

GOVERNMENT INTERFERENCE, TRUST, AND THE CAPACITY TO PERFORM: COMPARING GOVERNANCE INSTITUTIONS IN THAILAND

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ABSTRACT

In this article governance institutions are compared in terms of government interference, trust in governance institutions, and the capacity of governance institutions to perform. A questionnaire was administered to find out the perception of an expert group consisting of MPA students from Chulalongkorn University. The author's understanding about recent development of Thai politics and administration was combined into the analysis. The findings indicate that there is a high positive association between trust in governance institutions and the performance capacity of governance institutions. However, trust in governance institutions was negatively associated with government interference in governance institutions. As of this writing Thailand was experiencing a period in which citizen trust in the national government was very low. In mid-April, 2010 the Thai Election Commission ordered the ruling party to be dissolved for allegedly concealing campaign contributions. Anti-government protesters had pressed for Prime Minister Abhisit Vejjajiva's resignation for months. His coalition government was further weakened as senior military officials and leaders of other coalition parties demanded a call for elections for a new government within a short period of time.

INTRODUCTION

Governance institutions such as the Constitutional Court and the National Counter Corruption Commission are institutions recently established in Thailand with the purpose of checking and balancing the use of government power by the executive: the prime minister and cabinet members, and bureaucrats. There are, in principle, supposed to be independent guardians who function as indirect representatives of citizens in monitoring government officials in power. Under the democratic governance paradigm (Bowornwathana, 2006a; 2001), citizens are the masters, and those in government are representatives of citizens. But the government officials in power cannot be trusted to use government power at will, and they must, in turn, be monitored by outside independent governance institutions. In a democratic governance system, there is a strong mistrust of those government officials in power. The transformation of a traditionally authoritarian polity into a democratic governance one is a radical shift from a tradition of a strong state and single-power-centered government, into a new governance system where government power is shared and dispersed (Bowornwathana, 2006b). At the initial stage, the creation of governance institutions is overwhelmed by the attempts of the strong traditional government to interfere, intrude and control governance institutions through various means such as influencing the appointments of members of governance institutions and budget allocations (Bowornwathana, 2008). Where government interference over the new governance institutions is high,

there is likely to be low trust in the new governance institutions and low capacity to perform.

In this article I will use the recent Thai experience in institutionalizing governance institutions to show comparatively, first, how the creation of governance institutions in a strong state-centric polity such as Thailand has inevitably been marked by high interference from the government executive and officials (Bowornwathana, 2000; 2010a). Second, I will compare the nature of trust in governance institutions. What factors account for the changing levels of trust in governance institutions? Third, I shall compare the capacity of governance institutions to perform. Fourth, I shall make observations about the relationships among trust in governance institutions, government interference, and the capacity to perform of governance institutions.

Eleven governance institutions are chosen as case studies. They are: the Ombudsmen, the National Human Rights Commission (NHRC), the Administrative Court (AC), the Constitutional Court (CC), the National Anti-Corruption Commission (NACC), the State Audit Commission (SAC), the Anti-Money Laundering Office (AMLO), the Election Commission (EC), the Senate, the House of Representatives, the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions (SCJCDPHPP). These are governance institutions set up by the previous 1997 Constitution, and reinstated by the present 2007 Constitution.

COMPARING GOVERNMENT INTERFERENCE IN GOVERNANCE INSTITUTIONS

Since the promulgation of the previous 1997 Constitution, the newly created governance institutions have experienced constant interference from several governments. In particular, the Thaksin governments (2001-2006) had tried to reintroduce the authoritarian perspective toward government reform by championing his Company Model, or "the Country is My Company Approach" toward government reform" (Bowornwathana, 2006c; 2005; 2004). Government reform initiatives chosen by the Thaksin Government were measures to enhance Thaksin's ability to control and monopolize the state machine. Administrative reform becomes an instrument for the dictatorial prime minister to consolidate political and administrative power. I have argued that during Thaksin's Governments, several tactics were used to control governance institutions. First, the Thaksin Governments tried to exercise control over senators who had the power to approve and select candidates to serve as commissioners on these governance institutions. Second, the Thaksin Governments sent their men in as commissioner members and officials in these governance institutions. Third, the Thaksin Governments tried to bring some governance institutions under their chain of command. Fourth, the Thaksin Government tried to exploit loopholes in the laws governing these governance institutions. Fifth, the Thaksin Governments encouraged the practice of double standards by these governance institutions. Sixth, the Thaksin governments tried to slow down the birth or growth of certain governance institutions that they thought were harming them politically and business-wise. Seventh, the Thaksin Governments may downplay or discredit some governance institutions through the use of government media, especially television propaganda (Bowornwathana, 2006, 104-105).

