation at municipal level (Fenwick 2009). Accordingly, municipal governments act as the primary agents of federal government – which could be seen as a compatible agenda with the PT’s political base.

Apart from social benefits, Bolsa Família has nurtured democratic deepening in Brazil as a by-product. Welfare programmes should not be considered a one-way relationship in which a government provides for its voters. From over 1,100 individual interviews to explore the policy recipients, Hunter and Sugiyama (2014) found that Bolsa Família imbues beneficiaries with heightened feelings of belonging and agency. Rather than feeling that the state is paternalistic in making benefits dependent upon behavioural reform, most recipients view the conditionalities as aligning with their parental responsibilities and the constitution’s guarantees in education and health. This is because the Bolsa Família is framed in a way that is favourable to citizenship formation. In advertising the programme, for example, the government projected a sympathetic view of why people are poor and a strong commitment to entitle Brazilian citizenship: ‘The Bolsa Família is a programme that transfers money directly to families as a way of guaranteeing the human right of adequate food, education and health’ (Hunter and Sugiyama 2014: 838).

In a nutshell, the strong and coordinative relationships between political parties and civil society organisations in Brazil have been part and parcel of the success in welfare progress and democratic deepening, as exemplified in the case of Lula’s government and the Bolsa Familia programme. Yet, as Morais and Saad-Filho (2011: 38) put it: ‘The achievements of

Lula’s administration are in no way revolutionary, but they are real enough'; there is still a long way for Brazil to go in this welfare state-building path. We have illustrated how constitutional design, both as process and instrument, can shed light on its post-authoritarian development. The following two parts will undertake the same task for the case of Thailand.

V. Thailand: Constitutional Design as Process

In contrast to the ‘politicised’ and ‘ugly compromised’ characters of Brazil’s 1988 constitutional drafting, the process that led to Thailand’s 1997 Constitution was technocratic in nature. The negotiation was less open and the drafting more exclusive since the 2006 and 2014 military coups.

A. Technocratic in Nature

Thailand’s 1997 Constitution was triggered by the bloody May 1992 incident. That General Suchinda Kraprayoon, who engineered the 1991 coup, took office caused mass uprising which encouraged a movement of political reform from various social forces. Dr Prawase Wasi, a leading royalist intellectual and key figure in Thai civil society, was appointed by the president of parliament to chair the newly established Democracy Development Committee. However, the reform was set in motion later under the Banharn government in 1995 when Article 211 of the Constitution was amended to permit the formation of the Constitution Drafting Assembly (CDA).

The 1997 Constitution is known as the ‘People’s Constitution’ since it was the first constitution to be drafted by an elected CDA and is widely hailed as a landmark in Thai constitutional history. Yet, it is worth noting that Thailand’s 1997 Constitution did not emerge from the anti-authoritarian drive as in Brazil. It was rather driven by disenchantment towards fragmented, corrupt parliamentary politics. Accordingly, the underlying presumption of the 1997 constitutional drafters was that democratic institutions should be divorced from ‘politics’, usually understood as the lobbying and self-seeking behaviours of elected politicians. As Ginsburg (2009: 91–2) notes: ‘Here we can see clearly the “post-political” quality of the constitution: there was an assumption that parties were corruptive and that non-party members were somehow insulated from external pressures.’
Prawase’s mindset is based on Buddhism, as he once claimed: ‘Dharma-based democracy will help political parties to recruit good people into politics, which will improve the quality and morality of democracy’ (quoted in Aim 2013: 98). The CDA required its assembly members to hold a Bachelor’s degree to ensure that candidates came from the professions, particularly legal and business. In contrast to Brazil’s open-ended start, the blueprint was put in place before the hearing process, as observed in Connor (2003: 166):

The frameworks document had been written with little consultation and it had pre-empted debate, but nevertheless it became the basis for soliciting comment from public hearing and organised interests including business, NGOs, professional associations and the press. It would not be exaggerating to say that the available evidence suggests a blueprint was well in place before the hearings and was largely followed.

The drafting process was relatively short with about 8 months in total. Over 850,000 people were reportedly consulted and more than 300 organisations participated, in addition to 87,000 people responding to questionnaires (Dressel 2009: 301). Nonetheless, critiques also note that, despite a host of public hearings during the process, the CDA leadership was able to impose strict limits on the issues to be deliberated by setting the agenda for the public meetings and clearly stating which issues were to be discussed – to the point that critiques say it was rather a means of public relations to legitimise the reform campaign (Connor 2003: 166).

