THE UNIVERSITY
of EDINBURGH

This thesis has been submitted in fulfilment of the requirements for a postgraduate degree (e. g. PhD, MPhil, DClinPsychol) at the University of Edinburgh. Please note the following terms and conditions of use:

- This work is protected by copyright and other intellectual property rights, which are retained by the thesis author, unless otherwise stated.
- A copy can be downloaded for personal non-commercial research or study, without prior permission or charge.
- This thesis cannot be reproduced or quoted extensively from without first obtaining permission in writing from the author.
- The content must not be changed in any way or sold commercially in any format or medium without the formal permission of the author.
- When referring to this work, full bibliographic details including the author, title, awarding institution and date of the thesis must be given.

Dualminster: Constitutional Change and Continuity in Sri Lanka and Guyana

Peter Reid

PhD

The University of Edinburgh

2024

I confirm that this thesis presented for the degree of PhD —

i) has been composed entirely by myself;

ii) has been solely the result of my own work;

iii) has not been submitted for any other degree or professional qualification.

Parts of this work have been published in Peter Reid and Asanga Welikala, 'Scottish Secession and the Political Constitution of the United Kingdom' in Richard Johnson and Yuan Yi Zhu (eds), *Sceptical Perspectives on the Changing Constitution of the United Kingdom* (Bloomsbury 2023) and in Peter Reid and Gayanthi Ranatunga, 'Parliamentarism in Sri Lanka: Lessons from Bangladesh' (forthcoming) Indian Law Review. Those parts used in this thesis are solely the result of my own work.

Peter Reid

Acknowledgements

I am grateful to a number of people who have helped me both in the conduct of my studies and in the navigation of this personal journey. Firstly, I am grateful to my supervisors for their support and insights. From my initial research proposal to this final thesis, they have always challenged and encouraged me. I am additionally thankful to Dr Welikala for guiding me during my work in Sri Lanka and helping to inspire so much of this project.

I am grateful to Dr Paikiasothy Saravanamuttu for discussing Sri Lanka's 1978 Constitution, its passage, and its myriad effects with me. Dr Saravanamuttu's generosity and support during my visits to Colombo helped me to shape the ideas in this thesis. I would also like to thank Dr Nihal Jayawickrama for giving me an interview on Sri Lanka's constitutional development. It was a privilege to hear about his experiences. I also appreciate Professor David Perfect's help in my approach to researching The Gambia. Although The Gambia was dropped from this thesis as a case study, Professor Perfect's insights were helpful in shaping my thoughts about comparison and case selection.

Finally, I would like to thank my family, especially my parents and my grandpa, for always supporting me with their love and conversation.

Lay Summary

This thesis examines changes to the constitutions of Sri Lanka and Guyana since independence and their relevance for historical institutionalist and legal theory. Both countries began independence with constitutions similar to the British parliamentary model. However, because of specific leaders' personal tendencies and wider political forces related to independence and universal franchise, both Sri Lanka and Guyana modified their constitutions some years after independence. They changed from purely parliamentary systems to something more presidential. This initial change in the constitutions has subsequently triggered further constitutional change.

Although Sri Lanka and Guyana have altered their constitutions since independence, both the 1978 Constitution (Sri Lanka) and the 1980 Constitution (Guyana) also exhibit continuity with aspects of earlier constitutional documents. This thesis argues that constitutional and institutional change can be gradual, over many years, and can be triggered by initial, relatively small, changes that irritate the rest of the system. This thesis further accounts for divergences between Sri Lanka and Guyana's written constitutions and the ways in which these constitutions operate in practice.

Abstract

This thesis explores trajectories of constitutional change in post-colonial Sri Lanka and Guyana. It examines the change from a Westminster model parliamentary system to hybrid constitutions with executive presidents that, nonetheless, preserve significant aspects of the independence constitutions. These ‘Westminster model constitutional features’ interact with the executive presidencies to create unique outcomes that would not be expected in pure presidential or parliamentary systems. The reasons for and effects of this change are examined with a historical institutionalist approach. Theories of gradual institutional change, rather than punctuated equilibria, help to explain incremental and partial constitutional development in both contexts. This historical institutionalist approach is blended with the legal theory of Santi Romano and British political constitutionalists.

Both Sri Lanka and Guyana incorporated executive presidencies into their constitutions as a response to social and electoral trends since independence. In Guyana, politics had divided along ethnic lines between the Indo- and Afro-Guyanese. Forbes Burnham, the prime minister, introduced an electoral system and executive presidency attuned to this divide as a means of entrenching himself in power. In Sri Lanka, on the other hand, JR Jayewardene saw an executive presidency as within the national interest more broadly. Primarily, it would allow the officeholder to make sound economic decisions even if they were politically unpopular. Also, a president of Sri Lanka with a secure term would be in a better position to reach an agreement to the ‘national question’ with minority groups, especially the Tamils.

These ‘agents’ of constitutional change had different ideological backgrounds and therefore different reference points in designing the new constitutions. Sri Lanka’s 1978 Constitution is influenced by the French Fifth Republic, while Guyana’s 1980 Constitution is modelled on communist states. Although the motivations and ideologies behind presidentialism were distinct, the historical and sociological context to the offices means that they have morphed into ‘communal presidencies’, or institutional symbols of political exclusion.

Both the 1978 Constitution of Sri Lanka and the 1980 Constitution of Guyana retain Westminster model constitutional features. This thesis identifies a set of seven constitutional provisions that it associates with the Westminster model. These are (1) strong-form dissolution and prorogation powers; (2) individual and collective ministerial responsibility; (3) independent public services; (4) a recognised leader of the opposition; (5) ministers must be members of the legislature; (6) a Westminster model speaker; and (7) Westminster model public finance procedures. Even after the change to presidentialism, these provisions were preserved and built upon in the new constitutional documents. Not only this, but they modified – and were themselves modified by – the existence of the new executive president. Since 1978 and 1980, parliament, cabinet, and the judiciary have relied on these constitutional provisions in creative ways in their interactions with the executive president, and vice-versa.

In describing the constitutions of Sri Lanka and Guyana, this thesis proposes 'the political constitution as intercurrence'. This theory blends historical institutionalist approaches with those of Santi Romano and British political constitutionalists. It is an aid to describing the 'Dualminster' constitutions of Sri Lanka and Guyana. Both countries have preserved and modified Westminster model constitutional features while also giving the head of government a dual role as head of state, too. These stories of a unique constitutionalism offer insights into agentic dynamics, the nature of a legal system, and the ways in which institutions relate to each other over time.

Table of Contents

Introduction

1. Research Questions ... 13

2. Origins of the Project ... 13

3. Case Selection ... 14

4. The Gambia ... 16

4.1 Overview of The Gambia ... 17

4.2 Reasons for Excluding The Gambia ... 22

5. Methodology ... 23

5.1 Process Tracing and Existing Research ... 23

5.2 Watson, Legrand, and the Nature of Law ... 24

6. Contribution to the Literature ... 28

7. Overview ... 30

Chapter I

Independence, Universal Franchise, and Political Leadership

Introduction ... 33

1. Sri Lanka ... 35

1.1 Political Bidding ... 35

1.2 Ethno-Religious Breakdown ... 41

2. Guyana ... 47

2.1 Racial Divisions – Background Conditions ... 47

2.2 Racial Divisions – Burnham and Jagan ... 49

2.3 Independence and Foreign Intervention ... 54

3. Agentic Dynamics of Constitutional Change 57
3.1 Agents' Interests 58
3.2 Agents' Ideologies 63
Conclusion 68

Chapter II

Westminster Model Constitutional Features

Introduction 71
1. Parliamentary, Presidential, or Semi-Presidential? 72
2. Identifying the Westminster Model 74
2.1 Is there still a 'Westminster Model'? 75
2.2 Seven WMCFs 77
2.3 Westminster *Models*? 78
3. Tracking Constitutional Change 79
3.1 Incorporating the Executive Presidents 80
3.2 Strong-form Dissolution and Prorogation Powers 83
3.3 Collective and Individual Ministerial Responsibility 84
3.4 Independent Public Services 86
3.5 The Leader of the Opposition 90
3.6 Ministers Must be Members of the Legislature 91
3.7 Speakers 92
3.7.1 Speakers in Westminster Model Constitutions 93
3.7.2 Speakers in US and Francophone Constitutions 95
3.8 Public Finance Procedures 100
3.8.1 Public Finance in Westminster Model Constitutions 100
3.8.2 Public Finance in US and Francophone Constitutions 103

4. Reforming the Presidencies: Constitutional and Political Trends 105
4.1 Sri Lanka 105
4.2 Guyana 110
Conclusion 113

Chapter III

The Communal Presidencies

Introduction 116
1. The Communal Presidencies 118
1.1 Pre-Existing Patterns of Executive Centralisation 119
1.1.1 Guyana 119
1.1.2 Sri Lanka 123
1.2 The Presidencies as Symbols and Drivers of Communalism 126
1.2.1 Sri Lanka 126
1.2.2 Guyana 133
1.2.3 Collegial Cabinet 138
2. Westminster Model Constitutional Features in Practice 142
2.1 Collective and Individual Ministerial Responsibility 143
2.2 Ministers as MPs and the Cabinet-Parliament Nexus 150
2.3 The Speaker 156
2.4 The Leader of the Opposition 161
Conclusion 168

Chapter IV

Cohabitation and Constitutional Crises

Introduction 170

1. The Crises 170

1.1 Guyana 170

1.2 Sri Lanka 178

2. Reflections on WMCFs 186

2.1 Cohabitation, WMCFs, and Communal Presidencies 186

2.2 Prorogation, Dissolution, and Cabinet-Parliament Relations 191

2.3 Westminster Office Holders and Westminster as an Interpretive Process 195

2.4 The Limitations of WMCFs in Explaining Constitutional Crises 197

Conclusion 200

Chapter V

The Historical Institutionalism of Constitutional Law

Introduction 202

1. What is Historical Institutionalism? 203

2. Institutional Irritants 204

2.1 Definition 204

2.2 Distinguishing Characteristics 206

2.2.1 Critical Junctures 206

2.2.2 Institutional Irritants 209

2.3 Irritants, Intercurrence, and Gradual Change 211

2.3.1 Intercurrence 211

2.3.2 Mechanisms of Gradual Change 213

2.3.3 Gradual Change and Institutional Irritants 215

2.4 Presidentialism as an Institutional Irritant 216

2.4.1 The Communal Presidencies as Institutional Displacement 216

2.4.2 Triggering Further Change - Conversion 219
2.4.3 Triggering Further Change – Layering 222
3. The Plasticity Paradox 223
3.1 Levels of Plasticity and Types of Institutional Change 224
3.2 Moments of Enhanced Plasticity 226
3.3 Plasticity and the Balance of Arms 230
Conclusion 232

Chapter VI

The Political Constitution as Intercurrence

Introduction 235
1. Santi Romano and Law as Institution 236
1.1 Santi Romano 237
1.2 The Legal Order 238
1.3 Modifying Romano 242
1.3.1 The Political Constitution and Disharmony 243
1.3.2 Legal Orders and their Sociological Character 246
1.4 The Political Constitution as Intercurrence 247
1.5 Dualminster and the Political Constitutionalism of JAG Griffith 250
2. Dualminster 256
2.1 The Communal President as Government 256
2.2 Close Nexus Between Cabinet and the Legislature 261
2.3 Parliament as a Platform for Performative Politics 261
2.4 The Communal President Must Command Confidence in Parliament 266
2.5 The Commonwealth as a Point of Constitutional Reference 267
Conclusion 268

Conclusion

1. Reasons and Methods of Adopting Dualminster 270

2. Dualminster in Practice 273

3. Dualminster as a Family of Constitutions 276

4. Dualminster in Historical Institutionalist and Legal Theory 277

5. Avenues for Future Research 280

Bibliography……………………………………………………………………..…282

Introduction

1. Research Questions

This thesis addresses four research questions. Firstly, how and why did Sri Lanka and Guyana, representing British post-colonies in two continents, which started their constitutional existence as independent states as Westminster model parliamentary systems, convert to some form of presidentialism? Secondly, how do these hybrid constitutions operate in practice? Thirdly, is it possible to theorise a discrete model of government based on the marriage of presidentialism and Westminster model constitutional features in the similar but distinctive conditions of these case studies? And finally, what does their analysis, individually and comparatively, tell us about constitutional democracy and historical institutionalism?

2. Origins of the Project

The case studies and research questions that this thesis addresses originally drew my interest after I co-authored a handbook on the parliament of Sri Lanka in the wake of the Nineteenth Amendment to the Constitution. During this project, Sri Lanka's 2018 constitutional crisis gradually unfolded. My interest was sparked by how I viewed the crisis within the context of the handbook project. At the same time as I was learning about the continuity in the parliament's traditions and procedures, and how the Nineteenth Amendment was meant to make the constitution more parliamentary, the constitutional crisis showed how conventions such as confidence and procedures such as prorogation, associated with the independence constitution, were also the sites of conflict between parliament and the executive president. From there, I looked for other countries, representing as wide a geographical spread as possible, that showed similar constitutional trajectories to Sri Lanka since independence.

My initial hypotheses were that (1) the executive presidencies represented critical junctures in both Sri Lanka and Guyana and that, (2) while the parliaments appeared to operate like Westminster-style legislatures internally, any lingering Westminster model constitutional features that regulated the relationship between the legislature and the executive only served to strengthen the executive's hand. Furthermore, I

thought that (3) the written constitutions, even the political constitutions, of both countries could be analysed on their own merit and without discussing common patterns of communalism.

All three of these hypotheses were incorrect. I quickly found that there is, in fact, a complex relationship between Westminster model constitutional features and the extent to which either the legislature or executive is subordinate. It was only later that I was able to properly frame this by coming up with the 'balance of arms'. Also, I did not expect the development of the executive presidencies, which I now call the 'communal presidencies', to be so intertwined with communalism that they can only be properly appreciated as institutions by looking at dimensions beyond the written law and how it is applied in practice. Finally, while the thesis always envisaged a historical institutionalist approach, I had to abandon the idea of critical junctures in favour of gradual institutional change.

3. Case Selection

The case selection in this thesis is based on the 'diverse cases' principle. Both case studies have developed similar constitutions, however the paths that they took to Dualminster had significant differences, including the causal mechanisms at play and the ideologies of their political leaders. In determining causality, this thesis relies partly on other writers' findings and partly on process tracing (described below). The comparison between cases, and therefore the case selection's logic, performs a descriptive function.

Unlike comparison for description (the method used in this thesis), comparison for causality entails a rigorous approach to case selection designed to eliminate variables. Hirshl urges scholars in comparative constitutional studies to learn from other fields and thereby apply careful methodologies:

> intellectual integrity warrants that a scholar who aspires to establish meaningful causal claims or explanatory theories through comparative inquiry should select

her case studies in a theory-minded fashion and follow clearly articulated methodological principles.[1]

In qualitative case study approaches, the social and political sciences exemplify this rigour. The most similar cases and most different cases principles (originally Mill's methods of difference and agreement) have been used to explore economic development,[2] regime-types,[3] and nineteenth-century settler societies.[4] Methodologies such as these, along with others such as deviant and index cases,[5] use different rationales of comparison that ultimately have similar goals – to isolate variables and explore causal mechanisms. They tend to begin by identifying multiple possible causes of a phenomenon before selecting cases that isolate one or two possible causes. In essence, these approaches to case selection determine causality through the comparison itself. Specifically, the aim may be exploratory, estimating, or diagnostic.[6] By comparing inputs and outputs across a controlled sample, researchers test and develop theories of causality.

This study's case selection is inappropriate for determining causality. On the surface, Hirschl's prototypical cases principle could feasibly be applied to this study, because both cases represent a different path to Dualminster. These paths were, more or less, reflected in other contexts, too.[7] This is particularly true for Guyana, which reflected the Marxist influences combined with ethnic divides and authoritarian impulses which led other countries to incorporate executive presidentialism after independence. Examples include Ghana in 1960 and Uganda's 'Move-to-the-Left' in 1968.[8] Sri

---

[1] Ran Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Oxford University Press 2014) 228.
[2] Matthew Lange, *Lineages of Despotism and Development: British Colonialism and State Power* (University of Chicago Press 2009).
[3] James Mahoney, *The Legacies of Liberalism: Path Dependence and Political Regimes in Central America* (Johns Hopkins University Press 2001).
[4] James Belich, 'Exploding Wests: Boom and Bust in Nineteenth-Century Settler Societies' in Jared Diamond and James A Robinson (eds), *Natural Experiments of History* (Harvard University Press 2012).
[5] Kurt A Raaflaub and others, *Origins of Democracy in Ancient Greece* (University of California Press 2007); Arend Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (2nd edn, University of California Press 1975).
[6] John Gerring, *Case Study Research: Principles and Practice* (2nd edn, Cambridge University Press 2016). See particularly Chapter III.
[7] Hirschl (n 1) 256.
[8] Tertit Aasland, 'Electoral Reforms - National Integration, Mobilization, New Blood - in Document No. 5 on the Move-to-the-Left Strategy in Uganda' (1975) 10 Cooperation and Conflict 113; Egon Schwelb, 'The Republican Constitution of Ghana' (1960) 9 The American Journal of Comparative Law 634.

Lanka's change, on the other hand, represented right-leaning politics combined with direct Gaullist influences. Furthermore, the cases are independent of each other – neither country directly learnt from the other in developing these systems.

However, to function as a causal investigation, additional standards are required which cannot be applied here. This tried-and-true method has strong precedents in historical institutionalism.[9] Indeed, one of the most influential works in historical institutionalism, Collier and Collier's *Shaping the Political Arena,* relies on this method along with process tracing.[10] Unfortunately, because causal factors likely interact with each other, it would be inappropriate to argue that the prototypical or (causal) diverse methods apply to this thesis. Variables such as ethno-religious balance, the nature of the political divide, regional influences, and others all interacted in shaping the particular types of Dualminster system adopted in both countries. Therefore, a case selection geared towards causality should have each possible combination of each variable, which is outside the scope of a PhD thesis.

This thesis' case selection is grounded in the diverse cases principle as a descriptive approach. Gerring defines this as one which focuses "on several cases that, together, are intended to capture the diversity of a subject".[11] Guyana and Sri Lanka may possibly represent trends which can be applied to other countries, however they are not presented in this thesis as prototypes. Instead, they represent the breadth of circumstances that led to Dualminster (rather than each category of path), and the nuanced constitutionalisms that emerged as a result. This case selection captures Dualminster in its divergences and distinctiveness. Both countries represent distinctive politics, cultures, and constitutional ideologies that nonetheless converge on the simple principle that executive presidentialism can be operated while maintaining Westminster model constitutional features.

4. The Gambia

During most of the research process, this thesis was envisaged to include one more case study: The Gambia. While The Gambia originally followed a similar pattern of

[9] Gerring (n 6) 89.
[10] Ruth Berins Collier and David Collier, *Shaping the Political Arena: Critical Junctures, the Labor Movement, and Regime Dynamics in Latin America* (University of Notre Dame Press 2015).
[11] Gerring (n 6) 60.

constitutional development to Sri Lanka and Guyana, but with interesting differences in political development, a military coup in 1994 caused a rupture in its constitutional traditions. From 1994 to 2016, The Gambia struggled under the strongman rule of lieutenant-turned-president Yahya Jammeh. For this thesis, the constitution passed in 1997, which remains in force today, has little comparative value for those in Sri Lanka and Guyana, so divergent is it from that at independence. Also, while the 1970 Constitution did have strong similarities with those adopted in Sri Lanka and Guyana, then-president Dawda Jawara's leadership and popularity were so omnipotent that it can be misleading to try and unpick a Gambian 'constitutionalism' in this period from Jawara's personal rule. Furthermore, pre-2000s sources (particularly legal ones) are very limited.

4.1 Overview of The Gambia

At independence, The Gambia displayed all the tribal and religious differences, consolidated by geographical divide, that some post-colonial leaders exploited to disastrous effect. Unlike in Sri Lanka and Guyana, however, Gambian leaders have meticulously avoided communalism.

When The Gambia gained independence, the urban Bathurst elite had a relatively westernised mindset, and many were Christian, whereas those in the countryside were governed by their chiefs and were predominantly Muslim. Furthermore, the Wolof and Aku tribes were the dominant tribes in Bathurst, both in numbers and wealth, however neither formed a majority in the overall Gambian population. The Aku composed only 1% of Gambia's overall population, but 13% of the Bathurst population. Instead the Mandinka, who were largely confined to the countryside, composed slightly less than half of The Gambia's overall population.[12] Furthermore, although the Mandinka sustained the economy through the cultivation of groundnuts, they were sometimes looked down upon by the Aku and Wolof and if they moved to the city then they found themselves blocked from advancement.[13] The potential for instability was therefore clear: a substantial sub-nation, whose distinct identity could be aggravated by politicians through an atmosphere of religious intolerance, tribal conflict, and

[12] Arnold Hughes, 'From Green Uprising to National Reconciliation: The People's Progressive Party in the Gambia 1959-1973' (1975) 9 Canadian Journal of African Studies / Revue Canadienne Des Études Africaines 61, 62–3.
[13] ibid 64.

class/employment divide. The rural, Muslim, Mandinka sub-nation's subordinate position had been entrenched by colonial policy and new political leaders were about to be given the chance to capitalise on the country's divides. With 46% of the population and geographic spread, a Mandinka-nationalist movement could have dominated the political landscape.

Perhaps the most operative factor in preventing tribalism was the leadership of Dawda Jawara, Gambia's head of government from independence to 1994. A persistent theme in his party's early leadership (the People's Progressive Party) was the struggle between traditional Mandinka leaders (who favoured a wholehearted focus on the countryside and strong Mandinka representation in government) and Jawara (who favoured political alliances in Bathurst). It was Jawara who, despite internal opposition, filled government and civil service positions with Wolof and Aku appointments, even at the expense of Mandinka candidates. Beyond the good of national cohesion, this could also have been to Jawara's advantage. Jawara had a consistent vulnerability. He was not unanimously elected as the leader of his party and, for some, his advanced formal education did not compensate for his low caste. Jawara may have seen the most pressing threat to his premiership as his own party rather than any external opponents. By balancing rural and urban interests, and therefore rejecting tribal politics, Jawara developed a power base that was broader than traditional PPP members.[14] Jawara proved capable of managing coalitions in the 1960s, and this also prevented other parties from capitalising on ethnic divisions.[15] Of course, it should be emphasised that Jawara also had far less cynical reasons, too. It was observed of Jawara in 1981 that "no African leader has worked harder than he has to avoid any form of ethnic discrimination in public life."[16]

Then-lieutenant Yahya Jammeh overthrew Jawara in a bloodless military coup on 22 July 1994. This began twenty-six months of military rule by the Armed Forces Provisional Ruling Council ('AFPRC'), headed by Jammeh, before elections were held on 2 January 1997.[17] At the time of the coup, Jammeh was only 29 years old, and he

[14] ibid 68–70.
[15] Carlene J Edie, 'Democracy in The Gambia: Past, Present and Prospects for the Future' (2000) 25 African Development 161, 164.
[16] John A Wiseman, 'Revolt in the Gambia: A Pointless Tragedy' (1981) 71 The Round Table 373, 375.
[17] Abdoulaye S Saine, 'The Military's Managed Transition to "Civilian Rule" in The Gambia' (1998) 26 Journal of Political and Military Sociology 157, 157–8.

portrayed himself as a benevolent leader who was freeing the country from an unrepresentative and corrupt system, hidden behind the superficial trappings of democracy. He drew particular attention to the socio-economic rights of rural citizens and initially vowed to abandon politics once the country had been put in order.[18] Although scholars have some sympathy for the official reasons for the coup, it is widely believed that opportunism and discontent with the treatment of junior officers were Jammeh's true motivations.[19]

After the coup, international pressure caused Jammeh to limit the period of military rule. The international reaction to the coup "virtually crippled the economy" when the IMF, World Bank, and EU all cut or suspended aid and the UK advised against travel.[20] Under pressure, Jammeh agreed to fast-track the transitional programme (which aimed to restore civilian rule) from a four-year period to two. While promoting the goal of democracy, the international community accepted an authoritarian process, in Jammeh's hands, to achieve that goal. Jammeh appointed a constitutional review commission to consult the public and compile a report. Crucially, the report was not made public until three months after it had been handed back to Jammeh and, of course, after Jammeh had exercised his unfettered right to edit it.[21]

This cost The Gambia dearly in the final constitutional document. The new system was tailor-made to bolster Jammeh's position and subvert political opponents. Features specially designed for Jammeh included the lowering of the minimum age for president from forty to thirty years (Jammeh staged to coup in his late-twenties).[22] The forty-year age requirement had been widely supported at the time of its passage by the Gambian Bar Association and citizens generally. There were also no presidential term limits and the deposit required from parliamentary candidates increased more than tenfold from D200 to D2,500 and for presidential candidates from D2,500 to D3,500. Furthermore, deposits could only be recovered by those who received more than 40%

[18] Abdoulaye Saine, 'The Gambia's 2006 Presidential Election: Change or Continuity?' (2008) 51 African Studies Review 59, 62.
[19] Stuart A Reid, 'Gambia: "Let's Go Take Back Our Country"' [2016] *The Atlantic* <https://pulitzercenter.org/stories/gambia-lets-go-take-back-our-country> accessed 27 February 2023.
[20] Saine (n 17) 158.
[21] Edie (n 15) 185.
[22] ibid 186.

of the vote.[23] This paved the way for Jammeh's personal transition to 'civilian' leadership and it also excluded all but the wealthiest from competing for public office.