In 2004, the author made a rough estimation of the levels of government interference in governance institutions as shown in Table 1 (Bowornwathana, 2006c, p. 114). At that time, government intervention in the Constitutional Court, the National Counter Corruption Commission, and the Anti-Money Laundering Office was, in my opinion, higher than other governance institutions under investigation. The CC and the NACC lost much credibility when they failed to convict Thaksin on charges of concealing his assets about 11 billion baht placed in the hands of servants and a chauffeur. The NACC voted 8-1 against Thaksin. But the CC acquitted the then new Prime Minister Thaksin with a 8-7 vote. The case was closely reported by the media, and rumors were that Thaksin was able to bribe some CC judges. The NACC was seen as a subordinate agency to CC. In Thai politics during that time, the Senate chose judges for the CC. If one can control the majority of senators, one can then put one's men in. As for the case of AMLO, the prime minister exercised overwhelming power because he chaired the AMLO board. So during Thaksin, the AMLO became an instrument for Thaksin to silence government critics and the opposition by, for example, ordering AMLO to investigate the financial transactions of government critics. In short, government interference in these three governance institutions was high. So the CC, NACC, and AMLO could not effectively perform their mandates of ensuring accountability of the government executive, especially of the Prime Minister Thaksin himself.

Table 1: Government Interference in Governance Institutions (2004 estimation)

Governance Institutions	Levels of Government Interference
Ombudsmen	Low
NHRC	Low
CC	High
AC	Low
NACC	High
SAC	Moderate
EC	Moderate
AMLO	Highest
Supreme Court	-
Senate	-
House of Representatives	-

After Thaksin was ousted from power in 2006 by a military coup and demonstrations staged by the People's Alliance for Democracy (PAD), Thai politics was under military rule for one year (2006-2007). In 2008, the Thaksin's group returned to power as MPs from the former Thai Rak Thai Party formed a majority in the House of Representatives under the new party called Palang Prachachon. There were two short-lived governments under the leaderships of Prime Minister Samak and Somchai (the husband of one of Thaksin's sister). Both governments were accused by the PAD protesters and the opposition to be puppets or "nominees" of Thaksin. The belief was that Thaksin in-exile was giving orders to the Thai Government from abroad. This is a period when the government was rather weak and unstable, and governance institutions were able to function with lesser government interference. It was in fact, decisions made by some governance institutions such as the CC, the NACC, and the EC that resulted in the recent dissolution of several political parties in the government coalitions such as the Palang Prachachon Party, the Chart Thai Party, and the Machimatippatai Party.

Members of the executive boards of these political parties were banned from politics for five years, and a new election is called in constituencies where some MPs were disqualified by the EC.

Table 2 and Figure 1 show results of an opinion survey of 47 MPA students at Chulalongkorn University on December 8th 2008 with regard to their perception of the comparative levels of government interference in governance institutions. The question was: To what extent do you think that the following governance institutions have experienced government interference?

From Table 2, the governance institutions that experience high government interference are the House of Representatives (4.23), the Senate (3.77), and the Election Commission (3.64). Those governance institutions that manifest low government interference are the Constitutional Court (2.51) and the Administrative Court (2.51). The remaining governance institutions have average level of government interference. The opinion survey shows that in Thai politics, the Parliament (the House of Representatives and the Senate) is not an effective mechanism to check and balance the use of government power by the executive. In the House of Representatives, the government controls the majority of MPs, and it is very difficult for the opposition to effectively scrutinize the use of government power by the cabinet. In the Thai Senate, it is almost impossible for senators to be truly neutral because senators are connected to MPs and the executive in various ways. There are several ways that a senator can be associated with the executive. Examples are: former political allies, alumni from old schools and universities, business partners, relatives, family members (for example, the husband is an MP, while his wife is a senator), etc.. Surprisingly, respondents believed that there is high government interference in the EC. Decisions made by the EC affected certain groups of politicians. Those affected, accused the EC of not being impartial by favoring certain groups at the expense of others.

Another interesting finding is the rather low level of government interference in the Constitutional Court and the Administrative Court. Compared to my estimates in 2004, the level of government interference in the CC in 2008 has drastically reduced. In fact, the verdicts of the CC in 2007 and 2008 had resulted in the dissolution of the government's major political party of Thai Rak Thai Party and Palang Prachachon Party respectively. The level of government interference in the Administrative Court remains low as in 2004. This has to do with the way that administrative court system in Thailand is being set up as a court system like any ordinary court such as the criminal court.