B. More Exclusive Designing Over time

The 1997 Constitution lasted for less than a decade. The military coups in 2006, and most recently in 2014, have created two new constitutions – with the processes being increasingly exclusive.

Comparing processes of constitutional drafting in 1997 and 2007 well reflects the dynamics in the sites of political struggle. The 2007 Constitution was drafted in a highly exclusive manner directed by the military junta, with a clear agenda to reduce the influence of the rural and urban majority in the electoral process. The transferring of discretionary power from parliament to judicial and quasi-judicial agencies was obvious. Closely monitored by the military–bureaucratic elites who issued binding guidelines for the drafters, the appointed Constitutional Drafting Assembly had 6 months to prepare a draft for public referendum. The junta also threatened that if the public rejected the draft, the military could pick one of the previous 17 constitutions. Ultimately the draft was approved by 57%, with a voter turnout of 57.6%. But Dressel (2009: 300) notes that: ‘Despite its liberal claims, [the 2007 Constitution]
is less a genuine extension of the governance franchise than a means to channel and deflect new societal demands in the interest of Thailand’s traditional elites.’

The 2014 coup – and the subsequent constitutional drafting – has been even more exclusive than the 2007 coup. The Constitution Drafting Committee comprises 36 members, all of which were picked directly or indirectly from the military junta. The committee has been chaired by Borwornsak Uwanno, who is currently secretary-general of the King Prajadhipok Institute and was law professor at Chulalongkorn University, as well as a member of the 1997 Constitution drafting committee. And, unlike the last constitution in 2007, there will be no referendum on the next constitution. Table 2 compares the processes of Thailand’s three recent constitutions.

Table 2: Comparing constitutional drafting processes, 1997, 2007, and 2015

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<tr>
<th></th>
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<tbody>
<tr>
<td>Drafting period</td>
<td>Eight months</td>
<td>Six months</td>
<td>Six months on</td>
</tr>
<tr>
<td>Public participation</td>
<td>Medium</td>
<td>Low</td>
<td>Almost none</td>
</tr>
<tr>
<td>Key actors</td>
<td>Academics and civil society</td>
<td>Military and civilian bureaucrats</td>
<td>Military and select academics</td>
</tr>
<tr>
<td>Bargaining outcomes</td>
<td>Progressive</td>
<td>Regressive</td>
<td>n.a.</td>
</tr>
<tr>
<td></td>
<td>Strong mass legitimacy</td>
<td>Low mass legitimacy</td>
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In a nutshell, the processes of constitutional design in Thailand have reflected the dynamics of the power balance among social forces, from civil society-led in the 1997 one to military-led in the subsequent two. Unlike the Brazilian case, in which all key actors inside and outside Congress played their parts in negotiating and threatening their enemies, the Thai constitutions have been a product of those dominant in power at the time. As a result, constitutional design has never yielded a ‘bargaining equilibrium’ and the commitment to future amendments in a democratic way.
VI. Thailand: Constitutional Design as Instrument

Thailand illustrates well the power of constitutional design as an instrument with the dynamics of its political competition and administrative structures that have changed according to constitutional overhauls. As such, constitutional design is instrumental in shaping party institutionalisation and the relationship with civil society, which we argue to be the defining relations of welfare state-building. Regarding social development, whereas the pre-1997 economic growth was accompanied by the building of hospitals and the over-purchasing of expensive medical equipment, the post-1997 era has witnessed a much broader distribution of health resources with systemic welfare provisions (Selway 2011). The 1997 Constitution played an important role in increasing majoritarianism at the national level of Thai politics and giving the ruling party the ability to implement national health policies.

A. Fragility by Design

The extant literature typically considers Thailand’s multi-party governments and intra-party factionalism to be the result of politicians’ misbehaviour and personal incompetence. Delving deeper into the politics of the electoral system, this article argues that Thailand’s short-lived, multi-party governments are the result of certain constitutional regulations. In other words, it is fragility by constitutional design since the power to overhaul constitutions has virtually always resided in the hands of the traditional elite. To retain the upper hand, the most significant tools designed to perpetuate fragmented politics in parliament and to impede party institutionalisation are: (1) the multi-member plurality electoral system, widely called the Block Vote; (2) the appointed Senate; and (3) the relaxed regulations for party-switching. All three regulations featured in all but the 1997 Constitution, as summarised in Table 3.