This trend continued throughout Jammeh's career as the need arose, for example in the lead-up to the 2016 presidential elections, the Election Amendment Act was passed to bar anyone over the age of sixty-five from running for presidency. This provision was designed to keep Jammeh's main opponent, Ousainou Darboe, out of the running. Also, the registration fees for presidential and National Assembly candidates were again increased tenfold.[24]

Jammeh's rule saw a marked increase in authoritarianism and the use of force to suppress political opposition. Hughes notes that use of public resources for political purposes existed under Jawara, but intensified under Jammeh. The type of resource being used also changed, whereby Jammeh used finance and infrastructure, but also state-orchestrated violence.[25] There were instances of the army carrying out party campaigning before the first elections under Jammeh.[26] Even during the first elections of the second republic, former PPP members remained in jail and new opposition supporters (particularly the United Democratic Party) were publicly beaten, imprisoned, and tortured. In one incident, where 100-200 UDP supporters were ordered to lie on the ground before receiving a group beating from the military, it was reported that government officials were present at the scene and encouraged the attack.[27] Associated with such incidents were the July 22 Movement and the President's Youth Action Group, groups that received government finance to establish a national support base for the new ruler.[28] These violations continued throughout Jammeh's rule. Opposition leader Ousainou Darboe "had ended up in prison together with 19 other politicians for simply having participated in a demonstration calling for political reforms in April 2016."[29]

---

[23] Arnold Hughes, '"Democratisation" under the Military in The Gambia: 1994–2000' (2000) 38 Commonwealth and Comparative Politics 35, 37.
[24] Sheriff Kora and Momodou N Darboe, 'The Gambia's Electoral Earthquake' (2017) 28 Journal of Democracy 147, 148.
[25] Hughes (n 23) 39.
[26] Edie (n 21) 188–9.
[27] 'Gambia: Democratic Reform without Human Rights' (*Amnesty International*, 2 December 1997) 3 <https://www.amnesty.org/en/documents/afr27/004/1997/en/> accessed 27 February 2023.
[28] Hughes (n 23) 38.
[29] Christof Hartmann, 'ECOWAS and the Restoration of Democracy in the Gambia' (2017) 52 Africa Spectrum 85, 86.

The post-colonial Jawara and Jammeh periods included four distinct constitutions (and three 'Constitution' documents) in The Gambia. The first three constitutions existed under Jawara where, as in Sri Lanka and Guyana, the independence Westminster model constitution was altered in a gradual move towards an executive presidency. The Gambia skipped the parliamentary republic phases of Sri Lanka and Guyana and moved straight to a parliamentary system with an executive president. This system, introduced by the 1970 Constitution, was similar to those of Botswana and South Africa. The president was the preferred candidate of the party that won a majority of seats in the House of Representatives, or if no party won an outright majority, then the president was elected by MPs after the general election. The president would then vacate his seat as an MP and still be subject to the confidence of the Representatives.[30] This constitution was later amended to become a president-parliamentary structure with direct presidential elections. In this case, the Westminster model provision whereby the head of state could either dissolve parliament or try to form a new government in the event of a no-confidence vote was replaced with a strict duty to dissolve parliament and hold fresh elections.[31] The changes to Gambia's constitutional texts from independence until the coup in 1994 have strong similarities with Guyana and Sri Lanka.

After the 1994 coup, The Gambia further enhanced the executive's independence from the legislature. The system is purely presidential, however it also has some unusual provisions regulating the relationship between the legislature and president. In a break from the Westminster model, the legislature may require the president to dismiss the vice president or a secretary of state only by a vote of censure passed by two-thirds of all MPs.[32] It is also explicitly provided that the vice president and secretaries of state must not be members of the National Assembly,[33] while under the 1970 Constitution there was a requirement for ministers to be MPs.[34] Another interesting feature of the 1996 Constitution is the mechanism for the National Assembly to censure the president. Under Article 63, the National Assembly may pass a vote of censure against the president by a two-thirds majority of its members. If such a motion passes, then a

---

[30] Constitution of The Gambia 1970 (as originally passed), Arts. 34 and 36.
[31] Constitution of The Gambia 1970, Art. 85(3).
[32] Constitution of The Gambia 1996, Arts. 70(8) and 71(5).
[33] ibid. Arts. 70(1) and 71(2).
[34] ibid. Art. 45(1).

referendum is held to endorse or reject the resolution. If the resolution is endorsed by the electorate, then the president must vacate office.[35] Because there is not an unbroken relationship between the vote of censure and the president's removal, the system cannot be categorised as parliamentary, however. A failed draft constitution from 2020 kept the vice president and secretaries of state votes of censure but dropped this mechanism to oust the president.[36]

4.2 Reasons for Excluding The Gambia

The Gambia was ultimately removed from this thesis' case selection because of insurmountable hurdles in studying the country for both the Jawara and post-Jawara periods. For the Jawara period, there are insufficient resources to properly illuminate the constitution as it was operated in practice. Court judgments are few, Hansard records are piecemeal and only available in Banjul, and there were only a handful of contemporaneous political commentators who seldom addressed constitutional matters directly. Moreover, the system was so stable and dependent on Jawara's own leadership style that, even with the few sources available, it may be observed that there was an intertwining of the constitution with the leader himself. Discussions of constitutional developments and tensions as they took place in Sri Lanka and Guyana are therefore difficult to conduct in relation to The Gambia.

The weakness of comparing the post-Jawara period to Sri Lanka and Guyana is that it is a wholly different type of constitutional and political system and does not represent a 'Dualminster'. The constitution, while it preserves some overlap between the National Assembly and the president, has a distinctly presidential hue and is more comparable to other presidential systems in West Africa. The defunct draft constitution from 2020 went even further down the separation of powers road. Not only this, but the types of purely *constitutional* disagreements that take place in Guyana and Sri Lanka are not replicated in The Gambia. An example is when President Jammeh refused to leave office after losing the 2016 election. There was no court battle, the National Assembly was reluctant to hold Jammeh to account, and the solution was ultimately a military one, where ECOWAS forces surrounded Banjul and forced

[35] ibid. Arts. 63(3) and (4).
[36] Draft Constitution of The Gambia 2020, Arts. 114(2) and 117(3).

Jammeh to flee the country.[37] Therefore, for both of the periods described here, it is not possible to justify The Gambia as a comparable case study for Sri Lanka and Guyana.

5. Methodology

5.1 Process Tracing and Existing Research

In developing a historical institutionalist approach, this thesis uses process tracing. Gradually, and unsurprisingly, the social science concept of 'process tracing' is becoming the norm in historical institutionalist methodologies. There are still a range of methodologies being deployed by writers, however historical institutionalism increasingly understands its approaches with reference to process tracing. Collier, one of the most influential historical institutionalist writers, describes the value of process tracing, but notes that it is "neither adequately understood nor rigorously applied".[38] Process tracing could be said to have grown out of historical institutionalist studies, therefore methods such as counterfactuals and sequencing (central to process tracing) are tailor-made for a historical institutionalist approach.[39] There is a growing literature on the fine details and sub-categories of process tracing, but perhaps the best and most unifying guidance is given by Ricks and Liu, who build on earlier works.[40] For a theory-testing process tracing methodology, the writers give a tripartite checklist

> (1) define their theoretical expectations, (2) give direction to their research, and (3) identify the types of data necessary for testing a theory.[41]

The first of these steps requires us to develop multiple, competing hypotheses based on a theory. Unlike other methodologies, process-tracing requires researchers to have ever-more complex hypotheses to test.[42] The second step has four components, which are to establish a timeline (this can be based around the hypotheses themselves);

---

[37] Hartmann (n 29).
[38] David Collier, 'Understanding Process Tracing' (2011) 44 Political Science and Politics 823, 823.
[39] Jacob I Ricks and Amy H Liu, 'Process-Tracing Research Designs: A Practical Guide' (2018) 51 Political Science and Politics 842, 842.
[40] ibid.
[41] ibid 842.
[42] ibid 842–3.

construct a causal graph, which displays the exact type of causal process at work; identify alternative choice(s) and event(s); and finally their counterfactual outcomes.[43] This leads to the 'data collection' itself, which is finding evidence for the primary and rival hypotheses.[44]

Process tracing supplements this thesis' main method for determining causality, which is to explore the existing secondary literature written by scholars who lived through and examined these historical events. This allows the case studies to speak for themselves while still using rigorous methods to determine causality where the existing literature is insufficient. Secondary literature is particularly important for understanding why Dualminster was adopted in the first place. Ultimately, therefore, this thesis' aim is to use two constitutional experiences seldom accounted for by theorists to build and reassess theory accordingly. Where possible, it relies on existing research to develop a narrative around constitutionalism in its case studies. Chapter I, for example, relies heavily on secondary sources, and to a certain extent so does Chapter IV. Chapters II and III also offer empirical analysis of constitutional development and practice in Sri Lanka and Guyana. However, because the issues addressed in these chapters (changes in the constitutional texts and invocation of Westminster model constitutional features) are not discussed as much in the existing literature, original analysis of primary sources is relied on instead. Chapters V and VI apply these findings to historical institutionalist and constitutional theory.

5.2 Watson, Legrand, and the Nature of Law

This thesis makes assumptions about the nature of law and the most authentic ways to explore it. These assumptions can be elucidated through a discussion of works that have explored a similar theme – the dissemination of legal rules throughout different cultures. The most renowned debate in this field (between Watson and Legrand) represents different conceptions of law, which therefore have different methodological imperatives. This thesis' methodology accepts the political and cultural dimensions to a legal rule while also exploring legal rules through traditional doctrinal sources –

[43] ibid 844. For a more thorough discussion of counterfactuals see Bruce Kogut, 'Qualitative Comparative Analysis of Social Science Data' in Glenn Morgan and others (eds), *The Oxford Handbook of Comparative Institutional Analysis* (Oxford University Press 2010).
[44] Ricks and Liu (n 39) 844–6.

legislation and case law. It also sees constitutional norms as capable of interacting with each other.

This thesis explores law both through doctrinal analysis and 'constitutionalism' more broadly in its historical and political context. A key question for comparative lawyers is the extent to which law is dependent, in its content and operation, on social factors. These include factors as wide as political culture, economic development, religious identities, and ethnic divides. Anyone hoping to explore this relationship quickly gravitates towards two of the discipline's most influential writers – Watson and Legrand. Watson's two main arguments, for our purposes, run as follows. Firstly, the dominant pattern by which legal systems are altered is 'legal transplant'. Legal transplants occur when a given system incorporates another system's rules. Legal elites therefore tend to have a significant role in this process, however 'transplant' refers to the act of incorporating alien rules itself, rather than the political mechanisms used to achieve this or motivations for doing it. Secondly, legal rules are not necessarily intimately connected with the society that operates them.[45] Watson justifies the first argument with reference to an array of historical case studies. Particularly, he traces the deep connection between Justinian's *Institutes* and a range of modern legal systems. The second argument is itself based on these findings. If legal transplants are so prevalent, surely a deeper connection with each society is unnecessary for success? While Watson's short book "fell stillborn from the press", the test of time has proved its merits.[46] It would be superfluous to try and list all the scholars that Watson has influenced, but one example relevant to this thesis is Choudhry's work on 'constitutional migration'.[47]

Watson also has his critics, and the most prominent challenge comes from Pierre Legrand. Legrand both critiques Watson and proposes an alternative approach to legal study. His understanding of the nature of law has methodological consequences in approaching a legal thesis. Indeed, the Watson/Legrand debate can be seen as a battle over methodology. Others have preferred to characterise it as a clash between

[45] Alan Watson, *Legal Transplants: An Approach to Comparative Law* (Scottish Academic Press 1974).
[46] For Watson's play on Hume's words and a discussion of his work over time see John W Cairns, 'Watson, Walton, and the History of "Legal Transplants"' (2013) 41 The Georgia Journal of International and Comparative Law 637, 660.
[47] Sujit Choudhry, 'Migration as a New Metaphor in Comparative Constitutional Law' in Sujit Choudhry (ed), *The Migration of Constitutional Ideas* (Cambridge University Press 2007) 17–19.

legal history and legal philosophy, or modernism and post-modernism.[48] All are probably true. This is not to say that Watson and Legrand tried to prescribe a unified 'methodology of comparative law' – an exercise they both rejected – however their works reflect disagreement over the very nature of law.[49]

For Legrand, a legal rule's content is given to it by its context. Rules should not be investigated as "bare proposition statements".[50] Instead, their meanings are "a function of the interpreter's epistemological assumptions which are themselves historically and culturally conditioned".[51] It is this act of interpretation that gives a rule its "ruleness" and thus we cannot divorce the two in our studies of law. Because a transplant cannot, by definition, take place without a change in context, therefore, Legrand is sceptical whether a true 'transplant' could ever occur. Perhaps overegging the pudding, Legrand concludes that all that "can be displaced from one jurisdiction to another is, literally, a *meaningless* form of words. To claim more is to claim too much. In any *meaning-ful* sense of the term, 'legal transplants,' therefore, cannot happen".[52] This should be read in the context of his concession that

> No form of words purporting to be a 'rule' can be completely devoid of semantic content, for no rule can be without meaning. The meaning of the rule is an essential component of the rule; it partakes in the ruleness of the rule. The meaning of a rule, however, is not entirely supplied by the rule itself; a rule is never completely self-explanatory.[53]

Also, in a later work,

> In linguistic terms, one could say that the signified (meaning the idea content of the word) is never displaced since it always refers to an idiosyncratic semiotic situation. Rather, the propositional statement, as it finds itself technically integrated into another law, is understood differently by the host culture and is,

[48] Günter Frankenberg, 'Constitutional Transfer: The IKEA Theory Revisited' (2010) 8 International Journal of Constitutional Law 563, 566.
[49] Simone Glanert, 'Method?' in Pier Guiseppe Monateri (ed), *Methods of Comparative Law* (Edward Elgar 2012) 62–3.
[50] Pierre Legrand, 'The Impossibility of "Legal Transplants"' (1997) 4 Maastricht Journal of European and Comparative Law 111, 113.
[51] ibid 114.
[52] ibid 120.
[53] ibid 114.

on account of a process of semantic reconfiguration, ascribed a culture-specific meaning at variance with the earlier one.[54]

Therefore, Legrand's post-modernist approach to law denies a written rule having any, or at least any significant, universal content. Content is given to rules by the readers, who are embedded in their own unique contexts. This is the key factor that defines the rule in practice. Fundamentally, Legrand wants us to "appreciate how various legal communities think about the law, why they think about the law as they do, why they would find it difficult to think about the law in any other way, and *how their thought differs from ours*".[55]

This thesis is closer to Legrand's "emphasis on alterity"[56] than it is Watson's *Legal Transplants.* The diverse case selection principle is based on the assumption that history, politics, and social context are all important to the ways in which constitutions are built and operated. This thesis examines the varying structures associated with Dualminster, but also the ways in which legal structures interact with each other. It examines the interactions between Westminster model constitutional features and the executive presidency and also interactions with broader social and political factors. The extent to which this methodology is grounded in Legrand's approach should not be overstated, however. This thesis also represents an appreciation of the written word's power and the finite range of meanings that could be ascribed to any combination of words. One of its primary tasks is that bleakest form of scholastic aridity – comparing textual changes within and between each country (however it does avoid tabulation). In chapters V and VI, it discusses how rules cannot be understood in isolation from culture, but also how they cannot be understood in isolation from other rules. Although there may be no deliberate link between certain rules in legislation, background sanctions nonetheless strongly influence the interpretation and application of other provisions. This is a context-based approach to law, however its

[54] Pierre Legrand, 'Issues in the Translatability of Law' in Sandra Bermann and Michael Wood (eds), *Nation, Language, and the Ethics of Translation* (Princeton University Press 2005).
[55] ibid.
[56] Mark van Hoecke and John Bell, 'Legal Research and the Distinctiveness of Comparative Law', in Mark van Hoecke (ed) *Methodologies of Legal Research: What Kind of Method for What Kind of Discipline?* (Hart 2011) 172.

wholehearted concern with “bare proposition statements” stands in contrast with Legrand.[57]

6. Contribution to the Literature

This thesis does not have a formal literature review. Instead, it opts to review the existing literature throughout, but particularly in chapters I, IV, V, and VI. This structure lends itself towards the thesis’ interdisciplinary approach, which touches on substantive descriptions of the two case studies as well as historical institutionalist theory, legal theory, and other accounts of the Westminster model. This subsection gives a brief indication of the various disciplines and strands of literature to which this thesis makes a contribution.

Firstly, this thesis refines one approach by which the Westminster model may be researched and situates itself within the wider literature exploring Westminster model government. Chapter II discusses how, although there is rightful concern that the term ‘Westminster model’ has become over-stretched, nonetheless there are still Westminster model constitutional features that are analytically valuable. This borrows from and builds upon works by authors such as Ivor Jennings, SA de Smith, William Dale, and more recently, Elliot Bulmer. The work of H Kumarasingham has been especially valuable in writing this thesis. Kumarasingham’s work on ‘Eastminster’ shows how historical institutionalism is a viable approach to exploring the Westminster export model. It also combines abstract understandings of conventions with analysis of how they were operated in practice and modified in post-colonial contexts.[58] The term ‘Dualminster’ borrows from Kumarasingham’s prefixional twist. While Kumarasingham’s Eastminster in Ceylon describes the immediate aftermath of empire, especially the next ten years after independence, this thesis examines Westminster model constitutional features in Sri Lanka and Guyana from the late-1970s onwards.[59] Also, whereas other accounts of the Westminster export model have

[57] Legrand (n 50) 113.
[58] H Kumarasingham, *A Political Legacy of the British Empire: Power and the Parliamentary System in Post-Colonial India and Sri Lanka* (IB Tauris and Co 2013); H Kumarasingham (ed), *Constitution Making in Asia: Decolonisation and State-Building in the Aftermath of the British Empire* (Routledge 2016); H Kumarasingham (ed), *Viceregalism: The Crown as Head of State in Political Crises in the Postwar Commonwealth* (Palgrave Macmillan 2020).
[59] Kumarasingham, *A Political Legacy of the British Empire* (n 58) 9.

tended to focus on parliamentary systems, this thesis examines aspects of the Westminster model that survived a change to executive presidentialism.

This thesis is also related to debates over the efficacy of parliamentarism versus presidentialism. An old debate, the newest chapter was sparked by Linz's *Perils of Presidentialism* in 1990. This article sets out the foundational case against presidentialism. It characterises presidential regimes as excessively rigid and prone to instability and irresponsible behaviour. In making this assessment, Linz draws primarily on Latin American experiences of presidentialism while pointing to some examples of parliamentarism elsewhere. His comparative methodology is designed to test the impact of presidentialism on constitutional stability.[60] Subsequently, this area of study has blossomed and a mixture of similar methodologies have been used to address Linz's claims. Methodologies normally have a strong qualitative component and increasingly devote more attention to the black letter of the law in categorising different types of system (normally focusing on the "trichotomy" of presidentialism, parliamentarism, and semi-presidentialism).[61] Some methodologies have also developed a more quantitative bent than Linz's first contribution. Cheibub's work is particularly influential in this area, and quantitative analysis has also been used to test system design's impact on outcomes besides democratic stability, particularly voting behaviour, administration, and economic performance.[62]

In addressing similar questions, this thesis diverges from these approaches in important ways. Firstly, it is designed to bring out historical sequences and changes in systems across time. As mentioned, comparisons between presidentialism and parliamentarism tend to work across space rather than time and they don't normally investigate the reasons for choosing one system or the other, focusing instead on outcomes after the choice has been made. Secondly, this thesis' balance between legal and political sources tips more in the favour of legal studies than most other

---

[60] Juan J Linz, 'The Perils of Presidentialism' (1990) 1 Journal of Democracy 51.

[61] José Antonio Cheibub, Zachary Elkins and Tom Ginsburg, 'Beyond Presidentialism and Parliamentarism' (2014) 44 British Journal of Political Science 515; Matthew Soberg Shugart and John M Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (Cambridge University Press 1992). For a useful example of work that tries to break this mould, see Alan Siaroff, 'Comparative Presidencies: The Inadequacy of the Presidential, Semi-Presidential and Parliamentary Distinction' (2003) 42 European Journal of Political Research 287.

[62] José Antonio Cheibub, *Presidentialism, Parliamentarism, and Democracy* (Cambridge University Press 2006).

approaches in this area. Finally, other features of the constitutions beyond head of government appointment and removal form a substantial part of the analysis. The design of the head of state is understood within a constitutional environment that is heavily influenced by Westminster model constitutional features. This is distinct from previous approaches which have simply looked at head of government appointment and removal procedures.

In addition to studies of the Westminster model and the presidentialism/parliamentarism debate, this thesis also attempts to bridge the gap between constitutional and historical institutionalist theory in a way that has not been attempted before. While scholars of constitutionalism and constitutional theory are becoming more aware of the value of historical institutionalism, there have been few attempts to merge the disciplines' theoretical underpinnings.[63] Chapters V and VI argue that the study of the political constitutions of Sri Lanka and Guyana is, inevitably, a study of institutions. British political constitutionalist and Italian institutionalist legal theory open the door to blending these disciplines.

7. Overview

Chapter I describes the political background and agentic dynamics that led to constitutional change in post-colonial Sri Lanka and Guyana from Westminster model parliamentary systems to hybrid constitutions with executive presidents. In both contexts, there was a growing perception that the Westminster model did not comfortably fit the local context and was an impediment to social change. For JR Jayewardene in Sri Lanka, only an executive president would be able to make politically unpopular but nonetheless necessary reforms. Chief amongst these was fiscal discipline, however Jayewardene also saw the executive presidency as a vehicle to make a deal on the national question and resolve growing friction with the Tamils. Forbes Burnham in Guyana, on the other hand, accepted that his premiership depended on communal voting patterns and he adjusted the voting system, including the executive presidency, to entrench his rule. The strengthened executive also opened up new avenues for politicising the public service and patronage. In Sri Lanka,

[63] For an important exception, see Reijer Passchier and Maarten Stremler, 'Sitting at the Same Table: A Cross-Disciplinary "Constitutional-Institutionalist" Approach to the Study of Constitutions' (2023) 19 International Journal of Law in Context 255.

Jayewardene was influenced by de Gaulle's French Fifth Republic. In Guyana, Burnham was influenced by contemporaneous socialist polities.

Chapter II identifies the Westminster model constitutional features that are analysed throughout this thesis. It is a diachronic account of how these provisions were preserved and adapted and, at the same time, an account of how the executive presidents were incorporated into the constitutions. The provisions analysed are (1) strong-form dissolution and prorogation powers; (2) individual and collective ministerial responsibility; (3) independent public services; (4) a recognised leader of the opposition; (5) ministers must be members of the legislature; (6) a Westminster model speaker; and (7) Westminster model public finance procedures.

Chapter III examines how Westminster model constitutional features have been invoked and applied in practice. These constitutional provisions continue to be an important part of political discourse, however their interpretation and application is often distinct from their original meaning when they were drafted in the independence constitutions. These provisions have been altered to meet constitutional challenges in both countries. Their interpretation and application has been affected by the executive presidencies.

Chapter IV continues with this thesis' analysis of how Westminster model constitutional features have affected constitutional and political practice in Sri Lanka and Guyana. It describes episodes of constitutional crises in both contexts and how Westminster model constitutional features have caused, shaped, and exacerbated crises. Cohabitation has proved unworkable in both countries and constitutional crises have hinged on the relationship between the legislature, cabinet, and the president, as shaped by Westminster model constitutional features.

Chapter V is the first of two chapters to discuss Dualminster's significance for theory. This chapter situates Sri Lanka and Guyana's post-colonial constitutional trajectories within a theory of gradual institutional change. This requires us to re-evaluate existing historical institutionalist theory. It introduces the new concept of 'institutional irritants'. Dualminster communal presidencies have triggered further instances of gradual change in cabinet, the public service, and the legislature. The mode of change has

often been re-interpretation and new application of Westminster model constitutional features.

Chapter VI presents the political constitution as intercurrence and the characteristics of the Dualminster political constitution. The term ‘Dualminster’ is used to capture the presidents’ dual role as the head of state and government in systems that retain Westminster model constitutional features. Santi Romano’s work on law as institution forms the basis for bridging the gap between historical institutionalist and legal theory. Romano’s work is updated to account for the constitutional experiences of Sri Lanka and Guyana, where the best institutionalist account is the historical institutionalist theory of gradual institutional change. This approach views different institutions as their own legal orders and these legal orders (with different and competing institutional logics) as existing within a common landscape. We can thereby account for how the balance of arms (background sanctions) and sociological institutional characteristics interact with written rules to produce a political constitution.

Chapter I

Independence, Universal Franchise, and Political Leadership

Introduction

This chapter explores the post-colonial political trajectories that led to executive presidentialism in Sri Lanka and Guyana. In both countries, the rapid introduction of universal franchise in plural societies gave rise to ethnically divisive leaders, who deepened divisions and built political parties that aimed to establish control of the state by a single group. In British Guiana, this process was encouraged by foreign intervention while in Ceylon the colonial power made attempts to prevent discord on the lead-up to independence. Identity-based, communal politics was an instrumental factor in moving towards executive presidencies. Presidentialism was seen as either a panacea to divisions (in Sri Lanka) or as a mechanism by which to consolidate power through them (in Guyana). In Sri Lanka, an even more significant factor was political bidding and an unsustainable welfare state. After universal franchise in 1931, and particularly after independence in 1948, successive governments bought their way into power by promising the people consumer subsidies and welfare institutions that went against the nation's long-term economic interests. Whenever these were cut, governments were quickly removed from power. Presidentialism was therefore seen as a means of introducing long-term economic planning through secure terms of office and diluted parliamentary pressure.