Compared to 2004, government interference in the NACC has reduced from high to moderate level. In 2004, the then Prime Minister Thaksin was able to dictate Senate's choices of NACC members. A well-known corruption expert and buster, former Secretary-General of the old counter corruption commission (CCC), Klanarong Chanthick, was not chosen by Thaksin-dominated senators to become member of the NACC. Klanarong was then secretary-general of the CCC who represented the CCC in accusing Thaksin of concealing his assets. The 2008 NACC members were selected by the military government (Council of National Security) in September 22, 2006. One of the NACC member is now Klanarong. Clearly, the military coup group's choices of NACC members displeased the Thaksin's political group. The latter try to discredit the new NACC members as non-democratic because it was appointed by the military coup-

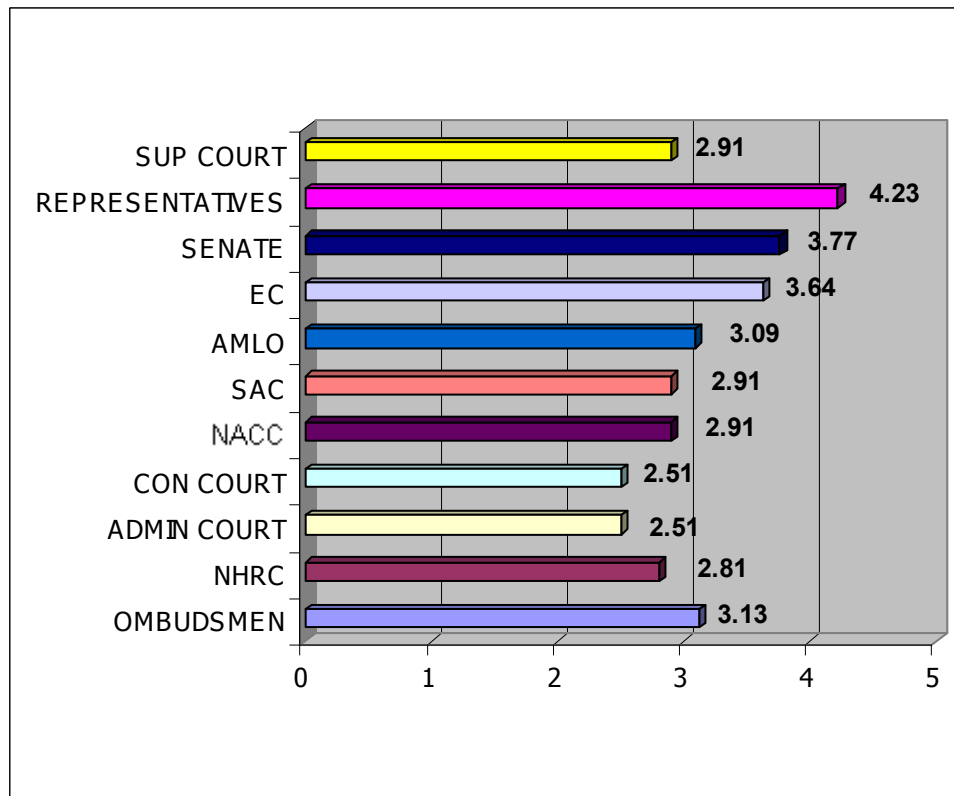
makers, not by parliament. This case study provides a good example in explaining the personalized nature of governance institutions. It is not the institutionalization of governance institutions that matter, rather the issue is whose friends and foes get appointed as commissioner members to these powerful governance institutions.

In conclusion, the findings on government interference in governance institutions in Thailand are several. First, the newly-created governance institutions in Thailand are highly politicized. Politicization of governance institutions in Thailand is widespread. The levels of government interference in governance institutions do not remain still. They fluctuate during different periods. Second, the highly politicized nature of Thai politics and administration has inevitably made the quest for a truly neutral and competence governance institution that can monitor the use of government power in the name of the citizen very difficult to attain at least at the initial stage of reform implementation.