First and foremost, with the Block Vote, voters have as many votes as there are seats in their district (e.g. three votes in a three-seat constituency). While parties are obliged to field a full team of candidates for any district they contest, voters can split their votes between candidates from different parties. The literature on electoral systems asserts that the Block Vote not only induces intra-party infighting but also undermines the value of the party label, particularly in transitional democracies (Larserud and Taphorn 2007; Hicken 2009). The second regulatory tool is the appointed Senate, which is clearly an attempt by the unelected elite to counterbalance the elected in the legislative process. For example, in the late 1980s, up to 85% of senators came from the armed forces and police (LePoer 1989: 187). Third, to
shore up the power of the unelected prime minister (as in the Prem era), and to force political realignment when necessary (the way Abhisit went to office), party-switching is facilitated. Individual and factional politicians were allowed to switch parties without risk of becoming ineligible to run for re-election. Before the 1997 Constitution took effect, an average of 38% of sitting and former MPs switched parties ahead of elections in 1983, 1986, 1988 and 1995 (Hicken 2009).

Distinct from others was the 1997 Constitution, designed to create a strong party and stable government. It changed the electoral system to single-member districts, which effectively reduced intra-party conflicts and drew voters to policy issues. In addition to the 400 single-seat constituencies, there were 100 MPs selected via proportional representation from party lists, with a 5% threshold. Senators were all elected. Party-switching was discouraged. Put together, the party leaders had far greater leverage over members of their own parties. Being sidelined by Thaksin and his single-party government, the establishment staged the coup and redesigned the 2007 Constitution to weaken political parties and the elected yet again.

Table 4 shows that in eight general elections held between 1979 and 1996, no political parties attained a majority. On average, there were 16 political parties competing in an election, with the effective number of coalition parties around 6.0 (Chambers and Croissant 2010). With the Block Vote, split returns occurred in over 50% of the districts (Hicken 2009: 28

<table>
<thead>
<tr>
<th>Source</th>
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<tbody>
<tr>
<td>Adapted from 1976 Constitution by coup-makers</td>
</tr>
<tr>
<td>Coup-makers appointed National Legislative Assembly</td>
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<tr>
<td>Parliament appointed a drafting commission</td>
</tr>
<tr>
<td>Coup-makers appointed Constitutional Drafting Assembly</td>
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<tr>
<th>Elected MPs</th>
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<tbody>
<tr>
<td>301 members through Block Vote</td>
</tr>
<tr>
<td>360 members through Block Vote</td>
</tr>
<tr>
<td>400 constituency MPs and 100 party-list MPs; Single-member districts</td>
</tr>
<tr>
<td>320 constituency MPs through Block Vote and 80 party-list MPs</td>
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<table>
<thead>
<tr>
<th>Party-switching</th>
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<tbody>
<tr>
<td>Allowed</td>
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<tr>
<td>Allowed</td>
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<tr>
<td>90-day membership requirement</td>
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<tr>
<td>Allowed</td>
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<tr>
<th>Senators</th>
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<tbody>
<tr>
<td>Appointed 225-member</td>
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<tr>
<td>Appointed 270-member</td>
</tr>
<tr>
<td>Elected 200-member; Only to amend or approve a bill</td>
</tr>
<tr>
<td>76 elected; 74 appointed; Given more power than the 1997 Constitution</td>
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<tr>
<th>Duration</th>
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<tbody>
<tr>
<td>12 years and 2 months</td>
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<tr>
<td>6 years and 7 months</td>
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<tr>
<td>8 years and 11 months</td>
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<tr>
<td>6 years on</td>
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<tr>
<th>Cause of Termination</th>
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<tbody>
<tr>
<td>Coup d’état</td>
</tr>
<tr>
<td>Promulgation of the new constitution</td>
</tr>
<tr>
<td>Coup d’état</td>
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</tbody>
</table>

Source: Author’s compilation.
Note: Further amendments of the four constitutions during their uses are not included.
Factional conflicts, both intra- and inter-party, led to the downfall of 5 of 11 governments. Cabinets in the 1990s lasted on average only nine months (Kuhonta 2011: 167). The 1997 Constitution almost had a perfect design, since politicians and voters responded to the new rules of the game in predictable ways. Thaksin’s Thai Rak Thai Party (TRT) won two elections in 2001 (49.6%) and 2005 (75.4%). The 2007 Constitution also led to predictable results. The seats won by the Thaksinite party (People’s Power Party) dropped from 75.4% to 48.5%. From the single-party government, a further two parties were allied to form the government. Factions re-established their important role, as before 2001, in the making and breaking of parties and cabinets (Chambers and Croissant 2010: 9).