Section 1 sets out the political trajectories that led JR Jayewardene to believe that Sri Lanka needed constitutional reform and an executive presidency. Soon after the introduction of universal franchise, and particularly after independence, Ceylonese politicians began a pattern of political bidding during elections. While this precipitated a strong welfare state and substantial state subsidies, Jayewardene believed that Ceylon lacked the economy to back up these expensive institutions in the long run. When the Sri Lankan economy began to falter in the 1970s, Jayewardene saw the opportunity for economic liberalisation, but only if his position as head of government

was secure. He learnt the lessons of the past, where other governments had crumbled when they tried to rebalance Ceylon’s foreign trade, and especially when they tried reduce subsidies. Jayewardene believed that only an executive president could make these politically difficult economic reforms. In addition, Sri Lanka’s ‘national question’ – the status of Tamils and their language – was generating mounting pressure for a political agreement between the central government and regional Tamil-dominate parties, particularly in the north of the country. Jayewardene saw the executive presidency as a platform for striking an agreement. The change to executive presidentialism also made proportional representation possible within the parliament. It was hoped that this would prevent massive swings at elections and encourage a balanced voice for minority groups at the national level.

Section 2 turns its view to Guyana. Communal politics were even more important here than in Sri Lanka. While the colonial power had tried to mitigate divisions in Ceylon on the eve of independence, in British Guiana the colonial and American governments deliberately provoked political divisions between Indo- and Afro-Guyanese. The independence constitution was engineered to ensure government by the mainly Afro-Guyanese People’s National Congress, led by Forbes Burnham. Proportional representation ensured that the mainly Indo-Guyanese People’s Progressive Party would lose elections, however it also put Burnham in coalition with the United Force. Along with increasingly fraudulent elections, presidentialism was seen as a way to entrench Burnham’s rule and remove the need for coalition government.

Section 3 compares the interests and ideologies of Jayewardene and Burnham and the influence that both had in the form of their new constitutions. While Jayewardene viewed an executive presidency as within the national interest generally, and even proposed it when he was in opposition, Burnham’s attraction to presidentialism lay in his personal pursuit of power. Furthermore, both statesmen came from opposite ends of the ideological spectrum and their comparative influences shaped divergences between the constitutions. Jayewardene drew on de Gaulle’s French Fifth Republic, while Burnham drew on examples from socialist states. These influences can still be seen in Sri Lanka’s 1978 Constitution and Guyana’s 1980 Constitution.

1. Sri Lanka

1.1 Political Bidding

As understood by JR Jayewardene, since the 1930s Ceylonese politics had been descending into an economic mire of political bidding for the electorate's support through unsustainable state subsidies. This change had roots in both British colonial practices and also Ceylonese culture, however the main cause had been the rapid introduction of universal franchise in 1931. This section focuses on a historical narrative that, while honest, is also particularly geared towards Jayewardene's personal understanding of the Sri Lankan context when he came to power in 1977. This narrative is designed to feed into the final section of this chapter, which discusses Jayewardene's personal interest in presidentialism. If the narrative seems to be an overly economically liberal reading of history, it is because these are the types of stories that influenced Jayewardene's 1978 Constitution.[1]

To understand Ceylon's economic decline, particularly as perceived by Jayewardene, we must understand the island's privileged position and the accompanying atmosphere of hope in 1948. Unlike its neighbours, Ceylon "strolled"[2] towards independence as "an oasis of stability, peace and order".[3] Most economic development indicators placed it substantially ahead of countries such as Thailand and Indonesia, and it was unencumbered by the extreme poverty seen in India and Pakistan.[4] For a while it had the highest per capita income of any Asian country.[5] Its per capita Gross National Product was only around 50% lower than that of Malaysia.[6] Education levels were also high.[7] Ceylon was "the best job the Englishman has done

---

[1] For a critique of this reading, see Ronald J Herring, 'Economic Liberalisation Policies in Sri Lanka: International Pressures, Constraints and Supports' (1987) 22 Economic and Political Weekly 325.

[2] "Ceylon strolled towards independence on 4 February 1948 with an unabashed fervour for Westminster government". H Kumarasingham, 'Eastminster – Decolonisation and State-Building in British Asia' in H Kumarasingham (ed), *Constitution-making in Asia: Decolonisation and State-Building in the Aftermath of the British Empire* (Palgrave Macmillan 2016) 1.

[3] KM de Silva, *A History of Sri Lanka* (Vijitha Yapa 2005) 600.

[4] Prema-Chandra Athukorala and Sisira Jayasuriya, 'Economic Policy Shifts in Sri Lanka: The Post-Conflict Development Challenge' (2013) 12 Asian Economic Papers 1, 4–5. See also Saman Kelegama, 'Development in Independent Sri Lanka: What Went Wrong?' (2000) 35 Economic and Political Weekly 1477, 1477.

[5] Calvin A Woodward, *The Growth of a Party System in Ceylon* (Brown University Press 1969) 3.

[6] Kelegama (n 4) 1477.

[7] Rajesh Venugopal, 'Democracy, Development and the Executive Presidency in Sri Lanka' (2015) 36 Third World Quarterly 670, 674; Kelegama (n 4) 1477.

anywhere in the world, almost better than his own country".[8] In short, it was "the best bet in Asia".[9] As discussed in this section, Jayewardene was part of the right-leaning, post-colonial elite who watched helplessly as this promise was lost on populist economic mismanagement. Advantages were "frittered away"[10] and Sri Lanka was left behind, failing to compete against the new Asian economic powerhouses.

Beginning in the 1930s, immediately after the introduction of universal franchise but then also after WWII, Ceylon invested heavily in a welfare state without creating sufficient economic growth. From the 1930s to 1961, policies were welfarist but not as strongly socialist as Sirimavo Bandaranaike's governments from 1961 onwards. While these early policies were appealing at first, they soon burgeoned and became economically unsustainable.

> By the early 1960s Sri Lanka was being described as an unusual and precocious development miracle. Between 1946 and 1963 the infant mortality rate dropped from 141 per 1000 to 56 per 1000, while life expectancy increased from 43 to 63 years. The adult literacy rate, which was already comparatively high in 1946 at 58%, rose quickly to 72% by 1963. These improvements also occurred in the absence of anything near a commensurate increase in economic growth, so that Sri Lanka had, in terms of social welfare indicators, burst into the league of countries that were a factor of between five and 10 times wealthier in terms of income.[11]

The welfare system was modelled predominantly on its British counterpart.[12] These changes became particularly pronounced after 1948, however they represented the post-1931 change in political parties from "notable-determined structures to voter-determined and socially responsive units".[13] Furthermore, welfarist policies had precedents in the colonial era and also tapped into the Buddhist values of equality, the rejection of wealth, and the duty to help those less fortunate.[14] "Authoritarian but

[8] Governor General Oliver Goonetilleke, cited in Woodward (n 5) 3.
[9] Deepak Lal and Sarath Rajapatirana, *Impediments to Trade Liberalization in Sri Lanka* (Gower Publishing Company 1989) 1.
[10] A Jeyaratnam Wilson, *Politics in Sri Lanka, 1947-1979* (2nd edn, Macmillan 1979) 118.
[11] Venugopal (n 7) 674.
[12] Kelegama (n 4) 1482.
[13] Woodward (n 5) 270.
[14] James Jupp, 'Democratic Socialism in Sri Lanka' (1977) 50 Pacific Affairs 625, 631.

paternalistic"[15] Sinhalese kings would take care to ensure peoples' welfare and the British would provide a "quantum of social welfare" to keep the population placated.[16] While its key cause was the rapid introduction of universal franchise, therefore, Ceylonese political bidding also had roots in other practices. Wilson also places universal franchise in the context of the Donoughmore Constitution itself (Ceylon's immediate pre-independence constitution), which discouraged political parties with the state council system and created incentives for politicians to over-serve their constituencies at the expense of long-term planning.[17]

Ceylon did not match its growing expenditure with similar economic growth. Ceylon "tasted the fruit before she has planted the tree".[18] By the mid-1970s, Sri Lanka's welfare system was "severely strained".[19] As Kelegama writes,

> In a long-term perspective what did not happen in 1948-60 may be more important than what did. To sustain moderate growth after 1960 would have required export earnings to be ploughed back into investment in other sectors of the economy. Instead, consumption claimed most of these flows, while investment generally remained below 10 per cent of GNP until 1956, even then advancing only to 13 per cent by 1960.[20]

Jayewardene himself had a hand in triggering the expansion of a welfare state. It was his own budgets in the late-1940s that "pandered"[21] to the social forces in favour of more welfarism.[22] The percentage of total expenditure spent on welfare rose from 18.6% in the 1920s to over 50% by 1948.[23] Tax revenue from the plantations subsidised consumers, notably in the form of the rice subsidy, which began as a war measure but became politically untouchable thereafter. Moreover, opposition parties would promise an increase in the subsidy as a path to power.[24] Policies developed from 1948 to the late-50s were based on strong trade.[25] Whenever exports slumped,

[15] Wilson, *Politics in Sri Lanka, 1947-1979* (n 10) 114.
[16] ibid.
[17] ibid 113–4.
[18] Joan Robinson, cited in Venugopal (n 7) 674.
[19] Wilson, *Politics in Sri Lanka, 1947-1979* (n 10) 115.
[20] Kelegama (n 4) 1478.
[21] Wilson, *Politics in Sri Lanka, 1947-1979* (n 10) 114.
[22] Venugopal (n 7) 676.
[23] Chandra Richard De Silva, *Sri Lanka: A History* (Advent Books 1987) 216.
[24] Kelegama (n 4) 1482.
[25] De Silva, *Sri Lanka: A History* (n 23) 267.

governments lacked the gumption to cut spending or devalue the currency. Instead, they created barriers to imports; thus generating inefficient industries.[26] While the UNP governments from 1948 to 1956 did make some positive developments, particularly in paddy cultivation, the general trend was still to enjoy the economic boom without a meaningful long-term plan.[27] SWRD Bandaranaike's government (1956-9) continued high spending while also introducing a higher rate of nationalisation.[28] The end-product of these politics was an expansive welfare state without the economic growth to back it up.

These trends, which had their roots in the 1930s, became particularly unsustainable after 1960. The period from 1960 (Sirimavo Bandaranaike's election) until 1977 (Jayewardene's election) was characterised by heightened state control. This can be broken down into state control from 1960-4, limited liberalisation from 1965-70, and the reintroduction of state control from 1970-7.[29] Each of these three phases was a different attempt at addressing Sri Lanka's foreign exchange problem. In the first phase, Bandaranaike's plan was import substitution: strengthening demand for domestic industries by blocking imports. In the second phase, Dudley Senanayake's United National Party ('UNP') made a "weak and hesitant"[30] attempt to liberalise without properly addressing consumer subsidies. Finally, 1970-7 was a 'doubling-down' on the first phase.

CR De Silva highlights some prominent policies in the first phase:

> The bank of Ceylon was brought under direct state control. The state also assumed a monopoly of general and life insurance. Foreign trade came increasingly under government regulation and control. The nationalisation of the assets of foreign-owned petroleum distributing companies in 1963 was another step in this direction.[31]

[26] Kelegama (n 4) 1478.
[27] De Silva, *Sri Lanka: A History* (n 23) 250.
[28] ibid 251.
[29] Kelegama (n 4) 1478–9.
[30] ibid 1480.
[31] De Silva, *Sri Lanka: A History* (n 23) 254.

In the second phase, the UNP grew agricultural productivity substantially, however this could not make up for the growing unemployment problem.[32] The third phase was particularly traumatic for the Sri Lankan economy. Nationalisation was used to try to counter the foreign exchange imbalance, along with state trading corporations for the remaining private sector.[33] Sri Lanka was also hit disproportionately hard by the oil crisis in 1973 and rising sugar, rice, and wheat prices.[34] However, "the economic problems of the government were aggravated by the partisan and doctrinaire policies it adopted".[35] The Paddy Marketing Board was the organisation through which the government tried to establish a monopoly on rice and paddy for self-sufficiency and equitable distribution. Rigid approaches such as this did not account for the specific context, such as the rise in black market trade.[36] In order to buy sufficient food, families had to break the law on a daily basis and buy on the black market while rice prices continued to rise. Nationalisation was not simply intended to address the foreign exchange issues, but also to reverse colonialism's economic legacy. Foreign ownership, mainly British, was replaced with state ownership or those who were 'Ceylonese by descent'. This also became mixed up with seizing political opponents' property.[37]

Closely tied to the unsustainable welfare state was the inability of Sri Lankan governments to implement long-term economic plans.[38] When governments turned over, there was no interest in the new cabinet to carry on the plans of their predecessors, even in a modified way. Instead, a new government would represent a complete overhaul of economic policy. Not only did this destroy long-term vision, but it also led to wasted energy as government apparatus was overhauled and redesigned after elections.[39] As ideological divisions between liberalism and socialism became more entrenched, this pattern only worsened.[40] Partly because welfare spending was so high, governments failed to diversify Ceylon's economy and reduce reliance on the

[32] ibid 256.
[33] Kelegama (n 4) 1480.
[34] ibid.
[35] De Silva, *Sri Lanka: A History* (n 23) 257.
[36] ibid.
[37] Jupp (n 14) 632.
[38] Kelegama (n 4) 1481.
[39] ibid.
[40] ibid 1481–2.

traditional colonial industries.[41] Ceylon therefore remained dependent on a few exports to uphold its economy. It was also left vulnerable to external shocks such as those in the mid-1970s.[42]

The event that epitomises Ceylon's consumer-orientated politics before 1977 is the 1953 *hartal*, triggered by an attempt to reduce the rice subsidy. Politicians learnt that it was "politically suicidal to abandon the rice ration".[43] The subsidy grew out of WWII measures to ensure a fair distribution of rice.[44] A slump in economic growth, signifying the end of the Korean War rubber boom, called for more investment. The UNP tried to draw on the rice subsidy, but met with instant public backlash.[45] The Trotskyist Lanka Sama Samaja Party ('LSSP') capitalised on public anger and called a *hartal* on 12 August. The protest became violent and multiple people were killed.[46] Sir Oliver Goonetilleke, the governor general, was forced to take charge. The events led to Dudley Senanayake's resignation and, thereafter, the UNP's rapid decline.[47] CR De Silva writes that

> The public uproar was so great that not only was the price reduced to 55 cents in October 1953 [from a proposal for 70 cents per measure] but the quantity allowed per head was increased to two measures in November 1954.[48]

This event is simply the most extreme example of a clear pattern in Ceylon's post-colonial politics. As mentioned above, opposition parties frequently tried to 'out-bid' governments before an election. When Dudley Senanayake's UNP was again removed from government in 1970, he

> ruefully commented that for the second time in his political career he had paid the penalty for disturbing the most cherished of the sacred cows of Sri Lankan politics – the rice subsidy.[49]

[41] De Silva, *Sri Lanka: A History* (n 23) 270.
[42] ibid 271.
[43] Jupp (n 14) 626.
[44] De Silva, *Sri Lanka: A History* (n 23) 288.
[45] ibid 248; de Silva, *A History of Sri Lanka* (n 3) 620.
[46] De Silva, *Sri Lanka: A History* (n 23) 248.
[47] ibid.
[48] ibid 288.
[49] de Silva, *A History of Sri Lanka* (n 3) 661.

1.2 Ethno-Religious Breakdown

As independence drew near, the rapid introduction of universal franchise in Ceylon created a new political playing field, whereby previously disenfranchised citizens now formed the majority in an ethnically and religiously plural society. There were pre-existing tensions between ethno-religious groups, but the broader trend had been one of social harmony. After independence, however, relations quickly deteriorated and competing groups saw it as intolerable to be ruled by their opponents.

The worst excesses of division were avoided in the early years of universal franchise with prudent political management and deliberately pluralist constitutions, which disproportionately advantaged minorities. The period from independence to 1955 "represented a period of continuity with the late colonial period in both policy and personnel".[50] The foremost figure in holding together the increasingly demarcated ethno-religious groups was DS Senanayake, Ceylon's independence leader who (along with Ivor Jennings and Sir Oliver Goonetilleke) was also instrumental in drafting the 'Soulbury Constitution', Ceylon's constitution at independence. Inspired by the example of the 'white dominions', Senanayake preferred dominion status, however this did not satisfy many of the younger Ceylon National Congress members, who desired full independence.[51] The schism eventually lead to Senanayake's resignation from the party. Until his death in 1952, Senanayake "thwarted all efforts to abandon the concept of a secular state".[52]

Constitutional safeguards were put in place to protect minority rights. Under the Soulbury Constitution, section 29 prevented discriminatory legislation being passed by simple majority procedures.[53] Along with disproportionate minority representation, another safeguard was independent judicial and public service appointments.[54] The Soulbury Constitution was "predicated on definite safeguards for the minority ethnic and religious groups".[55] Its "unexpressed premise" was "a consociational arrangement

[50] De Silva, *Sri Lanka: A History* (n 23) 247.
[51] de Silva, *A History of Sri Lanka* (n 3) 555.
[52] ibid 602.
[53] Pasan Jayasinghe, Peter Reid and Asanga Welikala, *Parliament: Law, History and Practice* (Centre for Policy Alternatives 2019) 12.
[54] A Jeyaratnam Wilson, *The Break-Up of Sri Lanka: The Sinhalese-Tamil Conflict* (C Hurst and Co 1988) 19.
[55] ibid 34.

between the English-educated élites”.[56] While these constitutional safeguards may seem relatively modest in retrospect, their acceptance at the time hinged on minorities' trust in Senanayake.[57] Ceylon was described as an “ideal colony” that moved towards self-government in a peaceful and responsible manner.[58]

By the early 1950s, ethno-religious issues were making their way to the heart of politics.[59] Sri Lankan identities are crosscutting and contain both ethnic and religious components (among others) that receive different weight in different historical contexts. Identity is therefore better understood through ‘ethno-religious’ lenses rather than simply religion.[60] De Silva identifies Bandaranaike as the politician who capitalised on the pre-existing desire among many Sinhalese for a more assertive, identity-based politics:

> The left-wing groups were just as unsympathetic as the UNP leadership under Sir John Kotelawala (Prime Minister, from 1953 to 1956) to the religious, linguistic and cultural aspirations of the Buddhist activists, and it was this group with its deep sense of grievance, its social and economic discontent, and its resentment at being neglected by both the left and the UNP, that eventually turned to Bandaranaike for leadership. Their first choice had been Dudley Senanayake, but he had turned it down, whereupon Bandaranaike eagerly seized their offer.[61]

It is worth noting that the All-Ceylon Buddhist Congress traced its roots back to 1918, when Francis Richard Senanayake (DS's elder brother) played an instrumental role in

---

[56] ibid. However, even decades before independence there had been some fracturing along ethnic lines. The British re-invigorated their vision of an ethnic ‘mosaic’ in the early-twentieth century and this was met with stiff resistance from the Sinhalese leadership. ibid 7–8. Also, this constitutional ‘engineering’ cut both ways, and Gunawardana identifies two “retrograde” structures of excluding minorities even in the early days of representative democracy – the pan-Sinhalese board of ministers (under the Donoughmore Constitution) and the disenfranchisement of Indian Tamils (in 1948 and 1949). RALH Gunawardana, ‘Roots of the Conflict and the Peace Process’ in Mahinda Deegalle (ed), *Buddhism, Conflict and Violence in Modern Sri Lanka* (Routledge 2006) 182.

[57] de Silva, *A History of Sri Lanka* (n 3) 602.

[58] Wilson, *Politics in Sri Lanka, 1947-1979* (n 10) 113.

[59] Ethno-religious nationalism was certainly part of the UNP's decline, however economic failures were also important. As mentioned, Dudley Senanayake resigned as prime minister after the 1953 *hartal*. De Silva, *Sri Lanka: A History* (n 23) 248.

[60] Frances Stewart, ‘Religion versus Ethnicity as a Source of Mobilisation: Are There Differences?’ (DFID 2009) Working Paper 70 8–9.

[61] KM de Silva, ‘Sri Lanka: The Bandaranaikes in the Island's Politics and Public Life: Reflections on the Centenary of S. W. R. D. Bandaranaike's Birth’ [1999] Round Table 241, 261.

the Sinhalese Buddhist movement.[62] Wilson notes the irony of this movement being "prised" from the Senanayakes by Bandaranaike.[63] Also, in 1947 the UNP was accused by the *Times of Ceylon* of provoking "religious fanaticism" through their derision of Marxists as anti-religious.[64] Nonetheless, Senanayake's vision for Ceylon was as a unitary and secular state. It was his rigid refusal to countenance sectarian politics that Bandaranaike capitalised on, [65] even if Senanayake "tacitly accepted" a "special responsibility" towards Buddhism.[66] Perera also points out that 1956 marked a break with personality politics and

> Political opinions, policies and programmes emerged to the forefront. A commendable turn of events which augured well for the success of democratic Parliamentarism.[67]

Nevertheless, Perera strongly criticises Bandaranaike's chauvinistic politics:

> Mr. Bandaranaike has much to atone for. In a very real sense he is responsible for the deterioration of the relations between Singhalese and Tamil communities.[68]

Bandaranaike's centre-left Sri Lanka Freedom Party ('SLFP') was formed out of an elite power struggle backed by sectarian divisions. When Bandaranaike lost the UNP leadership battle in 1951, he left to form his own party and took the identity-based Sinhalese-Buddhist vote with him.[69] He had always viewed the UNP as a "coalition party" and had entertained leadership ambitions for some time.[70] Furthermore, he suspected that there was a plot to block his succession to the leadership after DS

[62] Wilson, *The Break-Up of Sri Lanka: The Sinhalese-Tamil Conflict* (n 54) 9.
[63] ibid. For DS Senanayake's relative disinterest in the Buddhist movement during the 1930s see de Silva, *A History of Sri Lanka* (n 3) 531.
[64] Cited in Woodward (n 5) 68.
[65] de Silva, *A History of Sri Lanka* (n 3) 607–8.
[66] ibid 609.
[67] NM Perera, *A Critical Analysis of the New Constitution of the Sri Lanka Government* (Reprint, Dr NM Perera Memorial Trust 1991) 9.
[68] ibid 30.
[69] Jayadeva Uyangoda and Ariyadasa Keerthi, 'Sri Lanka Freedom Party: Continuity Through Ideological and Policy Shifts' in Amita Shastri and Jayadeva Uyangoda (eds), *Political Parties in Sri Lanka: Change and Continuity* (Oxford University Press 2018) 135.
[70] Woodward (n 5) 55.

Senanayake in favour of Sir John Kotelawala or Dudley Senanayake.[71] Over the course of the next few decades leading up to the civil war, Sri Lanka increasingly became a Sinhalese-Buddhist state. Even in opposition, the UNP tended to either support this process "or were not overt in their opposition".[72]

Sinhala-Only policies were linked to a complex economic, governmental, identity, and post-colonial dynamic. Particularly, Tamils' proficiency in English gave them advantages in joining the Ceylonese elite through university education and government jobs.[73] Sinhalese Buddhists are also disposed towards a hostage complex. On the one hand, they sometimes regard the island of Sri Lanka as their birth-right that must be defended for the continuity of the Sinhalese people. On the other hand, religious practices are diverse across the island. Particularly, the Tamil population form a large minority and they have strong social, cultural, and historical connections to the southern part of Sri Lanka's giant neighbour, India.[74] Finally, the resurgence in Buddhist nationalism was partly a reaction against Sri Lanka's colonial history. [75]

The trigger for ethno-religious politics was the Official Language Act 1956 (the 'Sinhala Only Act'). In 1943, Jayewardene moved a resolution in the state council to make Sinhala the official language, to the exclusion of Tamil. This would confine Tamil to the Tamil-speaking provinces.[76] This resolution was amended to include a move towards Sinhala and Tamil both as official languages.[77] A reason for the amendment may have been that Sinhalese politicians saw the advantage of a gradual move towards Sinhala-only.[78] After independence, there was a return to Sinhala-only policies. Language supremacy remained a tenet of 'Sinhala-only' policies, however the term also evolved

---

[71] ibid 76.

[72] Wilson, *The Break-Up of Sri Lanka: The Sinhalese-Tamil Conflict* (n 54) 36. This was not simply elite divide and rule strategies for electoral success. Sinhalese identity experienced an organic growth spurt in the mid-1950s that was partly separate from politics. Artists producing plays, films, and poetry began to consciously bolster Sinhalese culture. De Silva, *Sri Lanka: A History* (n 23) 251. Celebrations for the 2500th anniversary of the Buddha's birth were also significant. De Silva, *A History of Sri Lanka* (n 3) 614.

[73] Neil DeVotta, 'Ethnolinguistic Nationalism and Ethnic Conflict in Sri Lanka' in Michael E Brown and Sumit Ganguly (eds), *Fighting Words: Language Policy and Ethnic Relations in Asia* (MIT Press 2003) 107–115; David D Laitin, 'Language Conflict and Violence: The Straw That Strengthens the Camel's Back' (2000) 41 Archives Européennes de Sociologie/European Journal of Sociology 97, 122.

[74] Wilson, *Politics in Sri Lanka, 1947-1979* (n 10).

[75] de Silva, *A History of Sri Lanka* (n 3) 607–8.

[76] Wilson, *The Break-Up of Sri Lanka: The Sinhalese-Tamil Conflict* (n 54) 39–40.

[77] ibid 40.