Table 2: Comparing Government Interference in Governance Institutions

	N	Minimum	Maximum	Mean	Std. Deviation
OMBUDSMEN	47	2	5	3.13	.924
NHRC	47	1	5	2.81	.900
ADMIN COURT	47	1	4	2.51	.882
CON COURT	47	1	5	2.51	.953
NACC	47	1	5	2.91	1.039
SAC	47	1	5	2.91	1.080
AMLO	47	1	5	3.09	1.018
EC	47	2	5	3.64	1.031
SENATE	47	2	5	3.77	1.005
REPRESENTATIVES	47	2	5	4.23	.914
SUP COURT	47	1	5	2.91	1.039
Valid N (listwise)	47				

Figure 1: Comparing Government Interference Levels in Governance Institutions



Source: Author, 2009

COMPARING TRUST IN GOVERNANCE INSTITUTIONS

Trust in governance institutions refer to the extent that one believes that a particular governance institution will deliver what they have promised. It has to do with the level of confidence in the reliability of a governance institution. The concept of trust is culturally-bounded. There are societies with low and high government trust. In a social system such as Thailand that emphasizes personal relationships based on informal patron-client relations, the meaning of trust takes on a special one. Trust becomes personal, and the process of building trust in institutions takes an unusually long time. For example, one trusts the NACC not because it is a well-developed institution with carefully designed standard operational procedures and legal layouts. Instead, trust comes from the fact that one has faith in certain individuals in charge of a particular governance institution.

Table 3 and Figure 2 illustrate the levels of trust in governance institutions exhibited by survey respondents consisting of 47 MPA students at Chulalongkorn University on December 8th, 2008. The respondents were asked: To what extent do you trust these governance institutions to monitor government? According to the perception of the respondents in December 2008, governance institutions with high trust are in order respectively the Constitutional Court (3.94), the Administrative Court (3.89), the National Anti-Corruption Commission (3.75), the State Audit Commission (3.55), AMLO (3.38), and the Supreme Court's Criminal Division for People Holding Political Positions (3.36). The Ombudsmen and the National Human Rights Commission both

received a score of 3.13. Those governance institutions that received low scores are the House of Representatives, the Senate, and the Election Commission. They are seen as untrustworthy in performing the roles of the guardians of democratic governance.

In general, the December 8th, 2008 scores of governance institutions indicate that the respondents have a positive attitude toward governance institutions. I do not have an opinion survey of the respondents before that, but I think that trust in governance institutions fluctuates a lot depending on the nature of Thai politics. Recent political developments before December 8th may have shaped the attitudes of respondents. Examples are: the CC's decision to dissolve three political parties in the government coalition including the major Palang Prachachon Party resulted in the discharge of Somchai as prime minister; and the conviction of Thaksin for two years imprisonment in the Rachada Land Deal.

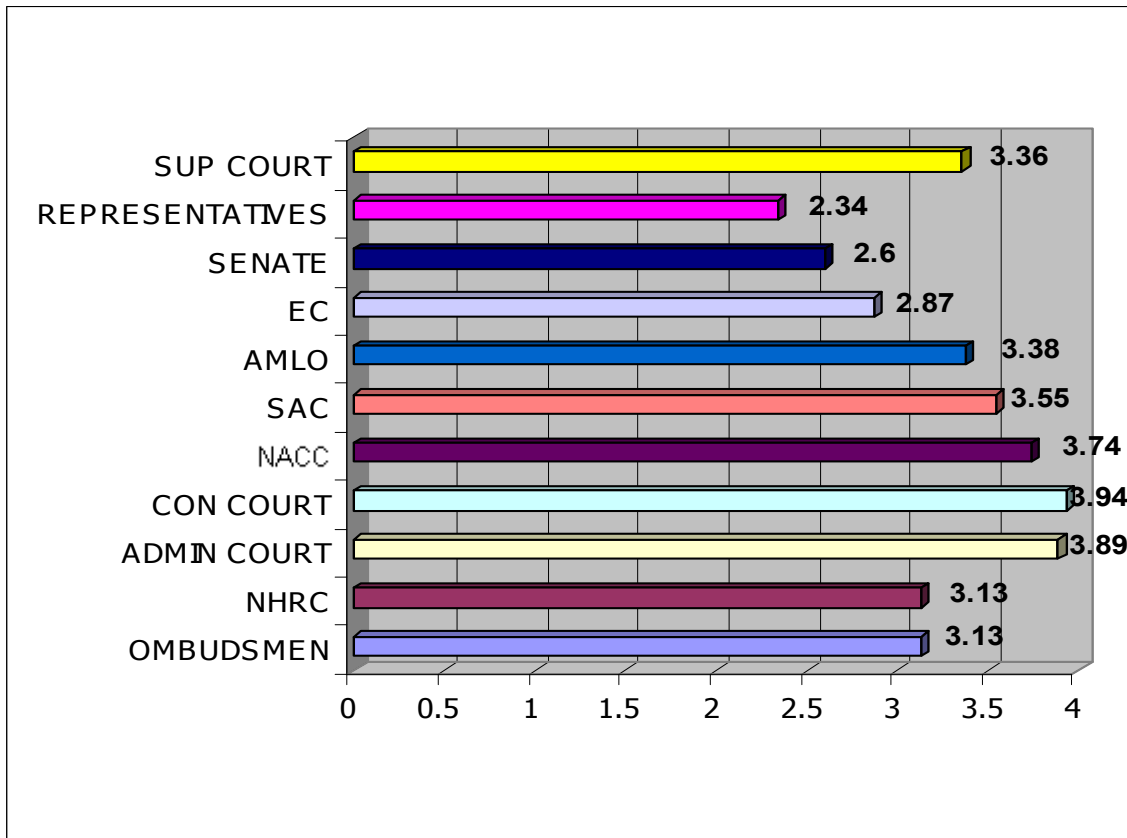
It could be that this group of respondents consisting of MPA students at Chulalongkorn University, are in general anti-Thaksin. More attitudinal surveys are needed to determine whether the survey results are different when one asks different groups with different political stands. Perhaps the present polarization of Thai politics into pro-Thaksin (red shirts) and anti-Thaksin (yellow shirts) makes a difference. If one asks the pro-Thaksin group, they may respond that the governance institutions such as the CC, the NACC and the SAC cannot be trusted. Such an answer is expected in a polarized polity.