Table 4 Parties that won the most seats in each general election, 1978–2007

<table>
<thead>
<tr>
<th>Election year</th>
<th>Party with most seats (%)</th>
<th>Number of parties with fewer than 20 seats</th>
<th>Turnout (a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1978 Constitution</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1979</td>
<td>Social Action (27.6%)</td>
<td>2(1)</td>
<td>43.9%</td>
</tr>
<tr>
<td>1983</td>
<td>Social Action (28.4%)</td>
<td>6</td>
<td>50.7%</td>
</tr>
<tr>
<td>1986</td>
<td>Democrat (28.8%)</td>
<td>10</td>
<td>61.2%</td>
</tr>
<tr>
<td>1988</td>
<td>Thai Nation (24.4%)</td>
<td>9</td>
<td>63.5%</td>
</tr>
<tr>
<td>1991 Constitution</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1992 (I)</td>
<td>Samakhi Dham (21.9%)</td>
<td>5</td>
<td>59.2%</td>
</tr>
<tr>
<td>1992 (II)</td>
<td>Democrat (21.9%)</td>
<td>5</td>
<td>62.0%</td>
</tr>
<tr>
<td>1995</td>
<td>Thai Nation (23.5%)</td>
<td>5</td>
<td>62.0%</td>
</tr>
<tr>
<td>1996</td>
<td>New Aspiration (31.8%)</td>
<td>6</td>
<td>62.4%</td>
</tr>
<tr>
<td>1997 Constitution</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>Thai Rak Thai (49.6%)</td>
<td>4</td>
<td>69.9%</td>
</tr>
<tr>
<td>2005</td>
<td>Thai Rak Thai (75.4%)</td>
<td>1</td>
<td>72.5%</td>
</tr>
<tr>
<td>2007 Constitution</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>People’s Power (48.5%)</td>
<td>3</td>
<td>74.5%</td>
</tr>
</tbody>
</table>

Source: Updated from Siripan (2006: Table 2.6).
Note: (1) In 1979, apart from those 7 small parties, there were 63 independent MPs.

B. Judicial Review towards Party Dis-institutionalisation

In contrast to Brazil, which witnessed judicial reviews towards party institutionalisation, judicialisation has also been undertaken in Thai politics since the mid-2000s but to

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13 A counter-argument is the ‘Thaksin factor’, in favour of Thaksin’s personality and resources rather than constitutional change. Nonetheless, TRT is not Thaksin’s first party. Under the 1991 Constitution, he was head of the Palang Dharma Party but the electoral results during his leadership were mediocre.
discourage party institutionalisation, and party politics as a whole, on the grounds that it has led to corrupt governments and too much power consolidation.

A series of bold judicial interventions, especially between 2006 and 2008, illustrates how the Constitutional Court has emerged as an increasingly important element in Thailand’s political landscape. It began with the ruling in May 2006 to annul the April general elections. The legal reasoning was unusually broad, such as the argument that a 37-day period between dissolution of the House and election day led to political problems that were sufficiently severe for the election to be disqualified. Another rationale was that the positioning of ballot boxes violated the secrecy of the vote. In May 2007 the Constitutional Tribunal ruled that Thaksin’s TRT party must be dissolved, barring 111 members of its executive from holding public office for five years. Other important cases came, in late 2008, to find Prime Minister Samak Sundaravej guilty of a conflict of interest for hosting a popular cooking show on television and the dissolution of the People’s Power Party, the TRT’s political successor. In total, the Constitutional Court dissolved seven political parties between 2006 and 2011, leaving the Democrats as the only major party remaining from the high period of judicial review (see Dressel 2010).

C. Reluctant Decentralisation

By international standards, decentralisation in Thailand has been implemented in a partial eclipse. Early reforms included minor changes in local institutions and an insignificant increase in revenue-sharing for local authorities. The 1997 Constitution emphasised that all local government units must enjoy autonomy in policy formulation, administration, personnel management and finance. Dufhues et al. (2011) argue that in Thailand there have always been strong forces opposed to decentralisation coming from the Ministry of Interior, which has held the authority to appoint provincial governors. The World Bank (2012) also reports that although Bangkok accounts for approximately 17% of the population and 25.8% of GDP, it benefits from roughly 72% of Thailand’s total expenditure.