[78] DeVotta, 'Ethnolinguistic Nationalism and Ethnic Conflict in Sri Lanka' (n 73) 116.

to include other ethnic dominance policies, too. The UNP initially supported both Sinhala and Tamil as national languages, but then adopted a Sinhala-Only policy in 1956 – a position adopted by the SLFP in December 1955.[79] Middle- and lower-class Sinhalese, in particular, exerted considerable pressure to affect this shift.[80] DeVotta argues that the UNP switch to Sinhala-Only "marked the beginning of ethnic out-bidding in Sri Lankan politics".[81]

Over the next few decades, Sinhalese representation in the legislature burgeoned from 68 seats in the 1947 elections to 137 in 1977.[82] While Ceylon Tamil representation also increased, its proportion relative to the Sinhalese was gradually dwarfed.[83] Representation became minorities' "primary concern".[84] Sectarian manipulation of voter lists and constituency boundaries became part of Ceylon's politics from an early stage. Even DS Senanayake was guilty of this when he deprived Indian workers of citizenship and voting rights from 1948-9. This was done to tackle Marxism, but it played into ethnic divides and was gratefully received by certain Kandyan Sinhalese.[85] Kumarasingham writes that

> The process of forming the new state stimulated parochialism, communalism and ethnic rivalry as groups competed for their share of the prize of sovereignty.[86]

Politicians increasingly appealed to rural voters' group identities, despite privately being a more moderate English-educated elite. Given their shared elite status, politicians could still compromise on issues with minority leaders through government forums.[87]

The Sinhala Only Act and its aftermath were the seeds of the Sri Lankan civil war. In short, language policy entrenched territorial division, limited Tamil socioeconomic mobility and engagement with the state, and increasingly pushed state apparatus

[79] Wilson, *The Break-Up of Sri Lanka: The Sinhalese-Tamil Conflict* (n 54) 40.
[80] DeVotta, 'Ethnolinguistic Nationalism and Ethnic Conflict in Sri Lanka' (n 73) 116–7.
[81] ibid 121.
[82] Wilson, *The Break-Up of Sri Lanka: The Sinhalese-Tamil Conflict* (n 54) 35.
[83] ibid.
[84] ibid 36.
[85] De Silva, *Sri Lanka: A History* (n 23) 247.
[86] Kumarasingham, *A Political Legacy of the British Empire* (n 58) 176.
[87] Wilson, *Politics in Sri Lanka, 1947-1979* (n 10) 116.

(particularly those designed to deploy force) towards ethno-religious allegiance.[88] It is therefore one of, and intertwined with, the "four major issues" that precipitate Sinhalese-Tamil tensions in Sri Lanka: "language and employment, regional autonomy, state sponsored settlement of colonists and access to education".[89] Just as Sinhala-Only policies proved to be a unifying force for many Sinhalese voters, so too Tamil communities coalesced in opposition. In 1956, rioting broke out across the island and 150 Tamils were killed.[90] Communal conflict, including Tamil Youth assassinations of politicians and security forces, occurred over the course of the next 30 years and these events were "characterised by extreme brutality".[91] This eventually led to the Black July pogrom of 1983, which represented the start of the civil war. These events, which saw at least 400 and up to 2000 Tamils killed, were sparked by the ambush of an army patrol by a group of Tamil militants.[92] While the 1983 events repulsed many Sinhalese and were initially met with delicacy by President Jayewardene, they also triggered growth in the number and ferocity of separatist groups. 1984 saw a jump in separatist atrocities and moderate Sinhalese attitudes became less sympathetic as a result. It also represented the beginning of India's engagement in the conflict.[93] This chapter discusses the forces (up to 1979) that caused Jayewardene to create the executive presidency and therefore the civil war is beyond its scope. The next chapter goes into more detail on how the executive presidency was seen as instrumental in winning the civil war and fed into communal politics. Nonetheless, it is important to appreciate the ethno-religious tensions that were coming to a pitch in the late 1970s and early 1980s and were pivotal in Jayewardene's constitution of 1978.

While the growing tensions between Sinhalese and Tamils was the most important relational breakdown in designing Sri Lanka's presidential system, it was not the only factor at play. Minority discontent burgeoned after universal franchise, and particularly after DS Senanayake's death. For instance, Christians were also threatened by the state's increasingly sectarian character. Disagreement over the independence of

[88] Neil DeVotta, *Blowback: Linguistic Nationalism, Institutional Decay, and Ethnic Conflict in Sri Lanka* (Stanford University Press 2004) 92–4.
[89] De Silva, *Sri Lanka: A History* (n 23) 238.
[90] DeVotta, 'Ethnolinguistic Nationalism and Ethnic Conflict in Sri Lanka' (n 73) 124.
[91] Gananath Obeyesekere, 'The Origins and Institutionalisation of Political Violence' in James Manor (ed), *Sri Lanka in Change and Crisis* (Briddles 1984) 153.
[92] Ahmed S Hashim, *When Counterinsurgency Wins: Sri Lanka's Defeat of the Tamil Tigers* (University of Pennsylvania Press 2013) 88.
[93] De Silva, *Sri Lanka: A History* (n 23) 244–5.

denominational schools had been an issue since at least the early-twentieth century when, in 1905, a ‘conscience clause’ was recommended by the Wace commission as a way of avoiding illicit tactics to strengthen churches’ influence. From this early stage, it was the Roman Catholics who were most sensitive to state interference in their educational affairs.[94] While mission schools did not object to higher spending on non-denominational state education, from the early 1900s onwards the conscience clause had been a consistent point of dispute.[95]

The biggest clash came with Sirimavo Bandaranaike in the early 1960s. In 1955, the Unofficial Buddhist Committee of Inquiry recommended that all denominational schools be taken under state control by 1958.[96] Bandaranaike took up this gauntlet after gaining the premiership in 1960. New reforms required schools to follow state direction if they received state funding. Since most mission schools were entirely (or almost entirely) funded by the state, they were left with little choice but to be nationalised.[97] Free tuition in English and Anglo-vernacular schools had been forced through in 1945 to promote social mobility.[98] This, amongst other grievances, was a key factor in the failed 1962 coup. Therefore, Buddhist nationalism had not just poisoned relations with the Tamils. In the run up to 1978 Sri Lanka was an increasingly factionalised country with resentments between multiple groups.

2. Guyana

2.1 Racial Divisions – Background Conditions

Some tension between Afro-Guyanese and Indo-Guyanese had been an inevitable repercussion of colonial business practice in British Guiana. For example, some argue that “[r]acial outcomes were structured into these policies since a key premise of the policy was fundamentally racial”.[99] After abolition, indentured Indian workers were a cheaper alternative to paying Afro-Guyanese a fair wage for plantation labour. Indo-Guyanese continued to undercut Afro-Guyanese wages, and this formed the building

[94] de Silva, *A History of Sri Lanka* (n 3) 510–1.
[95] De Silva, *Sri Lanka: A History* (n 23) 212.
[96] Wilson, *Politics in Sri Lanka, 1947-1979* (n 10) 16.
[97] de Silva, *A History of Sri Lanka* (n 3) 645–6.
[98] De Silva, *Sri Lanka: A History* (n 23) 212.
[99] Sara Abraham, ‘A New Politics: Multi-Racial Electoral Coalitions in Trinidad/Tobago and Guyana’ (PhD, The University of Wisconsin 1999) 63.

block of historical ethnic acrimony.[100] Added to this, planters actively sought to play the groups off against each other for their own gain.[101]

Racial divisions had both a social and economic basis. After emancipation, Afro-Guyanese "turned in effect against their traditional employment on the sugar plantations and to a lesser extent against agriculture as a way of life".[102] The Afro-Guyanese population was literate and Christian and gravitated towards the urban centres.[103] In 1960, "22 percent of the town dwellers in Guyana were Indian, whereas 70 percent of the urban dwellers were African".[104] Indo-Guyanese remained separate from the rest of society both geographically and socially. As Hindus and Muslims, they were less likely to attend school, given that schools were predominantly Christian bodies. Unlike the well-educated, Christian Afro-Guyanese therefore, in the late-nineteenth and early-twentieth centuries Indo-Guyanese were often illiterate.[105] At the everyday level, these differences took the form of prejudices whereby Indo-Guyanese were viewed by Afro-Guyanese as uncivilised whereas Afro-Guyanese were viewed by Indo-Guyanese as devoid of their own culture.[106]

In the wake of WWII, labour movements were often formed along racial lines.[107] Afro-Guyanese, with their education and locus in urban centres, were able to get a head-start in the public services. Under British rule, they began to dominate police, teaching, and low- to mid-level public office.[108] They often, therefore, viewed themselves as "the natural successors to the British in power and place".[109] It was not until after the war that Indo-Guyanese began to make footholds in these white-collar professions.

---

[100] Hari N Ramkarran, 'Seeking a Democratic Path: Constitutional Reform in Guyana' (2004) 32 Georgia Journal of International and Comparative Law 585, 586.
[101] Kate Quinn, 'Colonial Legacies and Post-Colonial Conflicts in Guyana' in Rosemarijn Hoefte, Matthew L Bishop and Peter Clegg (eds), *Post-Colonial Trajectories in the Caribbean: The Three Guianas* (Routledge 2016) 16.
[102] Anthony McCowan, 'British Guiana' in James Lemkin (ed), *Race and Power: Studies of Leadership in Five British Dependencies* (The Bow Group 1956) 18.
[103] Carmen Shirley Reid, 'The Constitutional Development of Guyana' (PhD, Syracuse University 1968) 18.
[104] ibid 20.
[105] ibid 21.
[106] Maurice St Pierre, *Anatomy of Resistance: Anti-Colonialism in Guyana, 1823-1966* (Macmillan 1999) 133.
[107] Reid (n 103) 90.
[108] ibid 21–2.
[109] BAN Collins, 'The Civil Service of British Guiana in the General Strike of 1963' (1964) 10 Caribbean Quarterly 3, 3.

Combined with a high Indo-Guyanese birth rate, Afro-Guyanese began to fear being displaced.[110]

After 1953, Britain also backed African-dominated trade unions as an antidote to the People's Progressive Party, discussed in the next subsection. While this was not done to deliberately intensify racial divisions, it did help to lay the groundwork for the subsequent racial split in the party.[111] As early as the 1947 elections, the governor was openly concerned by the "racial feeling" in political campaigns.[112] Even in the lead-up to the 1953 elections, when Afro- and Indo-Guyanese united around a single party, there were visible tensions between the groups. There was also a dispute between Cheddi Jagan and Forbes Burnham over who would be prime minister in the event of a victory and their backers broadly divided along racial lines.[113] St Pierre nonetheless points out that this "major schism" was ultimately surmounted.[114] Lutchman, on the other hand, argues that the split was "inevitable"[115] and it is "easy to forget" racialism's prevalence before 1953.[116]

2.2 Racial Divisions – Burnham and Jagan

British Guiana's most significant political party in the immediate wake of universal franchise was the People's Progressive Party (PPP). The PPP stormed onto the political radar after its unexpected landslide in the 1953 general election. This subsection discusses the origins of the PPP and how its leaders drove British Guiana's ethnic breakdown.

The PPP originated from the Political Affairs Committee (PAC), formed in 1946, a civil society organisation of which Jagan and his wife Janet were amongst the co-founders.[117] The PAC aimed to educate the public and prepare them for political

[110] Reid (n 103) 26.
[111] Stephen G Rabe, *U.S. Intervention in British Guiana: A Cold War Story* (University of North Carolina Press 2005) 52.
[112] Thomas J Spinner, *A Political and Social History of Guyana. 1945–1983* (Westview Press 1984) 25. See also Ralph R Premdas, 'The Rise of the First Mass-Based Multi-Racial Party in Guyana' (1974) 20 Caribbean Quarterly 5, 13.
[113] St Pierre (n 106) 98.
[114] ibid 99.
[115] Harold A Lutchman, *From Colonialism to Cooperative Republic: Aspects of Political Development in Guyana* (Institute of Caribbean Studies 1974), p 221.
[116] ibid 223.
[117] St Pierre (n 106) 75.

independence.[118] Jagan saw it as a training ground for a new generation of political actors.[119] The PAC re-launched itself as the PPP in January 1950.[120] The PPP, led by Cheddi Jagan, was a centre-left party that called for full independence and a socialist state. Its first cabinet, in 1953, had an even balance between Indo- and Afro-Guyanese.[121] The most prominent Afro-Guyanese in the PPP at this time was Forbes Burnham, a barrister and party chairman who was associated with more moderate left-wing views.[122]

Jagan was an Indo-Guyanese politician who grew up in the East Indian territory, between the Corentyne and Berbice rivers, on a sugar plantation. His father was a driver, overseeing the work of the cutters, and therefore a relatively elevated individual within the community.[123] Jagan attended an Anglican primary school followed by Queen's College in Georgetown for his secondary education.[124] Upon graduation, Jagan lacked opportunities outside of the sugar plantations. His father managed to gather enough funds to see him through two years at Howard University in the United States.[125] Jagan spent the next seven years in America, first in Washington DC and then in Chicago. It was in America that he met his wife and future president of Guyana, Janet Jagan. Janet was herself a political activist and had a profound influence on her husband's ideology.[126] Upon his return to Guyana, Jagan and his wife were quick to establish themselves in politics and were associated with the more radical Marxist wing of the party.

After 1953, the PPP began to split, and ethnicity became the keystone of British Guiana's politics. This followed the colonial government's suspension of the constitution. The details of this event are discussed in Chapter IV. For the current discussion, the relevant details are that the governor suspended British Guiana's constitution shortly after the PPP's victory in the 1953 elections. There had been friction between Jagan's government and establishment interests from the outset,

[118] ibid 76.
[119] ibid.
[120] Premdas (n 112) 14.
[121] Colin A Palmer, *Cheddi Jagan and the Politics of Power: British Guiana's Struggle for Independence* (University of North Carolina Press 2010) 20.
[122] Reid (n 103) 147.
[123] Spinner (n 112) 17–8.
[124] ibid 18.
[125] ibid 19.
[126] ibid 22.

however the sudden departure from democratic government came as a shock. It was after these events that the competition for power between the radical Jagan and more pragmatic Burnham became an issue.

The most operative factor in creating communalist politics was Burnham and Jagan's leadership, combined with foreign interference. While there were certainly pre-existing tensions and structures that made communalism a threat in British Guiana, these leaders were too willing to capitalise on racial differences for electoral advantage and ultimately encourage a violent breakdown in race-relations. While they were merely neglectful in preventing racialised politics at the start, both men later began to capitalise on them and it was during this period that serious violence broke out.

One-and-a-half years after the suspension of the constitution, Burnham called a party conference where he laid the foundations for a leadership bid. This led to a messy party feud whereby Burnham claimed to be party leader while the Jagan faction claimed he was under expulsion from the party. The split was not wholly along racial lines to begin with, and many in Burnham's faction simply saw Marxism as inconducive to Guyanese prosperity. However, it took on a distinct racial overtone in 1956 when a number of the remaining African executives left the PPP, protesting its racist rhetoric.[127] A precursor to Burnham's actions was the Robertson Commission, which heralded Britain's soft-touch towards Burnham – seen as a social democrat – compared to the Jagans, who were seen as communists.[128] This split was particularly significant because those leaving were hard-line leftists more closely associated with Jagan's wing of the party than Burnham's. They had been alienated both by an increasingly racialised party (evidenced by Jagan's refusal to join the West Indies Federation) and also Jagan's attack on the hard-left as causing the 1953 debacle.[129] Spinner argues that

> neither Burnham nor Jagan wished to make a strictly ethnic appeal, but given the reality of Guyana's plural components, a good chance always existed,

[127] David Hinds, 'Ethnicity and the Elusive Quest for Power Sharing in Guyana' (2010) 9 Ethnopolitics 333, 338.
[128] Rabe (n 111) 53.
[129] Spinner (n 112) 69.

especially if demagogues replaced statesmen, that race might overshadow class.[130]

On the other hand, Wallace writes that Burnham was more willing than Jagan to make the jump to racial discord.[131] In addition, Burnham's new party, the People's National Congress ('PNC') absorbed and formed alliances with African-dominated associations, including trade unions, quickly after its formation. This was seen as an effort to unify the African electorate against any multi-racial alternatives.[132]

Fresh elections were held in 1957 and by this point party-ethnic divisions had become clear, although they were not yet complete.[133] Jagan and Burnham now lead separate parties, the PPP-Jaganite and the PPP-Burnhamite (this was prior to the 'PNC' title). The PPP-Jaganite again made a strong performance (despite the new legislature having a smaller proportion of elected members), but it did so on a predominantly Indo-Guyanese ticket. Jagan had irreconcilably lost much Afro-Guyanese support by blocking Guyana's participation in the West Indies Federation. The move was clearly racially motivated, whereby many Indo-Guyanese did not want to become an ethnic minority within a Caribbean-wide framework.[134] The West Indies Federation had loomed in the background of Guyanese politics for some time and Jagan's original U-turn on the issue had coincided with Burnham's bid for the PPP leadership.[135] Nonetheless, on the back of an increasingly racialised campaign, Burnham only succeeded in winning three Georgetown seats (Georgetown being the African-dominated capital).[136] Between 1956 and 1960, one of the most noticeable changes to economic policy was the boost in government spending on rural (Indo-Guyanese populated) areas. Afro-Guyanese felt that the Jagan government favoured the Indo-Guyanese electorate over them.[137] Even if this spending was also designed to open

---

[130] ibid 67.
[131] Elisabeth Wallace, 'British Guiana: Causes of the Present Discontents' (1963) 19 International Journal 513, 543.
[132] St Pierre (n 106) 155–6.
[133] The 1947 constituencies were revived in order to disadvantage Jagan. In addition to the fourteen elected members of the lower house, there were also three ex officio members and the governor could appoint up to eleven more unelected members. Spinner (n 112) 71. The governor showed some trust in the PPP by not flooding the legislature with his own members. Rabe (n 111) 61.
[134] Tim Merrill, *Guyana and Belize* (2nd edn, Library of Congress 1993) 19–20.
[135] St Pierre (n 106) 137.
[136] Spinner (n 112) 73.
[137] St Pierre (n 106) 140.

up more of the coastal plain it was perceived as racial favouritism.[138] There were even widespread mistruths that the PPP-Jaganites were building a concentration camp for Afro-Guyanese dissidents.[139]

In the next round of elections, 1961, the trend worsened and the PPP deployed the slogan '*apaan jaat*' ('vote for your own race').[140] Jagan also began to fill the police force with his own supporters. While there had long been Afro-Guyanese domination of the police force, the sudden influx and its timing was seen as another threat to Afro-Guyanese security.[141] The PNC called for its supporters to "sweep them [the PPP] out and keep them out", waving brooms for imagery.[142] This government's tenure shows how unworkable politics had become, with racial divisions compounded by economic, geographic, and religious differences, too. A patter emerged, whereby racial tensions were heightened during elections. Even if they cooled slightly thereafter, they never return to what they were before. Each election cycle, in this period, was gradually heightening racial discord.[143]

The 1962 budget is illustrative of this point. The budget was known as the 'Kaldor Budget', after Nicholas Kaldor.[144] As well as capital gains tax reform, the budget included taxes on luxury goods and tax evasion preventions, both deemed reasonable responses by experts at home and abroad. However, they had a disproportionate effect on Afro-Guyanese (who were urban dwellers and higher paid). Newspapers described it as a 'choke and rob' budget, referencing a violent mugging technique, while the opposition staged a walk-out during the budget debate.[145] On 11 February, 4000 public servants participated in a rally against the PPP government. Two days later, a strike was called and both the public services and government departments were heavily impacted. Two days after that, Burnham was addressing crowds of 25,000 despite a government proclamation imposing a temporary ban on public

[138] Spinner (n 112) 74.
[139] St Pierre (n 106) 143.
[140] Kempe Ronald Hope, 'Electoral Politics and Political Development in Post-Independence Guyana' (1985) 4 Electoral Studies 57, 58.
[141] St Pierre (n 106) 164.
[142] ibid 144.
[143] Ralph R Premdas, 'Elections and Political Campaigns in a Racially Bifurcated State: The Case of Guyana' (1972) 14 Journal of Interamerican Studies and World Affairs 271.
[144] St Pierre (n 106) 147.
[145] ibid 149.

gatherings.[146] The protest eventually descended into violence, with senior police officers and rioters being shot.[147] Jagan had to rely on British armed forces to restore order.[148] However, a British investigation into the riots concluded that the aggravation was a calculated attempt by Burnham to wrest control from Jagan by drumming up racial grievance.[149] This also played into growing dissatisfaction amongst civil servants over pay and conditions after a period of intense inflation.[150]

2.3 Independence and Foreign Intervention

American and British support for the PNC skewed British Guiana's independence negotiations in their favour and skewed the constitution towards their continuous election. This contributed to lasting ethnic tensions and fundamental disagreement over constitutional legitimacy. The PNC was produced by the unification of Burnham's left-wing, Afro-Guyanese PPP faction and the more conservative, also Afro-Guyanese, United Democratic Party. Political differences between the sides were resolved by appeals to Afro-Guyanese ethnic unity. Although still left-wing, the PNC became Britain and America's favoured party because they were not *as* radical as the PPP and they were led by anyone else but Jagan, a supporter of Josef Stalin and Mao Zedong.[151] St Pierre describes how disturbed America was by Jagan's political appeal and his closeness to communist advisors, including his wife, even if he himself was not necessarily a communist. This included communications from the US secretary of state, Dean Rusk, to the British foreign secretary, Lord Home, emphasising the importance of "covert" resources.[152] Spinner acknowledges America's paranoia over another Cuba in the Caribbean, particularly after Jagan's colourful trip to Washington where he refused to distance himself from communism on live TV.[153] However, Spinner argues that the British were rather more "blasé" and originally favoured Jagan over Burnham because, while Jagan's views might be mellowed by responsibility, Burnham displayed strongly anti-white sentiments.[154] In meetings with Kennedy,

[146] ibid 149–51.
[147] ibid 152–3.
[148] Reid (n 103) 178–9.
[149] ibid 181–2.
[150] ibid 185–6.
[151] Merrill (n 134) 20.
[152] St Pierre (n 106) 165.
[153] Spinner (n 112) 83.
[154] ibid 82.

Jagan was again hesitant to distance himself fully from communism while Burnham had a simple message of socialism, only.[155]

While numerous authors have alluded to the influence of the CIA in shaping British Guiana's independence negotiations,[156] the fullest account is given by Stephen G Rabe in *US Intervention in British Guiana: A Cold War Story*.[157] Rabe describes how, after the 1957 elections, US distrust of Jagan tempered briefly and the British began to view him as a reformed man, who had 'learnt the lessons' of the 1953 emergency and was now capable of responsible government.[158] For the British, this view was reinforced by the constitutional convention in 1960, where Jagan appeared statesmanlike, particularly in comparison to Burnham.[159] Immediately after the convention, however, Jagan made a trip to Cuba where he compared Guiana's struggles with Britain to Cuba's struggles with America. Castro offered a loan of $5 million and also a generous deal to buy British Guiana's surplus rice.[160] Convinced that this money was being funnelled through Cuba by the Soviet Union, America settled on the objective of removing Jagan from the premiership before independence was granted.[161]

America began a covert campaign to destabilise the Jagan government and were instrumental in precipitating the deadly riots of 1962 and 1963. They also received assurances of cooperation from the British government in removing Jagan from office.[162] In the years immediately prior to independence there was coordination between Colonial Secretary Sandys' actions and American policy in British Guiana. In addition, the key issue of proportional representation (PR) had been agreed between Macmillan and Kennedy personally in 1962.[163] This was to give the PNC a better chance of electoral victory. The Macmillan government even rejected the offer of a Commonwealth/UN commission on the basis that they may favour first-past-the-post

---

[155] ibid 84.
[156] St Pierre (n 106) ch 7; Spinner (n 112) ch 6; Lilowatti Ramcharan, 'The Cold War in British Guiana, 1953-1966: A Case Study of Anglo-American Cooperation' (PhD, University of Kent 2003); Gordon Oliver Daniels, 'A Great Injustice to Cheddi Jagan: The Kennedy Administration and British Guiana: 1961–1963' (PhD, The University of Mississippi 2000).
[157] Rabe (n 111).
[158] ibid 61–6.
[159] ibid 67.
[160] ibid 70.
[161] ibid 70–3.
[162] ibid ch. 3.
[163] ibid ch. 4.

('FPP').[164] While the governor, Ralph Grey, remained dismissive of American fears, he was effectively overruled by Sandys.[165] Not only was foreign intervention instrumental in replacing Jagan with Burnham, but it also poured oil on the flames of racial division. Rabe describes how "[w]holesale racial warfare" began after the 1963 strike, whereby hundreds of Guyanese were killed over the course of the next one-and-a-half years.[166] While the strike was raging, Kennedy wrote to Macmillan urging him to suspend the constitution again and, if he saw fit, "let the local situation deteriorate still further", first.[167] While the 1962 strike had been put down after only a few days, the British government allowed the 1963 turmoil to continue for 80 days.[168] The death and destruction did irreparably harm to race relations in British Guiana.

The failure to implement direct rule agitated Kennedy and Secretary Rusk, who elevated British Guiana to the most important issue in Anglo-American discussions.[169] Rusk feared that Britain intended to make a hasty exit from Guiana before the Jagan threat had been resolved. Kennedy and Macmillan held discussions in June 1963, a few days after Kennedy's Berlin Wall speech, where the US determination was made clear to the hesitant British. Kennedy assured a favourable position from America on issues such as Southern Rhodesia as long as Britain delayed Guiana's independence and fully implemented a programme to remove Jagan.[170] Macmillan relented and the independence negotiations were held in October of that year.