Table 3: Comparing Trust in Governance Institutions

	N	Minimum	Maximum	Mean	Std. Deviation
OMBUDSMEN	47	1	5	3.13	.900
NHRC	47	1	5	3.13	.969
ADMIN COURT	47	1	5	3.89	.890
CON COURT	47	1	5	3.94	.942
NACC	47	2	5	3.74	.988
SAC	47	2	5	3.55	.880
AMLO	47	2	5	3.38	.922
EC	47	1	5	2.87	1.076
SENATE	47	1	5	2.60	.970
REPRESENTATIVES	47	1	4	2.34	.984
SUP COURT	47	1	5	3.36	1.206
Valid N (listwise)	47				

Source: Author, 2009

Figure 2: Comparing Trust in Governance Institutions



Source: Author, 2009

COMPARING THE CAPACITY OF GOVERNANCE INSTITUTIONS TO PERFORM

The capacity to perform refers to the readiness of the governance institutions to play the roles of the guardians who monitor the use of government power by the executive and bureaucracy.

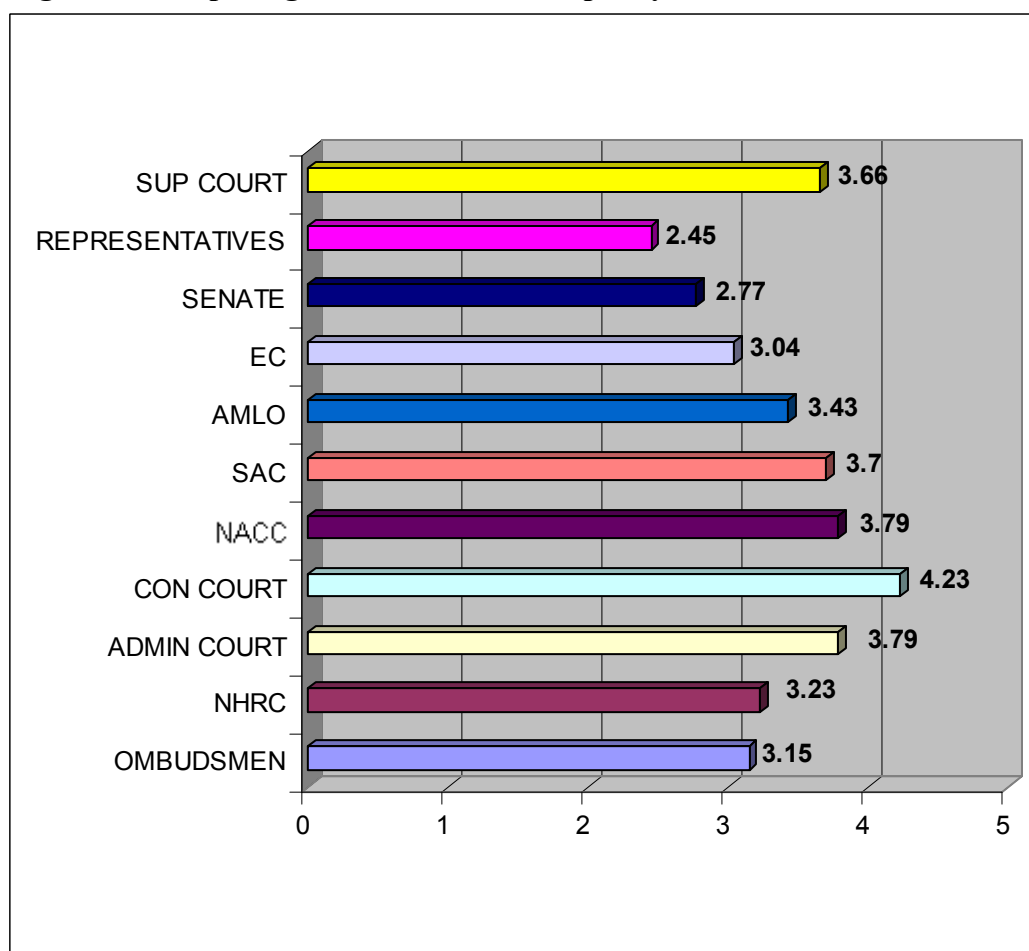
The same group of 47 MPA students at Chulalongkorn University was asked to answer the question: To what extent do you think that these governance institutions have the capacity to perform? According to Table 4 and Figure 3, the respondents believed that the Constitutional Court (4.23), the Administrative Court (3.79), the NACC (3.79), the Supreme Court's Criminal Division for Persons Holding Political Positions (3.66), and the AMLO (3.43) have high capacity to perform. The Ombudsmen (3.15), the NHRC (3.23), and the EC (3.04) have average capacity. The worst ones are the House of Representatives (2.45) and the Senate (2.77).