Worse, much research indicates that areas with decentralised authority have found elite capture and a new type of corruption and clientelism. One study argues that political decentralisation in Thailand has increased the power of political machines run by local bosses and reinforced the centrality of the spoils system in Thai politics rather than promoting local government efficiency and accountability (Dufhues et al. 2011). Another finds that decentralisation in Thailand has actually facilitated corruption at local level in the form of
moneyless corruption. Twenty-five out of thirty-two municipal officials from the focus group interviews confirmed that a patronage system existed and the situation has been more severe since enactment of the Decentralisation Act (Piyawadee and Hossain 2012: 559).

Put together, we can conclude that the underlying politics, as well as the contents, of constitutional design in Thailand have deterred key actors from both party institutionalisation and civil society development at local level. The only exception was the 1997 Constitution, and political contexts from the Asian financial crisis until the 2006 coup, whereby we saw the relatively close relationship between the ruling party and civil society, which, in turn, created the most innovative and profound social scheme in Thai history.

D. TRT and Civil Society: A Short-lived Honeymoon

Before 2001 health insurance in Thailand was divided into four programmes: Social Security, Civil Servants Medical Benefits, a 500-baht health card, and a low-income scheme. By 2001 a total of 34 million people – roughly 52% of the population – were covered by the low-income scheme and through the health card, yet in a piecemeal and unsystematic manner (Kuhonta 2011: 184).

When Party–Civil Society is in a Good Relationship: 30-baht Scheme

Universal health care has been part of TRT’s manifesto at the 2001 election, with the slogan ‘30 baht (about US$1) to cure any disease’. On the one hand, upon creating a party Thaksin developed close ties with pro-poor NGOs and brought into his party prominent intellectuals, NGO leaders and ex-leftists (Kuhonta 2011: 173). On the other hand, the party consulted health reformists to study how to utilise the existing health-care resources and gain cooperation from both the public and private sectors (Selway 2011: 178). Such consultative relationships encouraged the TRT to attempt a complete overhaul of the health system and address hospital accreditation, as well as methods of financing.

Like the case of Brazil, administrative consolidation is required before effective social reform. Once in office Thaksin created the National Health Security Office, an organ separate from the Ministry of Public Health, through which the majority of the health budget would now flow. In April 2001 the insurance system was revamped with a 30-baht scheme designed to provide universal coverage to all Thai citizens for almost any medical service. The 30-baht scheme has earned high praise from both domestic and international observers, even among
anti-Thaksin groups. It was responsible for reducing poverty in Thailand by 15% – about one million people – and hailed as ‘the most effective anti-poverty program ever in the history of our country’ (Selway 2011: 189). The number of uninsured steadily declined from 17 million before 2001 to 4.60 million in 2002 and 520,000 in 2008 (Kuhonta 2011: 185–6).

**When Party–Civil Society is in a Bad Relationship: Democratic Breakdown**

Despite initial close ties between Thaksin and key actors of civil society organisations that led to TRT’s first electoral win in 2001, the relationship has deteriorated over time. Towards the end of 2002 Thaksin expressed obvious frustration at the lingering demonstrations of the Assembly of the Poor, Small-Scale Farmers’ Assembly, and Pak Mun Dam activists. He publicly accused NGOs of ‘taking money from foreigners’, ‘inciting violence’ or ‘NGOs are like salesmen.’ The rift went deeper as the government rushed into signing several free-trade governments without public hearings and the facts that Thaksin assigned the Anti-Money Laundering Office to investigate key NGO leaders without justifiable cause (Aim 2013: 165–6). Expectedly, these conflicts later encouraged many NGO figures to join the anti-Thaksin movements and the eventual 2006 military coup.

Amid all the political chaos since 2006 no subsequent ruling governments have dared to abolish the 30-baht health scheme. Nonetheless, with the 2007 Constitution, which impeded party institutionalisation and weakened administrative power, the implementation of social policies after the 2006 coup has never been as strong as the honeymoon period of 2001–6. Health policies have become far more unstable and prone to capture by politicians helming the Ministry of Health. The first post-2007 government led by Thaksin’s PPP witnessed three health ministers in less than a year. Once the Democrats were in power the health ministry was mired in scandal and corruption allegations resembled pre-1997 Thai politics (see Hicken and Selway 2012). In sum, even in a country of political chaos and instability, the effectiveness of social reform has been contingent upon the party–civil society relationship, as our conceptual assumption would predict.