During independence negotiations, when Indo-Guyanese and Afro-Guyanese deadlocked over crucial constitutional issues, the British favoured the Afro-Guyanese position at each turn. The issues were: voting age (18 or 21), whether fresh elections ought to be held before independence, and whether the FPP voting system should be replaced with PR. The final deal comprised Afro-Guyanese preferences on all three issues, with a higher voting age, PR, and the promise of new elections. Most pressing among these was the electoral system. Indo-Guyanese geographic dispersal across British Guiana (spawning from their work in the sugar industry) gave them a disproportionate advantage in the FPP constituency system. On the other hand, the

[164] ibid 106.
[165] ibid 107–9.
[166] ibid 112.
[167] ibid 113.
[168] Collins (n 109) 3.
[169] Rabe (n 111) 116.
[170] ibid 118.

urban-dwelling Afro-Guyanese could likely cobble together a majority along with the United Force ('UF', described in the next section) if PR was introduced.[171] In the background, ethnic tensions had spilled over into ethnic violence. As mentioned, this included deadly riots in 1962 and '63 provoked by Afro-Guyanese trying to delay independence until fresh elections had been held and again in 1964 by PPP supporters who opposed PR and wanted to delay an election.[172] Certainly, the original constitutional convention in 1960 had made it clear that there would be only one more round of elections, and the 1961 winners would lead the country to independence.[173] Guyana therefore became the only British colony to begin independence with a PR, rather than FPP, system. The 1964 elections delivered the pre-conceived result, with no party commanding an overall majority of seats. The completeness of the racial divide was clear, as voting patterns mirrored racial demographics:

> There were 110,000 registered voters who were Indian, and the People's Progressive Party received 109,332 votes. The electoral roll showed 96,000 registered voters of African descent; the People's National Congress received 96,657 votes.[174]

Although the PPP was still the biggest party, it was Burnham that the governor invited to form a government. An alliance with the UF was struck and, in protest, the PPP refused to even take their seats in the legislature.[175]

3. Agentic Dynamics of Constitutional Change

This section discusses how the interests and ideologies of Burnham and Jayewardene shaped the 1980 and 1978 constitutions in Guyana and Sri Lanka. Personal interests and the pursuit of power were far more prominent in Guyana, where the executive presidency was part of Burnham's programme for autocratic, undemocratic rule. In Sri Lanka, on the other hand, the story is more complicated. Jayewardene certainly saw himself as the virtuous ruler that Sri Lanka needed, however he had campaigned for an executive presidency long before he would have had a chance of immediately filling

[171] Hope (n 140) 58.
[172] Reid (n 103) 29.
[173] Rabe (n 111) 66.
[174] Reid (n 103) 32.
[175] Quinn (n 101) 17–8.

the office. Therefore, although he changed the constitution in a way that enhanced his own power, he also saw executive presidentialism as within the national interest more broadly.

The personal ideologies of Jayewardene and Burnham had a concrete effect on their constitutions and their comparative reference points created divergencies in the executive presidencies' relationships with the other branches of government. Burnham's background in Marxism and his desire to create a socialist cooperative republic led him to borrow structures from systems such as North Korea and the German Democratic Republic. While the form of these constitutions may be different on paper, Burnham's presidency (which effectively appoints the government portion of the legislature) codified the actual practice of these systems. Jayewardene was inspired by de Gaulle's French Fifth Republic as a case study in how unstable parliaments could be replaced with an executive president and economic liberalisation.

3.1 Agents' Interests

Burnham saw the executive presidency as a personal escape route from the instabilities of Guyana's fraught and ethnicised politics. The presidency would further cement his place as ruler and open up new avenues for co-option.

First and foremost, presidentialism was attractive to Burnham because it would cement his position as head of government. This chapter has already discussed how PR was instituted in British Guiana in order to keep the PPP out of power at independence. While it succeeded in this objective, it did not guarantee Burnham a secure tenure as head of government. PR in a racialised polity could guarantee that Jagan never won a majority of seats, but it did not guarantee Burnham a majority, either. Burnham was forced to share power with Peter D'Aguiar's UF, a centre-right party that appealed to many business owners as well as the non-Afro-Guyanese, non-Indo-Guyanese vote. Burnham was consigned to coalition government in any free and fair election. D'Aguiar was unlikely to lend his party's votes to Jagan, but nonetheless the experience of coalition government demonstrated to Burnham that the UF only support the PNC after hard negotiation (and would be a constant thorn in his side thereafter). The system designed to put Burnham in power was now hampering him.

Presidentialism, as instituted under the original, unamended 1980 Constitution, where the head of government only required a plurality of votes in a general election and could not be removed by a vote of no-confidence, was tailor-made for a Burnham leadership. The PNC could continue racialised political campaigns where expedient (as could the PPP), knowing that they did not require an outright majority to take the presidency. Also, any coalition partners would be unable to snatch power away from Burnham. Furthermore, even if Burnham lacked a majority of seats in parliament, he could use all the powers of the executive presidency to build coalitions through patronage and co-option.

There were also other, more personal reasons that presidentialism was attractive to Burnham. Burnham, as a politician, stood out partly by virtue of his charisma, partly his oratory prowess, but crucially his political pragmatism. As discussed already, Burnham became the US and UK's favoured independence leader because he was able to read the international dimension to Guyanese politics and moderate his socialist stance accordingly, as opposed to the doctrinaire politics of Jagan. The poet and political activist (and then-PNC minister), Martin Carter, described Burnham's pragmatism as "political and not philosophical".[176] It could more strongly be argued that, even though Burnham's politics were underpinned by socialist values, his actions were those that best fitted his own political ends rather than any given ideology. He was able to outmanoeuvre the rigid PPP leadership and achieve goals such as republicanism and nationalisation over the long-term while working with other partners. James and Lutchman contrast this with the "ideological inflexibility" of the PPP.[177] Burnham could use the patronage inherent in the Guyana's executive presidency to great effect. In line with his political pragmatism, co-option was a natural part of his playbook as ruler. In his reflections on Burnham's *A Destiny to Mould,* Ramsahoye recalls how Burnham, even in his days of coalition with the UF, was proactive in engineering cross-overs from the opposition.[178]

---

[176] Martin Carter, 'Forward' in CA Nascimento and RA Burrowes (eds), *A Destiny to Mould: Selected Discourses by the Prime Minister of Guyana* (Longman Caribbean Ltd 1970) xi.
[177] Rudolph James and Harold A Lutchman, *Law and the Political Environment in Guyana* (Institute of Development Studies 1984) 69.
[178] James W Ramsahoye, *A Mouldy Destiny: Visiting Guyana's Forbes Burnham* (Minerva Press 1996) 28–9.

Although presidentialism was attractive to Burnham because it removed institutional pressures on him, it was still only a backup plan in response to those pressures. Burnham is distinguished from Jayewardene in Sri Lanka by the extent to which he was willing to undermine democratic norms and, particularly, to commit fraud at elections. While Jayewardene had his own shortcomings as a democrat (such as using a referendum to prolong the parliament where he had a four-fifths majority for another six years and where there were also allegations of electoral fraud), he did not mimic Burnham's pattern of consistently stolen elections.[179] The 1968 general election – the first to give the PNC an outright majority in the National Assembly – was run by the PNC through the minister for home affairs, rather than the elections commission.[180] *The Trail of the Vanishing Voters*, a documentary aired by the Granada Television Company as part of the *World in Action* programme, uncovered compelling evidence of fraud on the eve of the election. Basing its findings largely on the work of the Opinion Research Centre, a reputable organisation commissioned by D'Aguiar, the programme concluded that a quarter of overseas voting addresses in the UK did not exist and of those that did exist over 40% were not the residence of the individual listed on the voter register.[181] Electoral lists suggested that 45, 000 Guyanese lived in Great Britain, however the British census gave a figure of only 20, 000.[182] Even with these irregularities, however, the PNC only won 27 of the 53 available seats. The overseas vote was crucial to their success.[183]

World in Action was blocked from entering Guyana when it tried to make a follow-up report after the election.[184] In future elections, Burnham's abuse only increased in severity and flagrancy. In the 1973 general election, ballot boxes were brought to the Guyana Defence Force headquarters and ballot stuffing began when early returns from the PNC heartlands showed dampened support even there.[185] In the end, the PNC claimed over 70% of the vote and 37 of 53 seats. In the next general election, in December 1980, the PNC 'won' an even better 77.7% of the vote and 53 of 65 seats. This time, in front of a group of international observers, the PNC "transported its

---

[179] Wiswa Warnapala, 'Seeking Sanction for Dictatorship: The Referendum in Sri Lanka' (1983) 18 Economic and Political Weekly 17.
[180] Spinner (n 112) 125.
[181] ibid.
[182] ibid.
[183] ibid 126–7.
[184] ibid 127.
[185] ibid 145–7.

dedicated disciples from polling place to polling place"[186] as the army stole ballot boxes away only to return them after a few hours. The team of international observers reported that the election had been "rigged massively and flagrantly".[187] As context, over this period Burnham never managed to achieve his original objective of weaning the Indo-Guyanese vote from the PPP and he also alienated increasing numbers of Afro-Guyanese voters through corruption and economic failures.[188] Concurrently, the electoral machinery had been politicised to the PNC's advantage.[189]

As Burnham's support base began to shrink, he held sham elections to stay in power and, indeed, claim even bigger legislative majorities that expanded his power. Nonetheless, Burnham also saw constitutional reform as a back-up plan to hold onto power. Even if the PNC was subject to an honest election, the new constitution gave it a good chance of winning a secure term in charge of the executive, even if legislative power had to be shared.

For JR Jayewardene, on the other hand, the appeal of executive presidentialism lay in its secure tenure and centralised power as a way of rejuvenating and liberalising the economy – regardless of *who* was president. JR first proposed the executive presidency in a speech to the Science Students' Association of the University of Colombo in December 1966.[190] In this speech, he emphasised the link between institutional design and economic growth, which remained central to his support of presidentialism thereafter. He argued that the head of state needed a secure tenure so as he was not

> subject to the whims and fancies of an elected legislature; not afraid to take correct but unpopular decisions because of censure from its parliamentary party.[191]

He went on to call this a "very necessary requirement in a developing country faced with grave problems such as we are faced with today".[192] The link with the economic

---

[186] ibid 192.
[187] ibid.
[188] ibid 139–40, 155, 170, 182–3.
[189] James and Lutchman (n 177) 77.
[190] JR Jayewardene, *Men and Memories: Autobiographical Reflections and Recollections* (Vikas Publishing House 1992) 20.
[191] ibid.
[192] ibid.

and electoral trends we saw earlier in this chapter are unmissable. De Silva and Wriggins also emphasise that institutional reform as a pathway to economic growth was Jayewardene's main concern[193]

Jayewardene believed that electoral politics, such as they were in Sri Lanka, had taken the country down a populist road that would lead to economic ruin. He believed that tougher economic strategies had to be adopted and only a change to the electoral system – that would hand him secure tenure and power – could deliver economic growth. In *Men and Memories,* Jayewardene himself goes through Sri Lanka's post-independence elections and points out the institutional instabilities associated with the Westminster model that, he believed, had held the country back.[194] He even tabled an amendment during the 1972 Constitution's passage that would have introduced presidentialism for the Bandaranaike government. This was voted down almost unanimously, with Jayewardene and R Premadasa receiving "no support"[195] and UNP leader Dudley Senanayake being especially opposed.[196]

While overcoming ethnic divisions was not foregrounded as a reason for presidentialism, Jayewardene was nonetheless very likely to have had this in mind when he promoted the system from 1966 onwards. Presidentialism in Sri Lanka, as in Guyana, opened new avenues for co-option and it also made a PR electoral system possible, too. This would have been seen as a way of cooling ethnic divisions, even if the effects were, in fact, the opposite. De Silva and Wriggins observe that

> In the special circumstances of Sri Lanka's multi-ethnic society, J.R. was concerned that this new exercise in constitutional reform should repair the damage to ethnic harmony that the constitution of 1972 had caused.[197]

They go on to describe the constitution as "a purposeful attempt to alleviate some of the grievances of the Tamil minority".[198] The executive presidency was expected to achieve this by making it impossible for candidates to win on a Sinhalese nationalist

[193] KM de Silva and Howard Wriggins, *J.R. Jayawardene of Sri Lanka: A Political Biography*, vol II: 1956-1989 (Leo Cooper 1994) 377.
[194] Jayewardene (n 190) 21–3.
[195] ibid 91.
[196] De Silva and Wriggins (n 193) 379.
[197] ibid 381.
[198] ibid 395.

campaign that alienated minorities. This was because any candidate had to win over 50% of the vote and could not afford to discard minority support. Positive trends were observed in both the 1982 and 1988 campaigns.[199] The next chapter describes how the presidency nonetheless became more communalist over time.

The executive presidency also allowed for PR in parliament. This would probably have been untenable in a pure parliamentary system. Some minorities may have been advantaged under the old FPP system, but the loss of these advantages was outweighed by the prospects of PR. Sudden electoral swings that "deprived the Tamils of any prospect of acting as a balancing force in parliament" were meant to become a thing of the past.[200] A change in the demarcation process that stopped the counting of stateless Indian Tamils also boosted minority representation.[201] It was thought that PR might give the Tamils a better voice in parliament without allowing Tamil parties to destabilise national governments.[202] Overall, therefore, although Jayewardene may not have foregrounded ethnic harmony as a motivation for the executive presidency, it was certainly part of his calculation – even if it did rank behind the main issue of economic growth. These themes, and how this ultimately proved to be a miscalculation by Jayewardene, are discussed further in the next chapter.

3.2 Agents' Ideologies

Burnham's era in government orientated Guyana towards a cooperative socialist economy. The extent to which he personally bought into socialism may be debated, but it is clear that his government built its legitimacy on this ideology.

Burnham was first introduced to socialist studies during his time in Britain after winning a prestigious scholarship. As a politician, he was well aware that – for all its divisions – Guyanese society was united around a general commitment to socialist ideals. While business and middle classes were important in politics (and Burnham knew how to work with them better than Jagan), nonetheless they were still a minority. Whether he strongly bought into socialism on a personal level or not, its ideologies shaped the

[199] ibid 393–4.
[200] ibid 394.
[201] ibid.
[202] A Jeyaratnam Wilson, *The Gaullist System in Asia: The Constitution of Sri Lanka (1978)* (Macmillan 1980) 93.

rhetoric and actions of his time in government. He told people that cooperative socialism was the process whereby "the small man can become a real man".[203] Cooperative socialism was meant to be a uniquely Guyanese approach to delivering on peoples' welfare. Cooperatives were intended to form the basis of the Guyanese economy in order to distribute wealth while building independence. This was opposed to cooperatives' roles in other economies, where they were merely an adjunct of a wider economic model.[204] Speaking of socialism in European countries, Burnham said that "we must not put ourselves in the straitjackets of their dogmas and tactics".[205] He proposed a system which was fundamentally socialist, yet flexible enough to make the most of opportunities from abroad. Spinner notes that Burnham "always retained his socialist commitments".[206] On the other hand, some argue that cooperatives were also a subterfuge to generate more Afro-Guyanese rural dwellers.[207]

When relations with America began to fray (Burnham was particularly fearful of a breakdown in relations after he nationalised Raynolds Bauxite Company),[208] Burnham took a sharp turn to the left. From the mid-1970s, PNC socialism took a noticeably harder line than before. Privatisations increased, relations with communist powers strengthened, and the PNC began to describe itself as a Marxist-Leninist party.[209] Therefore, the new constitution – and by extension the executive presidency – was passed in a context where the electorate strongly favoured some form of socialist government. Burnham was influenced by socialist ideologies from an early stage in his career while remaining pragmatic in developing a Guyanese approach to the global political climate.

Contemporaneous socialist constitutions played a role in shaping Guyana's executive presidency. Burnham believed that the Westminster model of government had little relevance to, or traction with, the Guyanese people and it needed to be left behind as the country moved forwards.[210] The influence of socialist constitutions on Guyana's

---

[203] CA Nascimento and RA Burrowes (eds), *A Destiny to Mould: Selected Discourses by the Prime Minister of Guyana* (Longman Caribbean Ltd 1970) 157.
[204] ibid.
[205] ibid 155.
[206] Spinner (n 112) 138.
[207] Percy C Hintzen and Ralph R Premdas, 'Guyana: Coercion and Control in Political Change' (1982) 24 Journal of Interamerican Studies and World Affairs 337, 346.
[208] Spinner (n 112) 148.
[209] ibid 147–9.
[210] Nascimento and Burrowes (n 203) 79.

1980 document is most apparent in the directive principles. However, the relationship between presidential and National Assembly elections also echo communist government structures. James and Lutchman argue that the president solely exercises powers that are shared out in other socialist models and presidentialism was therefore part of a power-grab. They further argue that there was never a clear link drawn between the executive presidency and socialism, and Guyana's structure is *sui generis.*[211] The first of these points is undoubtedly true. However, socialist influences on the shape of the presidency were greater than the authors suggest. James and Lutchman describe the written constitutions of the Democratic People's Republic of Korea, the German Democratic Republic, and Cuba. The legislature seems to have more control over the executive in each of these studies than in Guyana. The problem, as the authors rightly draw attention to, is how the constitutions operate(d) in practice. Members of the legislature were normally chosen (in effect) by the executive standing committee rather than vice versa and were composed of, or at least dominated by, a single party.[212]

When seen in this light, Guyana's alphabetical list (discussed in the next paragraph) and joint presidential-parliamentary elections start to make more sense. As unique as the system looks on paper, it was most likely influenced by other socialist systems. When taken in conjunction with the wider Guyanese attraction to socialism, 'party paramountcy' (discussed in the next chapter) and its similarities with socialist doctrines, and the clear influence of socialist structures on other parts of the constitution, the argument becomes stronger. While the 1980 Constitution had a myriad of influences, therefore, the relationship between the executive and the legislature with regards to elections was probably linked to socialist governments contemporaneous to its passage. Rather than holding direct presidential elections, as in more liberal systems, Burnham created a system where government MPs depended on presidential approval after elections had already been held.

The alphabetical list system refers to Guyana's unusual closed list system of electing MPs. Whereas most closed lists specify, in advance, the order of preference for candidates at an election, in Guyana such order is not normally given, and the

[211] James and Lutchman (n 177) 112–4.
[212] ibid 111–4.

candidates often appear alphabetically. The only candidate that receives special status on the list is the party's preference for president, who is specified in advance. Each vote is therefore for both a presidential candidate and a party for the National Assembly (a combined vote). After the election has taken place and the various parties have been awarded their seats from the national top-up list, only then does the party leader decide which candidates from the list will become MPs. In this way, the system more closely resembles states where the executive appoints the legislature rather than vice-versa. The only politicians with a direct mandate are the party leaders. Under the original system there were twelve MPs indirectly elected by regional councils and fifty-three elected nationally. Since 2000, this has been changed to seats allocated by a Hare quota, whereby twenty-five MPs are elected from ten multi-member constituencies and forty from a national top-up list.[213]

From the outset, Jayewardene noted the French Fifth Republic as an example of combining parliamentarism and presidentialism to promote stability and growth.[214] We can speculate on parallels between France and Sri Lanka that may have influenced Jayewardene's thinking. De Gaulle came to power (for the second time) in May 1958 after the 'Algiers putsch'. The chronic political (and constitutional) instabilities in the Fourth Republic reached a crescendo when a political uprising in Algiers led to de Gaulle's appointment as leader by parliament, under threat of military force. Cabinet instabilities, the type of which Sri Lanka would also experience in succeeding years, had contributed to disillusionment with the government. De Gaulle was seen as a strongman who would restore order. Not only did de Gaulle achieve this, he also won

---

[213] Guyana's electoral laws are currently under review, however the chance of building agreement between the major parties is slim. The alphabetical list system is derived in practice from the Representation of the People Act (1964, as amended), section 98 of which provides that, once the number of seats per party has been apportioned, the representative of the list (i.e., the party's presidential candidate) "shall extract from the said list as many names belonging to candidates selected by him for the purpose, including his own name, if he has not been declared elected as president under Art. 177 of the constitution, as can be so extracted without their number exceeding the number of seats allocated to that list". This works in conjunction with s. 11, which does not require the party to provide any particular order of preference to the list. This has been criticised as incompatible with Art. 160(3)(a)(ii) of the constitution, which provides that the lists should be presented in a manner that allows "voters to be sure which individuals they are electing to the National Assembly" 'Election Follow-up Mission to Guyana 2023 Final Report' (European Union 2023) 10–1.

Some useful sources on the electoral law in Guyana that discuss these practices, among others, are 'European Union Election Observation Mission to Guyana 2020 Final Report' (European Union 2020) 10–11; '2020 General and Regional Elections in Guyana Final Report' (The Carter Center 2020) 38–9; 'Election Follow-up Mission to Guyana 2023 Final Report' 10–11.

[214] Jayewardene (n 192) 20.

succeeding elections and was credited as the architect of *Les Trente Glorieuses* (The French economic miracle from 1945-1975). De Gaulle saw the Fifth Republic as ensuring the institutional security needed to continue delivering on the economic success he had triggered after the war.

Welikala draws a direct connection between the 1958 crises in France and Ceylon and Jayewardene's admiration of a strong executive.[215] In May 1958, Ceylon experienced a political crisis of its own. The 1958 anti-Tamil pogrom saw country-wide ethnic violence, particularly by Sinhalese against Tamils. In the wake of the Sinhala Only Act (discussed earlier in this chapter), localised violence eventually coalesced into a total breakdown in law and order, where Tamils were targeted with impunity. In addition to violence against Tamils, police stations were under attack and the army opened fire on civilians. Tamils also launched reprisal attacks on Sinhalese in the North and East. Jayewardene (who, incidentally, had led protests against an agreement on language policy) watched from the opposition benches as the country descended into unprecedented violence. He saw how, as in France, the Bandaranaike government relied on centralised executive power and a strongman to restore order. Sir Oliver Goonetilleke, governor general, took control of the situation when it became clear that Bandaranaike was unable to get a grip of the country. Jayewardene was led to believe that only centralised control and tough executive decisions could put an end to chaos.

It may well be that these parallels between Ceylon and France in 1958 primed Jayewardene's attraction to the Fifth Republic when it was eventually instituted in France. Even if not, de Gaulle's economic liberalism and France's subsequent economic success would have been sufficient to draw Jayewardene's admiration when he got his own chance at constitutional reform. It is for these reasons that Jayewardene emphasised the French model as a suitable alternative to Sri Lanka's Westminster system.

The hold of the Westminster model on Sri Lanka and, to a lesser extent, Jayewardene, is also important in understanding the 1978 Constitution's design. Perhaps even more than Guyana, Sri Lanka's elites were steeped in Westminster traditions and would not

---

[215] Asanga Welikala, 'The Eastminster Viceroy and the Republican Monarch: The Sri Lankan Head of State and the 2018 Constitutional Crisis in Historical Context' in H Kumarasingham (ed), *Viceregalism: The Crown as Head of State in Political Crises in the Postwar Commonwealth* (Palgrave Macmillan 2020) 238.

give them up easily, even with the UNP's manifesto mandate. Despite being the mastermind of presidentialism, Jayewardene could not totally shake this influence. He was responsive to MPs' concerns that they were voting away their own power and tried to reassure them by preserving some familiarities with the old system, for example cabinet being drawn from parliament. Jayewardene similarly refused to create an overly powerful presidential secretariat and, furthermore, issued a pledge that he would always act through cabinet and parliament, in the interests of "preserving the parliamentary system as it existed without the diminution of their powers".[216] For Jayewardene, therefore, de Gaulle's system was never meant to be a wholehearted substitution for Westminster constitutionalism. Instead, he deliberately selected the aspects of the Fifth Republic that he felt would stabilise the executive while keeping the remaining Westminster parliamentary features within which he had lived his political career. The next chapter goes into more depth on the Westminster model constitutional features that remain in both Sri Lanka and Guyana's constitutions.

Conclusion

This chapter has set out the political dynamics and personalities that led to executive presidencies being incorporated into the constitutions of Sri Lanka and Guyana. A common theme in both countries was the post-colonial rise in communal mobilisation during elections. Whereas presidentialism was seen as a solution to communal politics in Sri Lanka, in Guyana it was intended to entrench Burnham's rule within a communalised polity. In Sri Lanka, more than communal politics, presidentialism was a response to political bidding, where the head of government could enact unpopular economic reforms without fear of being removed or suffering an early election. The interests and ideologies of Jayewardene and Burnham as individuals were also crucial in shaping the 1978 and 1980 constitutions.

In Ceylon, universal franchise was quickly followed by a pattern of political bidding and, slightly later, ethno-religious breakdown. Political bidding began to a limited extent after 1931, however an unsustainable welfare state was created in earnest after WWII. Subsidies introduced as war measures became politically untouchable after independence. Moreover, each round of elections represented a fresh round of

[216] De Silva and Wriggins (n 193) 387.

political bidding where subsidies were added to incrementally. In addition to subsidies was an extensive welfare framework that rivalled even those in comparatively rich nations. Furthermore, nationalisation – particularly in the 1970s – and mismanaged attempts to address the trade imbalance created inefficient industries. This eventually led to black market trade even for daily essentials. This narrative of Sri Lanka's independence history – a narrative of paradise lost – weighed heavily on Jayewardene when he called for executive presidentialism, even from the mid-1960s. As time went on, he became more confirmed in these beliefs and popular support for system-change grew.