Table 4: Comparing the Capacity of Governance Institutions to Perform

	N	Minimum	Maximum	Mean	Std. Deviation
OMBUDSMAN	47	1	5	3.15	.978
NHRC	47	1	9	3.23	1.202
ADMIN COURT	47	2	5	3.79	.832
CON COURT	47	2	9	4.23	1.306
NACC	47	2	5	3.79	1.041
SAC	47	1	5	3.70	1.061
AMLO	47	1	5	3.43	1.137
EC	47	1	5	3.04	1.103
SENATE	47	1	5	2.77	1.108
REPRESENTATIVES	47	1	5	2.45	.996
SUP COURT	47	1	5	3.66	1.027
Valid N (listwise)	47				

Source: Author, 2009

Figure 3: Comparing the Performance Capacity of Governance Institutions



Source: Author, 2009

RELATIONSHIPS AMONG TRUST, GOVERNMENT INTERFERENCE, AND CAPACITY

Suppose if one considers trust in governance institutions to be the dependent variable, with two independent variables: government interference and performance capacity. Figure 4 shows that trust in governance institutions is positively related to the capacity of governance institutions to perform. In fact, the trust line and the capacity line almost parallel one another. On the contrary, there is an opposite association between trust and capacity with government interference. That is, the higher the government interference, the lower the trust in governance institutions and the lower their capacity to perform.

Figure 5 shows the relationship between trust and government interference. High trust governance institutions are strongly associated with low government interference. In the same fashion, low trust governance institutions are also strongly associated with high government interference.

Figure 6 shows the relationship between trust in governance institutions and the capacity to perform. The relationship between trust and performance capacity of governance institutions is almost a straight line. High trust is strongly associated with high capacity to perform. Low trust is associated with low performance capacity.