**VII Conclusion: Structure, Agency and the Ugly Constitution**

This article is engaged with the debate over emerging welfare state-building by examining the two promising, but failed, developmental states – Brazil and Thailand – upon reaching a
new era of state-building from the late 1980s. Following a review of competing explanations, I have gone along with the revisionist embeddedness account, which attributes such success to the relationship between ruling parties and civil society. While building a successful developmental state requires an ‘embedded autonomy’ relationship between the state and business, the success of emerging welfare states requires embeddedness between political parties and civil society.

However, I then pointed out that this structuralist account largely ignores the role of institutions in shaping within-country dynamics. This article has argued for the causal role of constitutional design as an intervening variable in shaping political changes amid the long process of structural evolution. Constitutions are both a site of political struggle and an instrument that shapes political competition (Hewison 2007). The comparison between Brazil and Thailand regarding the politics of constitutional design can be summarised in Table 5.

Table 5 Comparing constitutional design in Brazil and Thailand

<table>
<thead>
<tr>
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<th>Brazil’s 1988 Constitutional design</th>
<th>Thailand’s 1997 Constitutional design</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drafting process</td>
<td>Essentially political</td>
<td>Essentially technocratic</td>
</tr>
<tr>
<td>Blueprint</td>
<td>Avoid a blueprint</td>
<td>Blueprint-following</td>
</tr>
<tr>
<td>Final draft’s character</td>
<td>‘Ugly’ compromises</td>
<td>‘Beautiful’ consolidation</td>
</tr>
<tr>
<td>Mode of devolution</td>
<td>Radical decentralisation</td>
<td>Partial decentralisation</td>
</tr>
<tr>
<td>Electoral rules</td>
<td>Generally impede party institutionalisation</td>
<td>Generally promote party institutionalisation</td>
</tr>
<tr>
<td>Countervailing power to political parties</td>
<td>Local civil society organisations</td>
<td>Judicial organisations and traditional elite</td>
</tr>
<tr>
<td>Judicial review</td>
<td>Controversial but encourage party institutionalisation</td>
<td>Controversial but discourage party politics</td>
</tr>
<tr>
<td>Key actor for welfare provision initiative</td>
<td>Lula’s Workers’ Party and its civic partners</td>
<td>Thaksin’s Thai Rak Thai and its ex-leftist leaders</td>
</tr>
</tbody>
</table>

Source: Author
Even though the task of welfare state-building is far more structural, and requires a more broad-based alliance, than developmental state-building, institutional design is also instrumental in redirecting or reinforcing such a structurally determined path. Party institutionalisation, civil society development and the interaction between party and civil society have been reflected from the very process of constitutional drafting and directed by its final design. Thus far Brazil has been able to grasp a second chance of state-building thanks to its ‘ugly’ 1988 Constitution, which came to light amid messy political conflicts and laden with incoherence and ambiguity. Notwithstanding, it has proved to have greater longevity and to have incentivised more conducive party–civil society relations towards democratic deepening and welfare progress than Thailand’s ‘beautiful’ 1997 Constitution, which was characterised by its technocratic design and anti-politics mentality. These contrasting paths are not determined solely by structural factors. Constitutional design has played a crucial role, since it shapes political realignments that could either foster or hinder the productive ruling party–civil society relationship, which, in turn, determines the progress and direction of emerging welfare states.

The implications from these initial findings are twofold. On the one hand, policymakers should be more macro-oriented. To a growing degree, the task of welfare state-building is far more structural, and requires a more broad-based alliance, than developmental state-building. By training, most policymakers tend to focus mainly on their specialisations and seek to provide first-best solutions to existing problems, assuming long-term political impacts as a given. In this regard, policymakers should shift their attention from micro to macro level. Under democratic welfare state-building, policy choices that prioritise short-term order and stability can do more harm than good in the long run – if they have an adverse impact on party institutionalisation and civil society development.

On the other hand, the implications for researchers are the reverse: They should be more micro-oriented. Students of comparative state studies are inclined to put things into structural and long-term perspectives by default. This is not totally wrong, but my findings call for a better understanding of institutional arrangements, which can be instrumental in redirecting or reinforcing such a structurally determined path. Researchers should be more attentive to the micro level of state-building analysis. Constitutional design, for example, has played a crucial role in shaping political realignments that could either foster or hinder the progress of emerging welfare states.
References