Ethno-religious breakdown was also significant in Sri Lanka's move towards an executive presidential system. This was avoided in the early days of universal franchise thanks to an elite-level understanding that these were undesirable forces to exploit. This was characterised by DS Senanayake's personal leadership. He abhorred the thought that Ceylon might become an ethno-religious state, and was able to command the respect of minorities and Sinhalese-Buddhists alike in charting a different course. However, with Senanayake's death came new opportunities for a different brand of politician. Just as elite-level understandings had avoided sectarian politics up until this point, so too elite-level infighting was critical in giving a political platform to more hard-line views. SWRD Bandaranaike split from the UNP after losing his prospects for the leadership. The most promising, untapped electoral force on offer was society's underlying ethno-religious tensions. Bandaranaike's unique brand of ethno-religious socialism not only utilised these forces but also heightened them. The UNP, instead of being a bulwark against ethno-religious breakdown, tacitly or actively supported these divisive politics. The Sinhala Only Act and linguistic nationalism was a flare point for these hostilities, however they quickly developed into a complex matrix concerning representation, religion, and territory.

British Guiana's pre-existing racial tensions were perhaps more severe than those in Ceylon, however elite calculations were still critical in escalating these tensions and making them a political bedrock. These calculations were made in response to the changed political playing field brought about by universal franchise. This change was also affected by American and British interference and a deliberate effort to split the electorate.

The PPP began life as a multi-racial party with the twin aims of independence and a socialist state. It had deep connections with the community and ran highly successful campaigns. Although its leadership was middleclass professionals, they clearly knew the struggles and interests of British Guiana's workers across various industries. However, as in Sri Lanka, elite infighting eventually led to a split and politics became ethnicity-based. Burnham and Jagan not only represented competing ideologies within the party, they also had strong personal ambitions for the leadership and this had been a persistent problem throughout the PPP's existence. When Burnham realised that he was not going to take the leadership from Jagan, and when America signalled its support for a more moderate brand of socialism, Burnham left to form his own party. Although the split did not follow purely racial lines to begin with, both leaders' increasingly racialised rhetoric and policies began to cement a clear trend in political alignment. Over the course of the next couple of elections, British Guiana's politics moved from one of unity and hope to violent racial clashes.

Jayewardene believed that, whatever the government, an executive presidency was squarely in Sri Lanka's national interest. He consistently campaigned for the change for one-and-a-half decades before it was finally introduced, even when the SLFP was in power. Burnham seemed to give far more weight to personal interest, where the new system would give him and his party a disproportionate advantage compared to the independence constitution. The relationship between the executive and cabinet, where effectively only the president and the leader of the opposition have a direct national mandate and the president selects government MPs after the election has taken place, seems to mimic the practice of socialist constitutions contemporaneous to the document. Jayewardene, on the other hand, explicitly drew on the French Fifth Republic and kept some parliamentary features alongside direct presidential elections. The intricacies of, and differences between, these constitutional texts is discussed further in the next chapter.

This chapter has therefore set out the forces and personalities behind constitutional change in Sri Lanka and Guyana. These findings are discussed further in Chapter V, which describes their significance for studies of historical institutionalism, particularly patterns of gradual institutional change and agency.

Chapter II

Westminster Model Constitutional Features

Introduction

This chapter describes how Guyana and Sri Lanka, representing British post-colonies which started their constitutional existence as independent states as Westminster model parliamentary systems, converted to forms of presidentialism. It is a doctrinal account of the ways in which the constitutions were changed, and also preserved, in order to make the jump.

This chapter is a diachronic account of the constitutions; it measures their incorporation and abandonment of Westminster model, parliamentary, and presidential constitutional provisions over the course of time. This analysis therefore operates on two levels. Firstly, it identifies the moments at which the systems changed from parliamentary to (semi-)presidential, and it also measures their movement between sub-categories (e.g., parliamentary systems with executive presidents, premier-presidential, president-parliamentary). As noted below, these classifications are well defined in the existing literature and fairly uncontentious. Secondly, it investigates the nuances of this change and the unique, textured constitutions that emerged as a result. While there are clear definitions for parliamentary and presidential systems, there are also distinct Westminster model constitutional features ('WMCFs') that can survive independently of a change to presidentialism. These provisions, however, take more time to identify and explain. By tracing WMCFs, this chapter accounts for the type of system *into which* the executive president was incorporated.

The WMCFs identified and tracked in this chapter are (1) strong-form dissolution and prorogation procedures; (2) individual and collective ministerial responsibility; (3) independent public services; (4) a recognised leader of the opposition; (5) ministers necessarily being members of the legislature; (6) a Westminster model speaker; and (7) Westminster model public finance procedures. These features are not intended as a be-all and end-all of the 'Westminster model'. Instead, they represent *one approach*

to the Westminster model. They are features largely distinctive to, and common among, Westminster model systems, and readily identifiable from many Westminster model constitutions.

This chapter concludes by describing democratisation reforms subsequent to the executive presidencies. In reforming the executive presidencies, both Sri Lanka and Guyana have, with varying degrees of success, attempted to re-assert parliamentary control over the executive. The presidencies have proved durable, if not universally supported, in both countries. The electoral politics and pitfalls of reforming the presidency in Sri Lanka included an autocratic president (Mahinda Rajapaksa) eventually precipitating a reformist coalition movement that took the presidency. However, this coalition movement quickly ran into problems once in office and the constitution was only partially reformed. Guyana has gone further in reforming the presidency, making the president dependent on parliament's confidence in 2000. As opposed to unstable reformist coalitions in Sri Lanka, Guyana implemented reform in a largely two-party system. The context was also different, where Guyana implemented constitutional change on the knife-edge between peace and civil war. Reform in Guyana and Sri Lanka has tended to be an elite-dominated process.

1. Parliamentary, Presidential, or Semi-Presidential?[1]

Starting with Linz's account of the *Perils of Presidentialism* in 1990, political theorists have extensively debated the political repercussions of a country's choice of system. A by-product of this debate is a detailed classification matrix for presidential, parliamentary, and various semi-presidential structures.[2] While some would include assembly dissolution procedures as a defining characteristic, parliamentary and

[1] This section is based on an extract from a co-authored article that will be published soon: Peter Reid and Gayanthi Ranatunga, 'Parliamentarism in Sri Lanka: Lessons from Bangladesh' (forthcoming) Indian Law Review.
[2] Juan J Linz, 'The Perils of Presidentialism' (1990) 1 Journal of Democracy 51; Juan J Linz and Arturo Valenzuela (eds), *The Failure of Presidential Democracy* (Johns Hopkins University Press 1994); José Antonio Cheibub, *Presidentialism, Parliamentarism, and Democracy* (Cambridge University Press 2006); Alfred Stepan and Cindy Skach, 'Constitutional Frameworks and Democratic Consolidation: Parliamentarianism versus Presidentialism' (1993) 46 World Politics 1; Matthew Soberg Shugart and John M Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (Cambridge University Press 1992); Maurice Duverger, 'A New Political System Model: Semi-Presidential Government' (1997) 31 European Journal of Political Research 125; Robert Elgie, 'Presidentialism, Parliamentarism and Semi-Presidentialism: Bringing Parties Back In' (2011) 46 Government and Opposition 392.

presidential systems are generally distinguished on the sole ground of whether the head of the executive is dependent upon the legislature in both origin and survival. This is the definition that will be used, however it will be shown that even this simple and broadly accepted categorisation inadequately describes Guyana in its path of constitutional development.[3]

Semi-presidentialism was first discussed by Duverger, who emphasised the sharing of executive responsibility between the president and the legislature.[4] However, the most used definition is that proposed by Elgie, who wanted a classification easily utilised with any given codified constitution rather than Duverger's more vague description. In this definition, a system is semi-presidential merely if "there is a directly elected president and a prime minister and cabinet that can be dismissed by the legislature".[5] Although some would argue that semi-presidentialism is a sub-category of parliamentary or presidential systems in most situations,[6] the debate is usually now addressed through the trichotomy lens.[7]

Semi-presidential systems can further be defined as premier-presidential or president-parliamentary, depending on the balance of legislative/presidential cabinet control.[8] A further distinction is those systems that are effectively parliamentary, with a directly elected but purely ceremonial president. The terms 'premier-presidential' and 'president-parliamentary' are defined by Shugart and Carey in *Presidents and Assemblies.*[9] Ironically, the authors seem to have envisaged these categories as alternatives to 'semi-presidential', however the literature has adopted them as sub-categories of that classification. Premier-presidential and president-parliamentary systems are distinguished by presidential dismissal powers over cabinet members. Premier-presidential systems feature a president who is elected by a direct popular vote, who 'possesses considerable powers', and in addition a prime minister and

[3] José Antonio Cheibub, Zachary Elkins and Tom Ginsburg, 'Beyond Presidentialism and Parliamentarism' (2014) 44 British Journal of Political Science 515, 518–519.
[4] Duverger (n 2).
[5] Elgie (n 2). 396.
[6] Arend Lijphart, 'Trichotomy or Dichotomy?' (1997) 31 European Journal of Political Research 125.
[7] Cindy Skach, 'The "Newest" Separation of Powers: Semipresidentialism' (2007) 5 International Journal of Constitutional Law 93. For an interesting discussion of how these systems might be re-categorised, see Alan Siaroff, 'Comparative Presidencies: The Inadequacy of the Presidential, Semi-Presidential and Parliamentary Distinction' (2003) 42 European Journal of Political Research 287.
[8] Shugart and Carey (n 2).
[9] ibid.

cabinet with executive responsibilities that depend on the confidence of the assembly.[10] A president-parliamentary system is characterised by:

1. the popular election of the president;

2. the president appoints and dismisses cabinet ministers;

3. cabinet ministers are subject to parliamentary confidence;

4. the president has the power to dissolve parliament or legislative powers, or both.[11]

Clearly, these definitions are also ideal types. Shugart and Cary acknowledge that, along with pure presidentialism and parliamentarism, they still do not represent a complete typology of every system in practice. The importance of this will become clear as the constitutions of Sri Lanka and Guyana are analysed. These countries have not always fitted neatly into one of the five categories presented here, however this framework is still an invaluable starting point for discussing each country's constitutional change.

2. Identifying the Westminster Model

This section identifies the constitutional attributes of the Westminster model. These WMCFs are (1) strong-form dissolution and prorogation procedures; (2) individual and collective ministerial responsibility; (3) independent public services; (4) a recognised leader of the opposition; (5) ministers necessarily being members of the legislature; (6) a Westminster model speaker; and (7) Westminster model public finance procedures. These are attributes that were frequently displayed by the independence constitutions of former British colonies, particularly from the 1960s onwards. This is not intended to be a complete account of what the 'Westminster model' may mean to different scholars. The term has been used to capture a range of phenomenon and also overused where another phrase would be more fitting. Instead, it is an account that captures the most important doctrinal constitutional features normally exhibited by nations newly independent from Britain around the mid-twentieth century. It is a useful

[10] ibid 23.
[11] ibid 24. This is a quotation.

account for tracking constitutional change and it is authentic to the way in which the Westminster model was understood during this era.

2.1 Is there still a 'Westminster Model'?

In light of recent work by Russell and Serban, a prerequisite to defining the Westminster model is to identify the things that it is not. As opposed to the attributes ascribed to the model by Ardent Lijphart, which Russell and Serban demonstrate have had a profound effect on the literature*,* for comparative constitutional lawyers, and for the purposes of this thesis, the Westminster model is best conceived as a specific set of constitutional attributes found in British post-colonial parliamentary democracies. This has less to do with structures such as election systems and (de)centralised government (which were chopped and changed depending on context) and much more to do with the relationship between cabinet and parliament and the role of certain officials. The Westminster model is a style of operating parliamentary government that cuts across many differently conceived models of parliamentarism (such as unitary/federal).

The main constitutional attributes that states on the road to independence from Britain saw themselves as sharing with each other, and the attributes that scholars originally identified as forming the Westminster model, were not those later identified by Ardent Lijphart in *Patterns of Democracy.* Lijphart emphasises those attributes that may make Westminster-derived systems majoritarian forms of democracy. He lists ten elements to this narrative, which he devises through observations of Westminster model democracies in practice. While political theorists may debate the value or accuracy of these observations, they are only loosely linked to the Westminster model as envisaged during the decolonisation process.[12] Moreover, many of Lijphart's attributes directly conflict with the original conceptions of the Westminster model from the decolonisation era. While Lijphart associates the unitary state, the lack of judicial review, and a flexible constitution with the model, Harding observes that it has in fact accommodated federalism, has often gave the judiciary a much more significant role than in the UK, and tends to include a codified constitution.[13] De Smith describes the

[12] Arend Lijphart, *Patterns of Democracy* (2nd edn, Yale University Press 2012) ch 2.
[13] Andrew Harding, 'The "Westminster Model" Constitution Overseas: Transplantation, Adaptation and Development in Commonwealth States' (2004) 4 Oxford University Commonwealth Law Journal 143.

different extents to which constitutional conventions were encoded and perhaps, therefore, different degrees of flexibility in their application.[14] There was certainly debate over the value and appropriateness of a justiciable bill of rights in independence constitutions,[15] but antiquated arguments that they were repugnant to Westminster-style government quickly lost traction in the post-war era. Parkinson notes that, by 1962

> there was a complete shift in British attitudes to, and practices for, the inclusion of bills of rights for new nations at independence and in that year the Colonial Office had developed a policy mandating bills of rights for its overseas territories moving towards independence, subject only to express local opposition.[16]

Madden emphasises these attributes rather than the attributes of the colonial power itself, and found independence constitutions significantly different to the system operated in the UK.[17] Indeed, Lijphart does not mention Harding, de Smith, or Jennings in his analysis of the Westminster model and it is far from clear that he saw his work as an extension of theirs. His description of the 'Westminster model' is intended simply as an example of a structure of government that forms just one part of an alternative conceptualisation of democracies. It ought not to be conflated with earlier theories, which have created two distinct bodies of research. Russell and Serban's work remains valuable, however, in that it demonstrates overlap and confusion in the literature.[18] It is perhaps no longer possible to simply refer to the Westminster model as a term of art, and effort is required by authors to explain exactly what political, historical, sociological, or constitutional attributes they are analysing. This thesis focuses on the original conception of the Westminster model, as depicted by a distinct body of both traditional and more modern works.

---

[14] Stanley A de Smith, 'Westminster's Export Models: The Legal Framework of Responsible Government' (1961) 1 Journal of Commonwealth Political Studies 2.

[15] Ivor Jennings, *Approaches to Self-Government* (Cambridge University Press 1956) 110.

[16] Charles OH Parkinson, 'British Constitutional Thought and the Emergence of Bills of Rights in Britain's Overseas Territories in Asia at Decolonisation' in H Kumarasingham (ed), *Constitution-making in Asia: Decolonisation and State-Building in the Aftermath of the British Empire* (Routledge 2016) 36.

[17] AF Madden, '"Not for Export": The Westminster Model of Government and British Colonial Practice' (1979) 8 Journal of Imperial and Commonwealth History 21.

[18] Meg Russell and Ruxandra Serban, 'The Muddle of the "Westminster Model": A Concept Stretched Beyond Repair' [2020] Government and Opposition 1.

2.2 Seven WMCFs

Working from Bulmer's description of the Westminster model, we can identify those attributes that worked their way into independence constitutions. Bulmer notes that, starting with Jamaica in 1962, independence constitutions often provided for an official leader of the opposition.[19] Indeed, this is just one Westminster-style official that was contained in such documents. All legislatures need presiding officers, however the Speaker of the House of Commons is distinct from presiding officers in other constitutional traditions both in the officeholder's powers and expected conduct. This role was incorporated into the Westminster export model.[20] Bodies for independent public service appointments were created to foster the essence of British practice.[21] Westminster conventions surrounding individual and collective ministerial responsibility were also encoded to a greater or lesser degree in most independence constitutions.[22] As Dale writes,

> Cabinet is the principle executive instrument of policy, with general direction and control of government. It is collectively responsible to Parliament for advice given to the Governor General by or under the general authority of the Cabinet, and for things done by or under the authority of a Minister.[23]

Additionally, and a feature which is often overlooked by legal scholars but is appreciated by economic analysts, the Westminster model's public finance processes are unusual. These processes are also partially codified in most independence constitutions.[24] In addition, ministers in Westminster model constitutions are drawn exclusively from the legislature, or else become members of the legislature when they are appointed. This was not widely discussed at the point of decolonisation, perhaps because it was taken for granted in a parliamentary system or else read into other conventions. Nonetheless, we will see how, as Sri Lanka and Guyana moved towards

---

[19] W Elliot Bulmer, *Westminster and the World: Commonwealth and Comparative Insights for Constitutional Reform* (Bristol University Press 2020) 85.

[20] Matthew Laban, 'More Westminster than Westminster? The Office of Speaker across the Commonwealth' (2014) 20 The Journal of Legislative Studies 143.

[21] de Smith (n 14) 3.

[22] Margaret de Merieux, 'The Codification of Constitutional Conventions in the Commonwealth Caribbean Constitutions' (1982) 31 The International and Comparative Law Quarterly 263.

[23] William Dale, *The Modern Commonwealth* (Butterworth and Co Ltd 1983) 141.

[24] Katherine G Willoughby, *Public Budgeting in Context: Structure, Law, Reform and Results* (John Wiley and Sons 2014) 33; Ann Mumford, 'The Fiscal State and Budget Institutions' in Ann Mumford, *Fiscal Sociology at the Centenary* (Springer 2019).

more presidential systems, these provisions remained important. The final feature of the model, contained in codified constitutions, that will be analysed in this thesis will be the relationship between the parliament and the head of state, as characterised by strong-form dissolution and prorogation procedures.[25] For many of these constitutional features, they were first discussed in the context of codified law as a way of describing the Westminster model. This is not the case for the Westminster model speaker and budget procedures, however. These require further elaboration, which is given later in this chapter.

2.3 Westminster *Models*?

Russel and Serban's intervention against the overuse, or insufficiently specified use, of the term 'Westminster model' is an important and valuable contribution. This thesis suggests that a large part of the conflict in the literature arises from distinct though related academic streams using the same term. Lijphart offered an original conception of the model, rather different to previous formulations, and this has had a massive impact on the literature. However, Russell and Serban's research suggests that the 'muddle' goes deeper even than this. Earlier conceptions of the Westminster model have become mixed up with Lijphart's majoritarian description, works focusing on parliamentary supremacy seem to have conflated the British system with the Westminster model, and the term may overlook important changes since independence.

This thesis therefore offers a specific set of readily identifiable constitutional features that were frequently found in countries associated with the Westminster model. Those features that also have a more cultural component specific to the Westminster model, such as the impartiality and independence of the speaker, nonetheless also have a doctrinal component and the cultural component can easily be studied through secondary sources. Beyond this, the next two chapters show how more political or sociological traditions of adversarialism are an important part of these WMCFs as they are applied in practice. While it would perhaps be going too far to say that a recognised opposition, for example, must *inevitably* lead to an adversarial political culture, it does

[25] Dale (n 23) 142; Petra Schleiter and Thomas G Fleming, 'Parliamentary Prorogation in Comparative Context' (2020) 91 The Political Quarterly 641; Anne Twomey, *The Veiled Sceptre: Reserve Powers of Heads of State in Westminster Systems* (Cambridge University Press 2018) 609–13.

show that more contextual aspects of WMCFs also exist. This chapter simply aims to present a version of the Westminster model that comparative constitutional lawyers will be comfortable handling. The next two chapters discuss how WMCFs have been applied in practice in Sri Lanka and Guyana, and how this practice has been influenced by the executive presidencies.

This is not so much an account of *the* Westminster model as an account of *a* Westminster model. These features rest on a secure academic footing, especially academic work contemporaneous with the countries' independence constitutions. However, there are also other ways of exploring these constitutions. British imperial government permeated political and constitutional life in many places, therefore complete attributes of any unified 'model' would be spread across multiple mediums – from codified constitutions to standing orders to unwritten norms and values. In the interests of time, feasibility, and maintaining a mainly comparative law approach (rather than politics or sociology), this thesis choses to focus on a discrete set of constitutional features.[26] These features are not the be-all and end-all of the 'Westminster model', but rather one approach to exploring that complex, muddled, but still useful phenomenon.

3. Tracking Constitutional Change

Both Sri Lanka and Guyana display a complex, non-linear move towards presidentialism that maintains many WMCFs from the original constitutions. In some areas, WMCFs have even been enhanced subsequent to the executive presidency. Guyana moved quite rapidly away from its original institutions (incorporating an executive president less than fifteen years after independence), but currently operates the system most comparable to the original independence document. Sri Lanka did not incorporate an executive president into its constitution until thirty years after independence, however the president remains separate from the legislature for

[26] H Kumarasingham (ed), *Constitution Making in Asia: Decolonisation and State-Building in the Aftermath of the British Empire* (Routledge 2016); H Kumarasingham (ed), *Viceregalism: The Crown as Head of State in Political Crises in the Postwar Commonwealth* (Palgrave Macmillan 2020); Haig Patapan, John Wanna and Patrick Weller, *Westminster Legacies: Democracy and Responsible Government in Asia and the Pacific* (Illustrated edition, UNSW Press 2005); RAW Rhodes, John Wanna and Patrick Moray Weller, *Comparing Westminster* (Oxford University Press 2009).

survival, unlike in Guyana. This section will discuss each of the WMCFs identified above, as well as the overarching incorporation of an executive president.

3.1 Incorporating the Executive Presidents

Neither of the two countries made a single and permanent change to presidentialism or a sub-type of semi-presidentialism. On the contrary, Guyana and Sri Lanka first toyed with republican parliamentarism. Under Sri Lanka's first republican constitution (1972), the president was appointed by the prime minister and could be removed by a variety of mechanisms, including the prime minister determining that he was incapable by reason of mental or physical infirmity or parliament passing a vote of no-confidence, tabled by the prime minister.[27] While the prime minister could arrange for the president's removal quite easily, parliament would struggle to remove him without the prime minister's consent. If a motion of no-confidence in the president was tabled by an MP other than the prime minister, then it required the support of two-thirds of MPs to pass.[28] Dale's principle that the governor general is to act on the advice of cabinet except when required to act otherwise was replaced with a similar duty for the president. The president was required to act on the advice of the *prime minister* unless otherwise stated, however the scope of the president's discretionary powers were extremely limited.[29] Combined with the president's political dependence on the prime minster, this significantly limited his autonomy. A similar construction was operated in Guyana from 1970 until 1980 under the amended independence constitution.

After this phase, Sri Lanka and Guyana have further transitioned between different types of executive presidentialism. Instead of representing a linear path towards ever more separated powers, both countries have hopped between more or less legislative control over the executive. Sri Lanka became a president-parliamentary republic in 1978, premier-presidential in 2015, and president-parliamentary again in 2020. Interestingly, the foundations of these systems were the (modified) Westminster provisions described by Dale. The power of the legislator to dismiss cabinet in semi-presidentialism works as a practical restraint on the president's choice of ministers. However, in Sri Lanka codified Westminster conventions also constrain the president's

[27] Constitution of Sri Lanka 1972, Art. 26(2).
[28] ibid Arts. 25 and 26(2)(e).
[29] ibid Art. 27(1).

choice of prime minister and accentuate the subtleties of cabinet dismissal. The convention that the governor general appoints as prime minister the MP who, in his opinion, is most likely to command the support of a majority of members was not explicitly stated in Sri Lanka's independence constitution. In minimalist style that also emphasised the importance of cabinet as a whole, the Soulbury Constitution read:

> Of the Ministers, one who shall be the head of the Cabinet, shall be styled the "Prime Minister"; of the other Ministers one shall be styled the "Minister of Justice" and another shall be styled the "Minister of Finance".[30]

It was not until the republican constitution of 1972 that this very Westminster convention made an appearance.[31] Even under the 1978 semi-presidential constitution, in all its amended forms, this provision survived as a constitutionalised restraint on the executive president's choice of prime minister. The various ways in which this provision, with subjective and objective components, was interpreted during the 2018 constitutional crisis is discussed in Chapter IV.

As well as this, other Westminster conventions have also served to texture Sri Lanka's semi-presidential arrangements. Dale notes the effect of a no-confidence motion in a Westminster system, whereby cabinet is dissolved, and under the 1978 Constitution this is still a mechanism for dissolving cabinet. Of course, while the wording of these provisions was in the Westminster style, identical structures are found in other semi-presidential traditions. However, in the Westminster tradition a rejection of the appropriation bill and or a statement of government policy are also normally equated with a vote of no-confidence. These conventions were incorporated in-tact into the 1978 Constitution to provide a nuanced version of Elgie's legislative/cabinet relationship.[32]

Sri Lanka's movement between premier-presidentialism and president-parliamentarism is found in the Nineteenth and Twentieth Amendments. This represents a change from strong presidential control to stronger legislative control and then back again. The move towards a more parliamentary arrangement, where the prime minister appointed cabinet and was answerable to parliament alone, also

[30] Constitution of Ceylon 1947, s. 46(2).
[31] Constitution of Sri Lanka 1972, Art. 92(2).
[32] Constitution of Sri Lanka 1978, Art. 49(2).

coincided with the enhancement of other WMCF institutions such as independent public service appointments. It further coincided with the limitation of WMCFs that jarred with a politicised head of state – dissolution and prorogation powers. Under the Twenty-First Amendment, there has been a very limited enhancement of the prime minister's role in ministerial appointments. The president is now required to make appointments in consultation with the prime minister, not merely "where he considers such consultation to be necessary", as it was under the Twentieth Amendment.[33]

In Guyana, the move to a republic was also followed by the incorporation of the executive president, whose originally broad powers have been limited in recent years. The 1980 Constitution established what is best described as a parliamentary republic with an executive president. However, this constitution exhibits unique characteristics that make it impossible to fit neatly into any single grouping. Under the unamended constitution, the president had a secure term in office and no-confidence procedures were therefore abolished. However, there were no discrete, direct presidential elections. Therefore, the constitution did not meet the Elgie test, neither did it meet the standards originally envisaged by Shugart and Carey, which required both set terms and direct elections.