Figure 4: Comparing Government Interference, Trust, and Performance Capacity

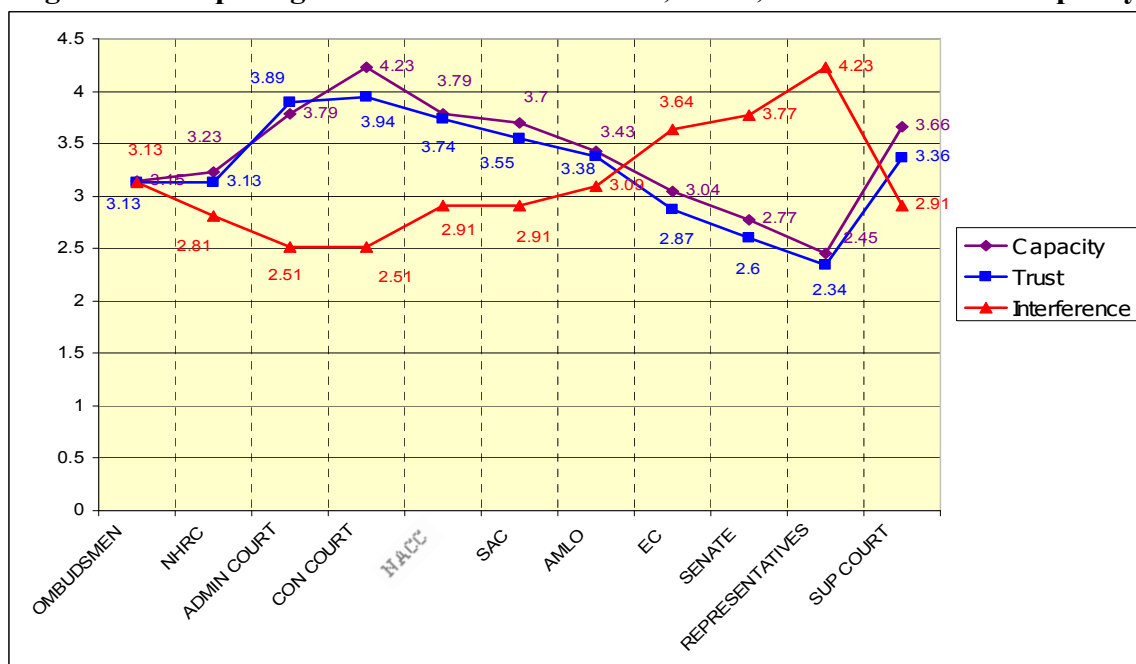
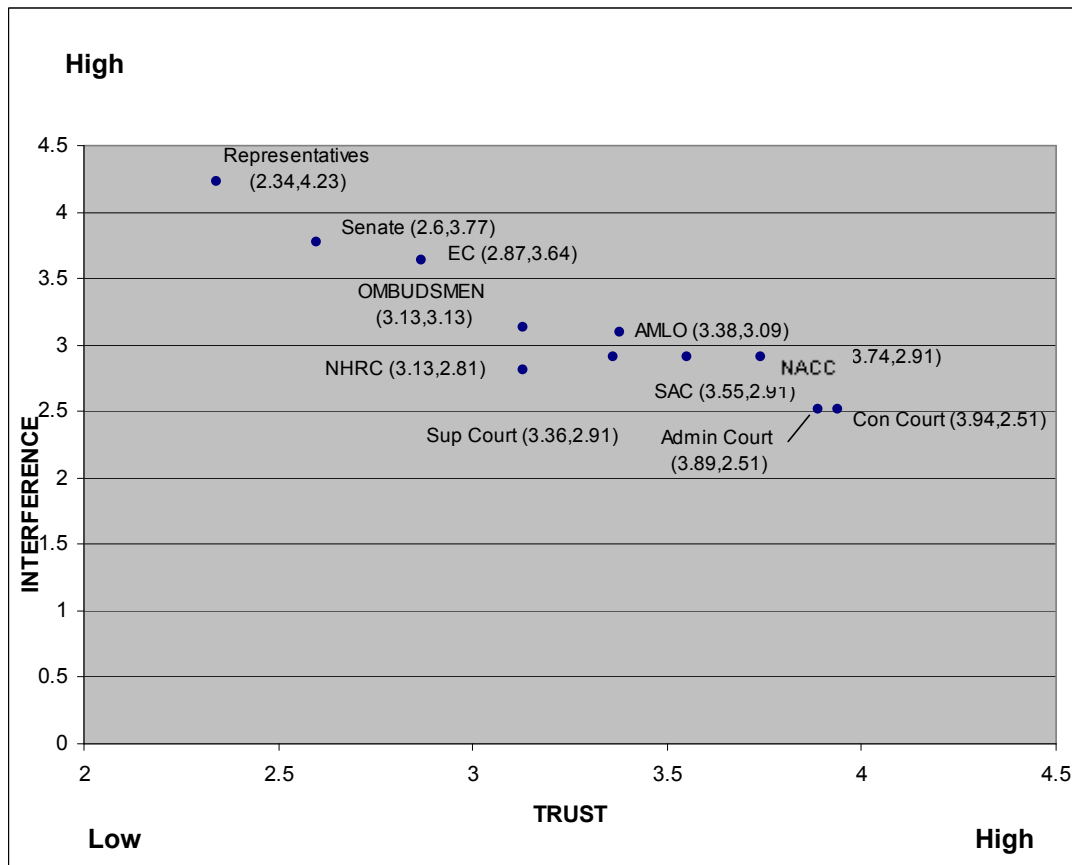
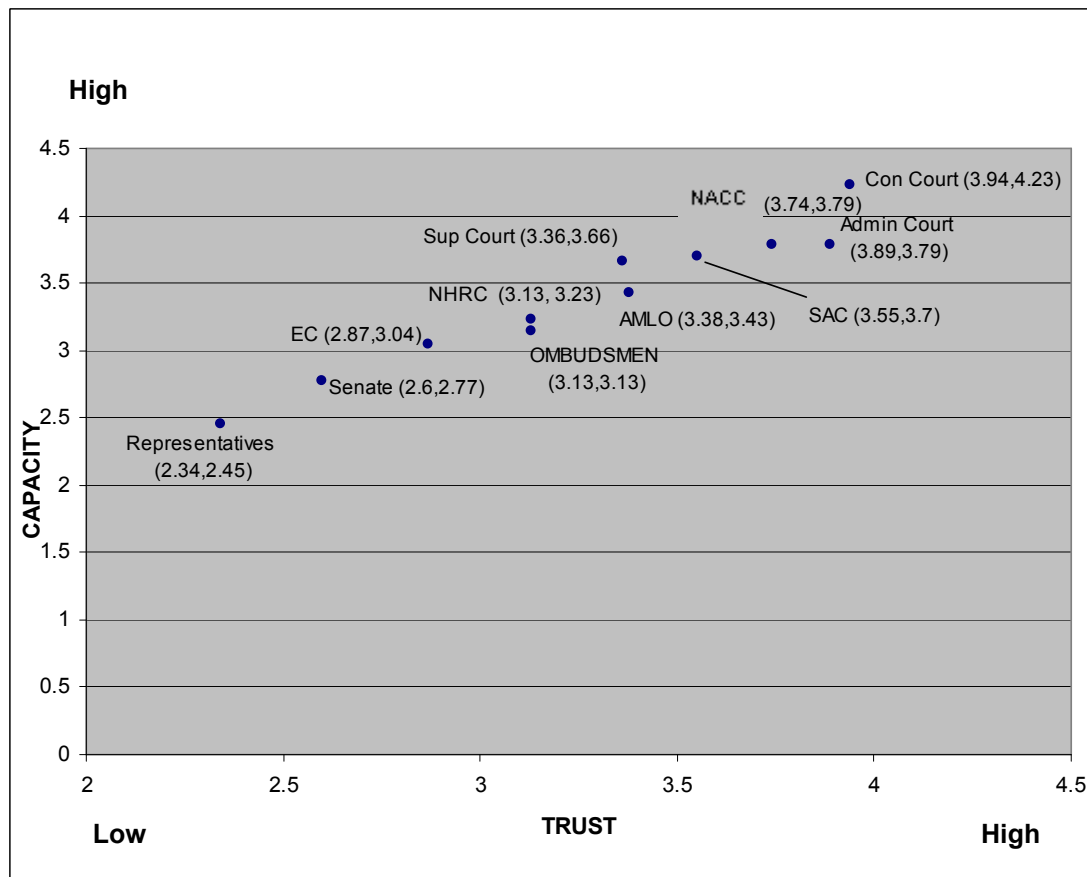