The system is therefore most comparable to those of South Africa and Botswana.[34] However, even this classification is prescribed somewhat by default. Not only were there secure terms (unlike South Africa and Botswana), but the election process was not a simple general election. As described in the previous chapter, the president was (and still is) the list candidate, specified by the party in advance, whose party wins a plurality of seats at the elections. A majority in the legislature is not required and there is no post-election, intra-party vote. Furthermore, in these combined presidential-National Assembly elections, electors vote for a party list, which is presented in alphabetical order. Seats are allocated proportionately, and the party's presidential candidate then select their preferred candidates for MPs from the original alphabetical list.[35] Only the presidential candidate is unequivocally identified before the election

[33] Twenty-First Amendment to the Constitution, s. 3; Twentieth Amendment to the Constitution, s. 7.
[34] Constitution of South Africa 1996, Arts. 86 and 102(2); Constitution of Botswana 1966, Arts. 32 and 92.
[35] This was changed somewhat in the 2000s reforms, which introduced a number of constituency seats. For more details, see the previous chapter.

results are announced. Therefore, electors vote for a specific party, a specific president, and a partially unknown caucus of MPs.

Obviously, this represented a significant break from parliamentarism at the time, but through constitutional amendments Guyana has returned somewhat to its parliamentary roots. The Constitution (Amendment) (No.4) Act 2000 requires the entire cabinet, including the president, to resign after losing a no-confidence vote by a simple majority of all elected members. The government then remains in office but has three months to hold fresh elections.[36] As in Sri Lanka, this move coincided with a revival of other WMCFs (discussed below).

3.2 Strong-form Dissolution and Prorogation Powers

Perhaps the most surprising feature of these constitutions is how little the dissolution and prorogation procedures were changed, even when the head of state became an elected and partisan figure. Under the independence constitutions, these powers were characteristically broad. The constitutions allowed the governor general to prorogue parliament at any time and, with few or no legal restraints, dissolve parliament at any time. In Sri Lanka, the governor general exercised these powers independently.[37] In Guyana, for both prorogation and dissolution the governor general was to act on the prime minister's advice.[38] There were time limits for the period between a dissolution and general election as well as between prorogation and the next session. For prorogation, the time limit was four months in both Sri Lanka and Guyana.

After becoming republics, and then after incorporating executive presidents, these powers remained broad. In Guyana, under the 1980 Constitution, the president may at any time prorogue or dissolve parliament, and the maximum length of prorogation has been extended to six months.[39] In Sri Lanka, the maximum length of prorogation remained four months in the 1972 document. The president was required to act on the prime minister's advice when exercising these powers and could dissolve or prorogue parliament at any time.[40] The 1978 Constitution limited these powers somewhat, including halving the maximum length of prorogation, however the president's powers

---

[36] Constitution (Amendment) (No.4) Act 2000, s. 5.
[37] Constitution of Ceylon 1947, s. 15(1).
[38] Constitution of Guyana 1966, Art. 82.
[39] Constitution of Guyana 1980, Arts. 70(1) and (2).
[40] Constitution of Sri Lanka 1972, Arts. 21(b) and 27(1).

still exceed those of most systems.[41] The back-and-forth of the Nineteenth and Twentieth Amendments included these powers. The Nineteenth Amendment limited the president's power to dissolve parliament to six months before the natural end of its term and any earlier dissolution needed the support of two-thirds of all members.[42] The Twentieth Amendment shortened this period to two-and-a-half years from the date appointed for Parliament's first meeting and could be overcome with the consent of a simple majority motion.[43]

3.3 Collective and Individual Ministerial Responsibility

Dale's version of collective responsibility consists of two components: there is cabinet collective responsibility, which is the duty of all ministers to support cabinet decisions publicly even if they disagree with them in private; there is also the powers of cabinet, which consists of general direction and control of the government.[44] In Guyana, Article 35 of the independence constitution simply stated that cabinet was responsible for the "general direction and control of the government of Guyana and shall be collectively responsible therefor to parliament". By 1980, this had been adapted to give the president superiority while maintaining cabinet collective responsibility. Article 106(2) states that

> The Cabinet shall aid and advise the President in the general direction and control of the Government of Guyana and shall be collectively responsible therefor to Parliament.

Therefore, the head of government moved from being a component and leader of the cabinet to being the source of much of its power. This was balanced to a certain extent by Article 50, which made both the president and cabinet two of the five "Supreme Organs of Democratic Power".

Significantly, Guyana's Constitution (Amendment) (No.4) Act 2000 enhanced legislative scrutiny of the government. It seems that the incorporation of an executive president had left a hole where cabinet (despite collective responsibility) was no longer wholly answerable to parliament. Section 6 relates to the situation where the president

[41] Constitution of Sri Lanka 1978, Art. 70(3).
[42] Nineteenth Amendment to the Constitution, s. 17.
[43] Twentieth Amendment to the Constitution, s. 12.
[44] Dale (n 23) 141.

assigns a minister responsibility for any government business under Article 107 of the constitution, but *remains responsible for any power not so charged*. For this retained power, it was added that "the President shall appoint a Minister or Parliamentary Secretary to be answerable to the National Assembly therefor on his or her behalf". Clearly, the principle of collective responsibility proved durable. However, the principle that cabinet should also be answerable to parliament for scrutiny of particular activities was weakened by the incorporation of the executive president and needed enhancement.

Article 46(1) of Sri Lanka's Soulbury Constitution stipulates:

> There shall be a Cabinet of Ministers who shall be appointed by the Governor-General and who shall be charged with the general direction and control of the government of the Island and who shall be collectively responsible to Parliament.

The 1972 Constitution maintained the substance of this provision and further added that cabinet would be answerable to parliament "on all matters for which they are responsible".[45] Under the 1978 Constitution, the president's responsibility to the legislature was weakened, but the two dimensions to Dale's convention (cabinet control and collective responsibility) were preserved. The president is "responsible" but not "answerable" to parliament.[46] Cabinet has direction and control of the government and is both responsible and answerable to parliament. The president is a member of, and the head of, cabinet.[47] This has been preserved even after amendments to the constitution.[48] Therefore, the overall cabinet structure (supreme as a collective body) is closer to the Westminster model than that of Guyana (where its duty is to assist the president). The next chapter discusses how this has made little difference in practice, however. The overall principle of collective cabinet responsibility remains unchanged and individual ministers are still responsible and answerable to parliament.

[45] Constitution of Sri Lanka 1972, Art. 92(1).
[46] Constitution of Sri Lanka 1978, Art. 42.
[47] ibid Art. 43.
[48] ibid Art. 42.

3.4 Independent Public Services

The rejection and later revival of parliamentary control over the executive coincided with the weakening and later revival of Westminster model independent public services. Appointment, promotion, dismissal, and discipline of public servants was normally handled by a 'public service commission' (PSC). The independence of PSCs can be partly be gauged by their own appointment and dismissal processes. Generally speaking, a bi-partisan or depoliticised appointment and removal process is more likely to deliver an impartial body than one dominated by a single party or politician. Similarly, a removal process that involves one or more independent tribunals is more likely to deliver an impartial body than one where the members are worried about politicised dismissals. Linked to this is specified and limited grounds for dismissal. Independence can also be enhanced by requiring that members do not hold other offices before, during or after their appointment that may create a conflict of interest. Naturally, the powers of these services – whether they are advisory or binding – is also critical for the overall system.

Sri Lanka's PSC suggests that the dynamic between constitutional provisions and the wider political context is also important. The independence constitution did not have tight restraints on the PSC's impartiality and, indeed, required very little procedure in appointments and dismissal. The governor general appointed the PSC, which consisted of three members and was responsible for the appointment, transfer, dismissal and disciplinary control of public officers.[49] The governor general could remove members for "cause assigned" and there was no safeguard against members holding public office after their tenure ended.[50] Nonetheless, despite an almost complete lack of safeguards, the system worked. Conventions codified in other Westminster-style constitutions were observed in practice and the Ceylon Civil Service was renowned for its impartiality and professionalism.[51]

On the other hand, the 1972 Constitution more clearly codified a structure that also lacked safeguards and this was followed by a deterioration in the impartiality of the

---

[49] Constitution of Ceylon 1947, s. 58(1).
[50] ibid, s. 58(5).
[51] C Narayanasuwami, 'Public Administration and the Nineteenth Amendment: Prospects for the Future' in Asanga Welikala (ed) *The Nineteenth Amendment to the Constitution: Content and Context* (Centre for Policy Alternatives 2016) 202.

public service. Under this constitution, cabinet effectively monopolised all public appointments, and the PSC was replaced with a State Service Advisory Board (SSAB). As the name suggests, this body was only trusted to advise cabinet in its appointment of public officials. Given the number of public appointments, cabinet tended to appoint public officials through the relevant minister, and the power could be further delegated down to other officials. Removal and disciplinary powers were vested partly in the State Service Disciplinary Board (SSDB). Disciplinary proceedings could only be initiated after a recommendation by the SSDB, however these proceedings remained in the hands of cabinet and could be delegated in a manner similar to appointment processes.[52]

Sri Lanka's 1978 Constitution did not originally do much to enhance the public service's independence. Instead, as described in the next chapter, it was part of an ongoing process of executive centralisation. The president had a specific power and role to appoint the public officers specified by the constitution or other law to be appointed by him.[53] Cabinet had a general power over the appointment, transfer, dismissal and disciplinary control of all public officers.[54] Cabinet could delegate these powers to the PSC as it saw fit, although not the control over Heads of Department.[55] The delegation or of transfer power could be superseded by a delegation to an individual minister of such power.[56] The PSC consisted of no less than five persons appointed by the president.[57] Members of the PSC were granted a five-year term, however could be removed by the president for "cause assigned".[58]

From the Seventeenth Amendment onwards, mirroring the to-and-fro between presidential and legislative control of cabinet, Sri Lanka has also seen a to-and-fro between a more or less independent public service. The Seventeenth Amendment introduced the Constitutional Council. This is the apex appointment body in Sri Lanka, which under the Seventeenth, Nineteenth, and Twenty-First Amendments is responsible for nominating members to independent commissions and approving certain individual appointments by the president.

---

[52] Constitution of Sri Lanka 1972, Arts. 117-119.
[53] Constitution of Sri Lanka 1978 (as originally passed), Art. 54.
[54] ibid Art. 55(1).
[55] ibid Arts. 55(2) and (3).
[56] ibid Art. 55(3).
[57] ibid Art. 56(1).
[58] ibid Art. 56(4).

Under the Seventeenth, Nineteenth, and Twenty-First Amendments, the council consists of the prime minister, the speaker, the leader of the opposition, and a mixture of government, presidential, opposition, and minority nominees (including eminent persons who are not MPs). Under the Eighteenth and Twentieth Amendments, it became the Parliamentary Council consisting of the prime minister, leader of the opposition, the speaker, and just one nominee from each of the leader of the opposition and prime minister, provided they were MPs. The Parliamentary Council was a purely advisory body in all appointments. This, of course, had a knock-on effect for the independence of all other depoliticization bodies in the constitution.[59]

In Guyana under Article 95(2) of the 1966 Constitution, the PSC originally consisted of five to six members: three appointed by the governor general acting on the advice of the prime minister after consulting with the leader of the opposition; two appointed by the governor general acting on the advice of the prime minister after the prime minister had "consulted such bodies as appear to him to represent public officers or classes of public officers"; and optionally one more appointed by the governor general acting in accordance with the prime minister's advice if the prime minister so wished. Under Article 95(3), the chairman and deputy chairman were appointed by the governor general on the advice of the prime minister after consulting with the leader of the opposition. Article 118 applied and the prescribed authority was the chairman for other members and the prime minister for the chairman.[60]

Under the 1980 Constitution, the president's control was enhanced. While there is still a PSC, the president also originally had the power to bypass this commission and

[59] Constitution of Sri Lanka 1978, Art. 41A.

[60] Art. 118 was a general clause that governed the removal from office of certain officials. Where a provisions in the constitution was governed by Art. 118, it would state who its own 'prescribed authority' was for the purposes of Art. 118(4) (i.e., who was in charge of making the original recommendation to the governor general that the official in question ought to be investigated) and Art. 118(6) (i.e., who was in charge of advising the governor general whether the official under investigation should be suspended).

Overall, Art. 118 ultimately put a lot of faith in the governor general. No matter who the 'prescribed authority' was, the official was entitled to be investigated by a tribunal of qualified Commonwealth legal professionals appointed by the governor general on the advice of the prime minister after consultation with the judicial service commission (Art. 118(4)(a)). The governor general made the final decision on removal after receiving a report and advice from the tribunal (Art. 118(4)(b)). Art. 118(3) compelled the governor general to remove the official where the tribunal recommended this. Art. 118(2) seemed to leave open the opportunity for the governor general to remove the official anyway even if this was not recommended, however the only reasons for removal could be "for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause whatsoever) or for misbehaviour".

remove any public officer "in the public interest".[61] This power has since been removed. The PSC is established under Article 135. Under Article 200, it originally consisted of five to six members: three appointed by the president after consultation with the minority leader, two appointed by the president after consultation with "such bodies as appear to him to represent public officers or classes of public officers" and the option of one more from the president acting on his own deliberate judgement. The chairman and deputy chairman were also appointed by the president after consultation with the minority leader and the public officer bodies mentioned above. Article 225 applied for removal, and the prime minister was the prescribed authority for (4) and (6), however the tribunal chairman could sometimes be the prescribed authority for (6) instead.[62]

The PSC's independence was intended to be enhanced slightly by the Constitution (Amendment) (No.3) Act 2001. "Consultation with the Minority Leader" was replaced with "meaningful consultation with the Leader of the Opposition" for the appointed members under Article 200(1)(a). Also, the members appointed under (b) were put in the National Assembly's hands:

> two members appointed by the President upon nomination by the National Assembly after it has consulted such bodies as appear to it to represent public officers or classes of public officers.

Under Article 200(2), the chairman and deputy chairman, who were previously decided by the president, are "elected by and from the members of the Commission using such consensual mechanism as the Commission deems fit". Also, the number of members went from between five and six to a mandatory six (i.e. the president retained a single nominee without needing to consult anyone).

On commissions more broadly under the original 1980 Constitution, it is important to note Article 226(2), which allowed the president to set the procedures of any commission. This obviously gave scope for indirect control of outcomes. This was

---

[61] Constitution of Guyana 1980 (as originally passed), Art. 232(7).

[62] Art. 225 is the 1980 Constitution's version of Art. 118 under the 1966 Constitution. Originally, the provisions largely remained unaltered however, of course, the governor general's role (including ultimate discretion in removal) passed to the executive president. Art. 225 was changed in the 2000-3 reforms so that, in appointing the tribunal of inquiry, the president now has to act on the advice of the judicial service commission and not simply after consultation (Constitution of Guyana 1980, Art. 225(4)(a)).

similar to the 1966 Constitution, where commissions could only create rules with the consent of the prime minister or a minister designated by the prime minister.[63] This has since been amended to read

> Subject to affirmative resolution of the National Assembly, a commission shall make rules, relating to the procedure of the commission; and until such rules are made, the commission shall regulate its own procedure.[64]

As part of the constitutional reform process, a new set of PSC rules were agreed in 1999.[65]

3.5 The Leader of the Opposition

The leader of the opposition is a significant constitutional actor in the Westminster model. The Westminster model has tended to cultivate impartial institutions from a bi-partisan seedling. Most prolifically in Caribbean constitutions, the leader of the opposition works with the prime minister and the head of state to appoint members to these institutions. Combined with the factors discussed above, including secure tenure and no conflicts of interest, these bodies are then able to function impartially. These bodies have come to be associated strongly with the Westminster model, particularly the PSCs described in the previous section.

Guyana shows the most consistent and prolific codification of the leader of the opposition's role. As already discussed, the leader of the opposition was a feature of the independence constitution and the change in dynamics after the incorporation of the executive president led to further reform. It is particularly significant that the appointment of the Chief Justice and Chancellor now require the leader of the opposition's approval (although this has not been a success in practice, as discussed in the next chapter). However, some details show that the 1980 Constitution was also a deliberate attempt to exploit this office for the government's gain. The officeholder was re-styled as the 'minority leader' and the president appointed the MP "who, in his judgment, is best able to command the support of a majority of those elected members who do not support the Government". If the president judged that the minority leader was no longer the member best able to command such support, he could revoke the

[63] Constitution of Guyana 1966, Art. 119(2).
[64] Constitution of Guyana 1980, Art. 226(2).
[65] See 'Public Service Commission Rules', (R 15/01/1999).

appointment.[66] It requires little imagination to see how this power could be used to turn opposition MPs against each other. Along with the new title and change in advisory dynamics, it is clear that the then-president, Forbes Burnham, intended to weaken his opponents and their role under the constitution. Intra-opposition elections for the opposition leader were not introduced until 2000 and the previous title was also restored.[67]

Sri Lanka has also strengthened the leader of the opposition's role in recent years. From the Seventeenth Amendment onwards, Sri Lanka's leader of the opposition has been given a significant role in appointing depoliticised bodies (even when the bodies themselves have varied in strength). Broadly, the Seventeenth Amendment introduced the Constitutional Council that was the pinnacle depoliticised (or more accurately bi-partisan) body in charge of appointing and consenting to the appointment of key officials and members of other depoliticised commissions. The Eighteenth to Twenty-First Amendments varied the structure of this body as well as its powers. In each case, the leader of the opposition was an *ex officio* member and also had a varying role in appointing other members.

3.6 Ministers Must be Members of the Legislature

In both case studies, even after the executive president was introduced, the principle that ministers have to also be members of the legislature remained. In Sri Lanka, the 1947 Constitution provided that

> A Minister or Parliamentary Secretary who for any period of four consecutive months is not a member of either Chamber shall, at the expiration of that period, cease to be a Minister or Parliamentary Secretary, as the case may be.[68]

Furthermore, at least two ministers had to be drawn from the Senate, including the minister of justice.[69] This continued under the 1972 Constitution, with the exception of the provisions on the Senate (being a unicameral parliament).[70] Even after the move

[66] Constitution of Guyana 1980, Arts. 110 and 184.
[67] Constitution (Amendment) (No.3) Act 2000, s. 16.
[68] Constitution of Ceylon 1947, s. 49(2).
[69] ibid s. 48.
[70] Constitution of Sri Lanka 1972, Arts. 94(2) and 96(c).

to semi-presidentialism in 1978, Article 44(1)(b) still provides that the president must appoint the cabinet of ministers from among the members of parliament.

In Guyana, this WMCF was weakened somewhat under the 1980 Constitution, but then strengthened again through amendment. Under the 1966 parliamentary constitution, the ministers other than the prime minister were

> appointed by the Governor-General, acting in accordance with the advice of the Prime Minister, from among persons who are elected members of the Assembly or are qualified to be elected as such members.[71]

Therefore, ministers did not have to be elected to the legislature. However, non-elected minsters could not number more than four.[72] Nonetheless, non-elected ministers became non-voting members of parliament by virtue of their office.[73] Therefore, although cabinet members were not necessarily members of the legislature before their appointment, nonetheless they became MPs after their appointment. These ministers lost their seat if they ceased to be ministers.

Under the 1980 Constitution, and after the introduction of the executive president, Guyana kept a similar system, whereby non-elected cabinet members also became non-voting MPs.[74] The prime minister has to be an elected member.[75] Under the original 1980 Constitution, there was no limit on the number of non-elected cabinet ministers. Since 2000, the requirement from 1966, whereby they could not number more than four, was re-introduced.[76]

3.7 Speakers

This section describes *what* the constitutional design of a speaker looks like in the Westminster model and also *why* this is distinct from other systems. Apart from public finance procedures, the other WMCFs discussed in this thesis are well accounted for in the existing literature. However, the design of the speaker has received far less attention. This section distinguishes the Westminster model from two other systems, namely the francophone and US models. France, Mali, and Algeria are used to

---

[71] Constitution of Guyana 1966, Art. 34(4)
[72] ibid Art. 34(4)(a).
[73] ibid Art. 34(6).
[74] Constitution of Guyana 1980, Arts. 103(2) and 105.
[75] ibid Arts. 101(1).
[76] ibid Art. 103(3).

represent constitutions typical to those based on the 'francophone' model, and the US as another distinct archetype. These systems are selected because they are the ones (beyond the Commonwealth model) that Sri Lanka and Guyana would perhaps otherwise be closest to or compared with. This section provides an overview of the Westminster model template for speakers and distinguishes them from the francophone and US models.

3.7.1 Speakers in Westminster Model Constitutions

Westminster model constitutions tend to give the speaker ongoing accountability to the legislature. These constitutions, as in many other systems, tend to make the election of a speaker the first order of business when a new parliament sits after a general election. The speaker tends to be elected by a simple majority of votes from either among the house's own members, or else a non-member who would have been qualified for election to the house. Guyana's independence constitution allowed for the election of a non-member to the speakership. This tradition was continued in Guyana's 1980 Constitution. In Sri Lanka's Soulbury Constitution, the speaker had to be chosen from among the Representatives' own number.[77] This provision was reproduced verbatim for the 'National State Assembly', and then parliament, in the 1972 and 1978 constitutions.[78]

In both Sri Lanka and Guyana, the speaker could be removed from office by a simple majority of votes, and this has remained unchanged. Not only this, but Westminster conventions around the speakership continued to apply. For example, in Sri Lanka it is still understood that if a motion to overturn a ruling from the chair were to pass, then the speaker would feel compelled to resign. This is a peculiarly Westminster model convention.[79]

Speakers in the Westminster tradition are set apart from other presiding officers by the burden of neutrality and impartiality that comes with the office. Different types of system tend to fit along a spectrum, with a highly impartial speaker at one end and a politicised speaker at the other. Westminster speakers are an archetype for impartiality, while the Speaker of the House of Representatives in the United States is

[77] Constitution of Ceylon 1947, s. 17(1).
[78] Constitution of Sri Lanka 1972, Art. 32(1); Constitution of Sri Lanka 1978, Art. 64(1).
[79] Priyanee Wijesekera, *Essays on Parliament* (Friedrich Naumann Foundation 2009) 5.

an archetype for a politicised speaker. Historically, the Commons speaker's allegiance to parliament (complete and untainted by loyalty to the monarch) was not established until the Glorious Revolution. Even after that, the speaker became the "legitimate prize" of the party with a majority in the house.[80] It was not until the nineteenth century and Speaker Onslow, who was relatively neutral and upheld rigorous ethical standards, that the office began to be depoliticised.[81]

The Speaker of the House of Representatives, on the other hand, has always been more political in character. The US system developed to accommodate a politicised speaker, as discussed in the next subsection. No matter whether speakers are politicised or neutral, they normally have a role in defending the independence of their legislature or chamber. In the Westminster model, this has arguably morphed into a role in facilitating coordination between the legislature and executive while upholding certain boundaries and allowing for scrutiny, too.[82]

The Westminster model standards of neutrality and independence have codified recognition in some constitutions. For example, Guyana's 1966 Constitution provided that

> (1) Save as otherwise provided by this Constitution, all questions proposed for decision in the National Assembly shall be determined by a majority of the votes of the members present and voting.
>
> (2) Except as provided by the next following paragraph, the Speaker or other member presiding in the Assembly shall not vote unless on any question the votes are equally divided, in which case he shall have and exercise a casting vote.
>
> (3) A Speaker elected from among persons who are not members of the Assembly shall have neither an original nor a casting vote and if, upon any question before the Assembly when such a Speaker is presiding, the votes of the members are equally divided, the motion shall be lost.[83]

---

[80] Philip Laundy, *The Office of Speaker* (Cassell 1964) 252.
[81] ibid 261.
[82] Stephen Laws, 'The Contest to "Take Control" of Brexit' (Policy Exchange 2019) Research Note <https://policyexchange.org.uk/wp-content/uploads/2019/01/The-Contest-to-Take-Control-of-Brexit.pdf> accessed 4 May 2022.
[83] Constitution of Guyana 1966, Art. 77.

In Sri Lanka, the Soulbury Constitution stated that

> The President or Speaker or other person presiding shall not vote in the first instance but shall have and exercise a casting vote in the event of an equality of votes.[84]

This was limited to only the speaker under the 1972 Constitution, but returned to "the person presiding" under the 1978 Constitution.[85] This mechanism is "wholly characteristic of Commonwealth Parliaments".[86]

Westminster model speakers, furthermore, have only a limited role in the state. They are largely confined to intra-legislative matters. It is normally for the speaker to be the head of the parliamentary secretariat, and over the years the administrative role of the speaker has grown.[87] This includes managing the maintenance of parliamentary facilities, often a role in parliament's security, too, and delivering assistance to members in the form of a parliamentary library and research services.[88] The speaker may also have a significant ceremonial function and is likely to occupy a high rank in the state.[89] It is also common for Westminster model speakers (along with speakers in other systems) to feature somewhere in the line of succession if the office of president lies vacant. However, the speaker does not normally sit on or make appointments to fourth branch bodies. This contrasts with the Sri Lankan speaker's role in the Constitutional Council, described below.