Figure 5: The Relationship between Trust and Government Interference



Source: Author, 2009

Figure 6: The Relationship between Trust and Performance Capacity



Source: Author, 2009

Eleven governance institutions in Thailand were compared in terms of government interference, trust in governance institutions, and the capacity to perform. The findings suggest that there is a strong association between high trust, low government interference, and high performance capacity.

As of this writing Thailand was experiencing a period in which citizen trust in the national government was very low. In mid-April, 2010 the Thai Election Commission ordered the ruling party to be dissolved for allegedly concealing campaign contributions. Anti-government protesters had pressed for Prime Minister Abhisit Vejjajiva's resignation for months. His coalition government was further weakened as senior military officials and leaders of other coalition parties demanded a call for elections for a new government within a short period of time.

Future research on governance institutions should take into consideration the political environment that these governance institutions are implemented. Thai traditional practices and values such as the strong state-centric tradition, personal relations, patronage, nepotism, and corruption must be taken into account. The challenging question is: Is it possible to develop strong independent and competent governance institutions in Thailand? From a bureaucratic politics view point, the creation of governance institutions may be seen as a manifestation of bureaucratic expansion by the senior bureaucrats who after retirement assume positions in these new governance institutions. Who should guard these guardians then? Is the idea of trust in governance

institutions foreign to the Thai context? (Bowornwathana, 2010b). Can we really find truly neutral, competent leaders, and persons free from political interference to act as commission members of these governance institutions? As of now, the cultivation of trust in governance institutions in the Thai polity is very much a matter of politics, personalism, and uncertainty.

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