3.7.2 Speakers in US and Francophone Constitutions

In his account of speakers around the world, Bergougnous writes that "the British model is a constant tradition in Commonwealth countries"[90] and also distinguishes speakers in other categories of constitutionalism: American continental, European continental, socialist, and 'developing countries'.[91] Bergougnous certainly agrees that

---

[84] Constitution of Ceylon 1947, s. 18.
[85] Constitution of Sri Lanka 1972, Art. 47; Constitution of Sri Lanka 1978, Art. 72(2).
[86] Shugart and Carey (n 2) 105.
[87] Laban, 'More Westminster than Westminster?' (n 20) 146–7.
[88] 'Comparative Research Paper on Parliamentary Administration' (Inter-Parliamentary Union 2020) <https://www.ipu.org/file/9714/download> accessed 21 April 2023.
[89] Faith Armitage, 'The Speaker, Parliamentary Ceremonies and Power' (2010) 16 Journal of Legislative Studies 325.
[90] Georges Bergougnous, *Presiding Officers of National Parliamentary Assemblies: A World Comparative Study* (Inter-Parliamentary Union 1997) 104.
[91] ibid 104–13.

the ‘Commonwealth’ model of speakership is distinct from any other.[92] However, his categorisation of other systems varies somewhat. Bergougnous draws attention to a particular ‘francophone’ style of speakership, but chooses to group many of these countries into the ‘developing countries’ header instead. Also, although he chooses to group Latin American and US speakerships under a single header, he observes that the lower (representative) houses in these systems have significant differences. As mentioned in the introduction to this subsection, for our purposes it is more useful to group francophone presiding officers together and examine the speaker of the US House of Representatives individually. This is partly because it is useful to distinguish WMCFs from these two other systems, that the case studies also share some characteristics with, and also because the francophone presiding officers genuinely have similar attributes that make them convenient for grouping into a single category.

In the US, the speakership of the House of Representatives is the prize reserved for the leader of the majority party. As such, it has always been a more politicised office than the Westminster or francophone models. Writing in 1928, Chiu noted that America’s Founding Fathers “wasted little time over the question of the Speakership”,[93] however in practice the office had developed a clear duality in its role, that was both “political and judicial” and clearly distinct from the British speaker.[94] Writing on the speaker twenty years earlier, Hinds more generally noted that, because such legislative houses had been operated in different colonies already,

> when the Constitution was framed the members of the convention spent very little time over the house of representatives.[95]

Hinds further notes that early speakers were far more politically partisan than their predecessors, and

> Jonathan Dayton, speaker from 1795 to 1798, conducted himself so violently in partisan debate on the floor that he was called to order by the temporary occupant of the chair.[96]

---

[92] ibid 104.
[93] Chang-Wei Chiu, *The Speaker of the House of Representatives Since 1896* (Columbia University Press, 1928) 20.
[94] ibid 19–20.
[95] Asher C Hinds, ‘The Speaker of the House of Representatives’ (1909) 3 The American Political Science Review 155, 156.
[96] ibid 157.

Although the US speaker is no longer such a partisan figure, indicators suggest their more political nature than francophone, or certainly Westminster, counterparts. Most notably, the speaker does not just keep their party membership, but also wears another hat (official or *de facto*) as leader of the majority party in the house. The speaker is not simply responsible for facilitating votes, debate, and scrutiny, but is actively responsible for ensuring that the majority party passes its legislation. This can be seen in the speaker's power to appoint nine out of the thirteen members of the committee on rules. This body ('the traffic cop of Congress') was formerly chaired by the speaker and determines the rules under which bills are presented to the House of Representatives. Furthermore, when the speaker of the Representatives and the president are from different parties, the speaker is often a political figurehead. Speaker Pelosi, for example, frequently clashed with President Bush over the Iraq War.[97]

Compared to francophone systems, the speaker of the Representatives is more approximate to Westminster model speakers in removal procedures and their role in the workings of state. US speakers may be removed by a simple majority vote, which is a privileged procedure. Only one member would be required to table such a motion, however this was briefly changed to more onerous initiation procedures in 2019.[98] That being said, given their political role, US speakers are also more willing to face down political criticism in office than Westminster model speakers, who would feel compelled to resign if even a substantial minority of the house lost faith in them.[99] Like Westminster model speakers, however, the Speaker of the House of Representatives does not have a substantial official role in appointing members of executive-branch or independent bodies. The speaker's powers of appointment and supervision are contained to intra-legislative branch matters, only.[100]

[97] 'Pelosi in Iraq to See How War Is Going' *Reuters* (26 January 2007) <https://www.reuters.com/article/uk-iraq-pelosi-idUKCOL65830320070126> accessed 17 April 2023.

[98] Kyle Stewart, 'How a Speaker of the House Can Be Ousted with a "Motion to Vacate"' (*NBC News*, 10 January 2023) <https://www.nbcnews.com/politics/congress/speaker-of-the-house-ousted-motion-to-vacate-rcna64902> accessed 17 April 2023.

[99] Wijesekera (n 79) 5.

[100] For a list of sources on the US speakership, see 'General Works on the Speakership' (*US House of Representatives: History, Art and Archives*) <https://history.house.gov/Records-and-Research/Speakers-Resources/Selected-Bibliography/> accessed 21 April 2023.

Francophone presiding officers tend to also have a significant political component to their role, although not quite to the same extent as US speakers. Not Mali, Algeria, nor France have provisions in their codified constitutions similar to those in Westminster model constitutions, whereby the speaker is only allowed a casting vote. That being said, a convention has developed in France whereby the President of the National Assembly will not normally take the floor in debates or exercise a vote.[101] Bergougnous draws attention to the slight politicisation of francophone speakers compared to their Westminster model counterparts

> in the French Parliament, however impartial they may be, the Presidents are still leading figures in their own parties… or the National Assembly in Mali, where the President's impartial attitude attenuates the influence of the large majority to which he belongs."[102]

Richard Ferrand was secretary general of the La République En Marche! group in the National Assembly until his election to the chair.[103] French speakers' ambiguous political role is encapsulated in the words of a former presiding officer of the French National Assembly, Edgar Faure, when he was asked if the speakership was a springboard or a dead end:

> My dear friend, one can quite easily make a dead end into a springboard.[104]

In removal procedures and extra-legislative functions, francophone presiding officers share attributes that make them distinctive from other systems. Speakers in Mali, France, and Algeria are elected for a fixed term that corresponds to the lifespan of the legislature. Unlike speakers in the US or Westminster model constitutions, therefore, they cannot be removed by a simple vote in the house. Algeria's constitution states that

---

[101] Bergougnous (n 90) 82.
[102] ibid 98.
[103] 'Assemblée Nationale President Richard Ferrand Loses Seat in Legislative Election' *Le Monde.fr* (19 June 2022) <https://www.lemonde.fr/en/politics/article/2022/06/19/assemblee-nationale-president-richard-ferrand-loses-seat-in-legislative-election_5987367_5.html> accessed 21 April 2023.
[104] Quoted in Bergougnous (n 90) 101–2.

> The President of the People's National Assembly shall be elected for the term of the legislature.[105]

The constitution makes no reference to the National Assembly being able to remove its presiding officer by withdrawing confidence. The parliament's own codified procedures only allow for the presiding officer to be removed upon resignation, incapacity/incompatibility, or death.[106] This has had real-world consequences. For example, in the eighth term of the assembly, lack of guidance around removal of the presiding officer and appointment of a new officeholder further vexed political instabilities.[107] In the election of the presiding officer in France, a majority vote of confidence is not even necessarily required. If run-off elections go to the third round, a simple plurality will suffice.[108] This would be unimaginable in many Westminster model parliaments, where the speaker should command not just majority support, but also the confidence of minorities.[109]

Speakers in francophone legislatures often make important fourth branch appointments that distinguish them from Westminster model or US counterparts. For example, the President of the Republic, the President of the National Assembly, and the President of the Senate each appoint three members of the Constitutional Council.[110] In addition, the section of the high council of the judiciary with jurisdiction over judges also has two appointees from each of these office holders.[111] The constitutions of Mali and Algeria have similar provisions.[112]

In this regard, we see how the role of Sri Lanka's speaker since the Seventeenth Amendment regarding the Constitutional Council and Parliamentary Council has been a break with the Westminster model tradition. Here, the Sri Lankan speaker chairs a body that is responsible for nominating independent commissions and approving

---

[105] Constitution of Algeria 2020, Art. 139. Similarly drafted provisions may be found in the French constitution (Art. 32) and the Mali constitution (Art. 68).
[106] Internal Rules of the Algerian People's National Assembly, Art. 10.
[107] Kadri Tewfik, 'On the Legal Status of the Acting Speaker of the People's National Assembly?' (2021) 6 Journal of Legal and Political Studies.
[108] 'Fact Sheet: The President of the National Assembly - National Assembly' <https://www2.assemblee-nationale.fr/decouvrir-l-assemblee/folder/organisation-et-fonctionnement-de-l-assemblee/le-president-de-l-assemblee-nationale> accessed 21 April 2023.
[109] Laundy (n 77) 102.
[110] Constitution of France 1958, Art. 56.
[111] ibid Art. 65.
[112] Constitution of Mali 1992, Art. 91; Constitution of Algeria 2020, Arts. 187 and 194.

certain presidential appointees.[113] That being said, these bodies were not concerned exclusively with constitutional questions or judicial matters as they are in many francophone contexts. Instead, the Constitutional Council and Parliamentary Council give the speaker a role in fourth branch appointments more broadly. It is believed that these provisions originated from Nepal's constitution.[114]

3.8 Public Finance Procedures

3.8.1 Public Finance in Westminster Model Constitutions

Public finance procedures in Westminster model constitutions are distinct from many other systems. Political scientists and economists have already discussed this through the lenses of *ex ante* and *ex post* scrutiny of public finances. There is a trend whereby Westminster model parliaments have much weaker *ex ante* scrutiny of public finances than other systems, however *ex post* scrutiny tends to be fairly strong.[115] This subsection focuses on two aspects of Westminster model public finance procedures, namely that they are linked to confidence votes and there is no constitutional safety net for when they are rejected. These features, taken alone, are not dissimilar to those found in many other parliamentary democracies. While there are other features that distinguish Westminster model public finance procedures from other parliamentary democracies, a full account is outside the scope of this thesis. As in the case of speakers above, this thesis focuses on what distinguishes Westminster model public finance procedures from the US and francophone systems.

While political scientists and economists have made valuable advances in this field, it is not a topic that comparative constitutional lawyers usually discuss.[116] However, there are clear constitutional dimensions to this debate. Indeed, one could perhaps argue that constitutional orders lie at the heart of these trends (or, more persuasively,

---

[113] For a discussion of the Constitutional Council, see the subsection on independent public services above.

[114] CS Dattatreya, 'The Proposal for a Constitutional Council' in Dinusha Panditaratne and Pradeep Ratnam (eds), *The Draft Constitution of Sri Lanka: Critical Aspects* (Law and Society Trust 1998) 75.

[115] Joachim Wehner, 'Legislative Arrangements for Financial Scrutiny: Explaining Cross-National Variation' in Riccardo Pelizzo, David M Olson and Rick Stapenhurst (eds), *The Role of Parliaments in the Budget Process* (The International Bank for Reconstruction and Development/The World Bank 2005) 12–3. 'Westminster Model' is used here in a looser way than the categorisations set out in this thesis.

[116] An exception is Will Bateman, *Public Finance and Parliamentary Constitutionalism* (Cambridge University Press 2020).

that public finance historically lies at the heart of constitutional order). Westminster model constitutions tend to frame public finance provisions in a very similar fashion. Guyana and Sri Lanka are typical examples of such constitutions. These constitutions are distinct from other traditions in two important regards: if the legislature rejects an appropriation bill, then this is treated as a vote of no-confidence in the government, and (more importantly still) there are no stopgap or safety net procedures for when public finance proposals are rejected. Of course, there are many aspects of these procedures that are shared with other constitutional traditions, such as the rule that it is only the executive that can table a bill relating to these matters.[117]

Sri Lanka has codified in its constitution the Westminster convention that appropriation bills are equivalent to a confidence vote. The independence constitution did not explicitly state this convention, however the 1972 (first republican) constitution stated that if the appropriation bill was rejected and the prime minister did not advise the president to dissolve the legislature within forty-eight hours, then the prime minister was taken to have resigned. The Article gave identical provision for no-confidence motions, rejection of the appropriation bill, and rejection of the statement of government policy other than at the first session.[118] Similarly, Article 49(2) of the 1978 (second republican) constitution states that

> If Parliament rejects the Statement of Government Policy or the Appropriation Bill or passes a vote of no-confidence in the Government, the Cabinet of Ministers shall stand dissolved, and the President shall, unless he has in the exercise of his powers under Article 70 dissolved Parliament, appoint a Prime Minister, Ministers of the Cabinet of Ministers, other Ministers and Deputy Ministers.

Therefore, in Sri Lanka, this norm was on a codified footing.

In Guyana, although the constitutional texts themselves did not contain this norm, it was nonetheless recognised as a feature of the constitution. For example, when the

[117] Some may argue that conventions first codified in the Parliament Act 1911 relating to public finance procedures in a bicameral parliament are also part of the Westminster model. There may be weight to this, however many smaller states that adopted the Westminster model chose to have a unicameral legislature.
[118] Constitution of Sri Lanka 1972, Art. 99(2).

PPP was struggling to pass its budget in 1962 (before independence, but nonetheless under a Westminster-inspired constitution), D'Aguiar stated

> If any budget has to be substantially changed because pressure has been brought by the people who are being taxed, then it amounts to a vote of no confidence. The government must stand or fall by its budget.[119]

While protests around the 1962 budget may well have been politically opportunistic on the part of Burnham and D'Aguiar, nonetheless in challenging the budget and the Jagan government's legitimacy within parliament they relied on Westminster model conventions. As we will see in the next chapter, in practice this convention did not survive the move to an executive presidency. Nonetheless, during the 2013 budget the speaker did suggest to the government that the principle could still apply:

> the Minister of Finance, when reporting to the House, may either report that his Government accepts the amendments and go on to report to the House that the estimates have been approved, as amended, or he may indicate that he is withdrawing the Estimates entirely as his Government does not accept the amendments and see them as an indication of lack of confidence in the Government.[120]

Relatedly, Westminster model constitutions also tend to lack safety net mechanisms for when a budget is rejected. Bateman writes that

> Because a supply vote could only be originated with the executive government's consent, a rejection of supply in the Commons had the effect of depriving a government of all legitimate financial resources: once a supply vote had been rejected, a government could neither choose the basis upon which to finance its activities, nor could any other parliamentary coalition impose a budget on the government. The only constitutionally proper option would be to form a government which could exercise the financial initiative in a way which would garner the approval of a majority in the Commons.[121]

---

[119] As quoted in Thomas J Spinner, *A Political and Social History of Guyana. 1945–1983* (Westview Press 1984) 96.
[120] Speaker's Ruling No. 4 of 2013 (16th April 2013), pp. 18-9.
[121] Bateman (n 116) 56.

Bateman further describes how Westminster public finance procedures were codified and copied 'boilerplate' into new constitutions during the decolonisation process.[122] The convention that a government must resign if its budget is rejected was traditionally seen as a natural consequence of two other constitutional norms: that the executive has a monopoly on tabling finance bills and the raising of any tax must be approved by parliament. If government is to function (i.e., fund itself) it needs the support of parliament. Therefore, if a budget is rejected, then there is no other option but for cabinet to be dissolved.[123] This remains the case in Sri Lanka and Guyana. As will be seen in the next subsection, these norms do not hold true for the US or francophone systems. Indeed, there are various safety nets in place in US and francophone constitutions. The constitutions of Sri Lanka and Guyana, on the other hand, have kept most of the original WMCFs intact.

3.8.2 Public Finance in US and Francophone Constitutions

Francophone constitutions normally have executive-heavy stopgap procedures if public finances are not approved by the legislature. Article 47 of the French constitution provides that

> Should Parliament fail to reach a decision within seventy days, the provisions of the Bill may be brought into force by Ordinance.

Similarly, Article 150 of the Algerian constitution provides that

> Should it not be adopted within the indicated period, the President of the Republic shall promulgate the draft law of the Government by ordinance.

Article 77 of Mali's constitution is more restrained, stating that if a budget is rejected by the legislature, then it shall

> be automatically established by the Government on the basis of the revenues of the preceding fiscal period and after consultation with the Supreme Court.

In France, finance bills may be introduced by either MPs or the prime minister, whereas in Westminster model constitutions, only the executive has the right of

[122] ibid 4.
[123] For a similar (though not identical) argument and more historical detail, see ibid 2.

initiative in these matters.[124] The executive's monopoly on finance bills has been explicitly preserved in Sri Lanka.[125]

The US federal budget process is known for its legislative-heavy engagement. This was a deliberate design choice on the part of the Founding Fathers, who did not want to over-power the executive.[126] The constitution states that Congress has the power

> to lay and collect Taxes, Duties, Imposts and Excises […] No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by law.[127]

Indeed, when Congress receives federal budget proposals, the work is divided between twelve sub-committees. Not only this, but the House of Representatives and Senate both produce separate resolutions that are re-negotiated and merged later.[128] There is therefore an intense *ex ante* review of public finances and political horse-trading is part of the process. Both the Senate and House of Representatives are heavily engaged in the process.

Most importantly, there are highly refined safety net procedures for when agreement cannot be reached. If agreement cannot be reached in time, then lawmakers can either extend the current year's spending levels, or else affect a government shutdown.[129] As in most other presidential systems, the US did not used to go into government shutdown if the budget failed. This only occurred after 1980, when the Carter administration re-interpreted the 1884 Anti-Deficiency Act as strictly limiting agencies' discretion.[130] Even when there is a government shutdown, essential services are kept intact. Furthermore, shutdowns have happened so frequently since then that the political skill of managing a shutdown process has become refined. Even though some criticise the possibility of shutdowns without better default rules, and the

[124] Constitution of France 1958, Art. 39.
[125] Constitution of Sri Lanka 1978, Chapter XVII;
[126] Bateman (n 116) 82.
[127] Constitution of the United States of America 1787, Arts. 1(8) and (9).
[128] 'Policy Basics: Introduction to the Federal Budget Process' (*Center on Budget and Policy Priorities*, 7 March 2003) <https://www.cbpp.org/research/federal-budget/introduction-to-the-federal-budget-process> accessed 21 April 2023.
[129] ibid.
[130] 'Government Shutdowns: Once "Incomprehensible, Inconceivable, Unthinkable," Now the Norm' (*Federal News Network*, 14 January 2019) <https://federalnewsnetwork.com/government-shutdown/2019/01/government-shutdowns-once-incomprehensible-inconceivable-unthinkable-now-the-norm/> accessed 21 April 2023.

US certainly has weaker backstop provisions than other presidential systems,[131] nonetheless the system clearly allows for a minimum level of functionality even if public finances cannot be agreed between the executive and legislature.[132]

As is apparent from the discussion above, cabinet is not necessarily dissolved if the legislature rejects government's public finance proposals in these systems. There may be a risk of this in francophone systems, and of fresh general elections, but it is not a constitutional norm. Not only this, but there are stopgap procedures that are not included in the Westminster model. Indeed, the strongest stopgap – the executive introducing public finance regulation as ordinances – is found in francophone systems. It should be emphasised that even the US's procedures are fairly unique for presidential systems, and other executive presidents often have stronger stopgap powers.[133]

4. Reforming the Presidencies: Constitutional and Political Trends

As may be apparent from the analysis above, Sri Lanka and Guyana show similar approaches to constitutional reform, particularly democratisation, subsequent to the incorporation of an executive presidency into their constitutions. Significantly, Sri Lanka and Guyana have both attempted to move back towards more parliamentary control of the executive. This section discusses the politics of, and difficulties around, constitutional reform.

4.1 Sri Lanka

In Sri Lanka, there has been a to-and-fro between enhanced presidential power and moves back towards parliamentarism. In keeping with the previous chapter, the arguments from both sides focus on the historical baggage of presidentialism. For some, the executive presidency is the only way to hold the country together and deliver economic growth. Presidentialism is seen as a source of stability amidst changeable political allegiances. Mahinda Rajapaksa was able to increase presidential power

[131] David Scott Louk and David Gamage, 'Preventing Government Shutdowns: Designing Default Rules for Budgets' (2015) 86 University of Colorado Law Review 181.
[132] 'Policy Basics: Introduction to the Federal Budget Process' (n 128).
[133] Wehner (n 115) 14.

(even after promising to abolish the executive presidency) because of support from his wartime victories. Viewing this along with increased foreign investment, the Rajapaksa presidency looked to some like a necessary office for Sri Lankan prosperity. Also, the executive presidency has increasingly become a vehicle for Sinhalese-Buddhist nationalism and a protector of the faith, as opposed to the ethnically unifying office it was originally conceived as. Whenever increased presidential power is mooted, for example on the lead up to the Twentieth Amendment in 2020, those in support always emphasise stability and economic growth, and increasingly Buddhist nationalism.[134] These trends, and the sociological character of this 'communal presidency', is discussed further in the next chapter.

Democratisation movements in Sri Lanka normally propose limitations on presidential power and more parliamentary control. Enhanced judicial power is certainly part of this, as one would expect in a context with a history of individual rights abuse. However, there are also important actors in civil and political society that want to move back to parliamentarism, too. As described below, the *yahapalanaya* reform campaign succeeded in unifying the broadest reform coalition in Sri Lanka's independence history around a move back to parliamentarism. Although there were some materials that spoke of 'reforming' the executive presidency rather than abolishing the office, Jayakondy writes that the intention behind the campaign was understood by everyone involved.[135] Against all odds, the coalition succeeded in winning the presidency and also a parliamentary majority. However, after this electoral success politicians began to backpedal on their promises of a return to parliamentarism. Along with increasingly strained relations between the prime minister (Ranil Wickremesinghe) and the president (Maithripala Sirisena), these trends inhibited reforms and eventually led to the half-way-house of the Nineteenth Amendment.[136]

The *yahapalanaya* movement coalesced around removing an autocratic family, and president, from power. Since 2005, Sri Lankan politics had been dominated by a single family: the Rajapaksas. The family's original powerbase was in the Hambantota

---

[134] Asanga Welikala, 'The Coming Constitution of the Civilization-State' (*Groundviews*, 8 July 2020) <https://groundviews.org/2020/07/08/the-coming-constitution-of-the-civilization-state/> accessed 25 March 2022.
[135] Aruni Jayakody, 'The Process of Constitutional Reform, January to May 2015' in Asanga Welikala (ed), *The Nineteenth Amendment to the Constitution: Content and Context* (Centre for Policy Alternatives 2016) 41.
[136] ibid.

district, from which successive generations were elected to parliament. This began with Don Mathew Rajapaksa in 1936. However, it was Mahinda Rajapaksa that took them to national dominance. After his victory in the 2005 presidential elections, Rajapaksa quickly appointed fellow family members to key positions within the government and parliament. Rajapaksa appealed to Sinhalese-Buddhist nationalist sentiments and was accredited with the swift, if brutal, end to the civil war.

The coalition mobilised around constitutional reform and a single presidential candidate. Abhorrent of the rampant corruption and abuse that developed during Rajapaksa's presidency, and acknowledging that he had totally captured the Buddhist-Nationalist vote, opposition parties began to develop a plan for the family's defeat and Sri Lanka's re-democratisation. This plan took the form of the Single-Issue Common-Candidate (SICC). The SICC was first floated by journalist Kumar David in 2012.[137] The proposal had two components: the single-issue and the common-candidate. The first of these components was the renewal, or really the defence, of Sri Lanka's democracy. This was seen as inextricably linked to preventing another Rajapaksa term in the presidency. David writes:

> In one phrase: 'Stop the Free-fall to Dictatorship!' The backdrop was a perception that the return of Mahinda Rajapaksa for a third term would spell autocracy.

There were three goals within the single issue of democratic renewal: "defeat Rajapaksa, re-impose term limits, repeal the executive presidency".[138]

The second component, the common-candidate, was opposition unity around a single candidate for the presidency. Parties from polar ends of the political spectrum unified around Maithrapala Sirisena, general secretary of the SLFP and minister for health. Welikala frames this movement as agreement around three "propositions":

> (a) that all conceivable political and civil society forces must be united in opposition to the regime; (b) that the force of this unity must be channelled into a single presidential candidate against Rajapaksa; and (c) that the substantive platform of this coalition must be almost entirely, if not exclusively, on constitutional reforms to

[137] Kumar David, 'Revisiting the "Single-Issue Common-Candidate" Strategy: Successes and Failures' in Asanga Welikala (ed), *Constitutional Reform and Crisis in Sri Lanka* (Centre for Policy Alternatives 2019) 90.
[138] ibid 91.

> foster good governance in general, and abolish the executive presidential system in particular.[139]

After the coalition won the presidential and parliamentary elections, the personality-clash between the president and his immediate junior (Prime Minister Wickremesinghe) quickly became an issue, and passing reforms became more difficult as time went on. Essentially, President Sirisena felt vulnerable because many in his own party were still loyal to Mahinda Rajapaksa. Furthermore, the attributes that made him suitable for leading a reformist coalition (he was uncontentious and not particularly well-known) also made him a weak leader without sufficient experience. Prime Minister Wickremesinghe also had his failings. Although he was not the head of the executive, he saw the president as his subordinate politically. As well as differences in governmental experience, at a personal level issues of class were also involved, with Wickremesinghe coming from a privileged background and Sirisena not. As discussed in Chapter IV, these issues, which came to a head in the 2018 constitutional crisis, had been present throughout the reform process and made the Nineteenth Amendment difficult to pass. In short, structural and personality conflicts made for a weak coalition and the timeframe for reform was much shorter than it would otherwise have been.

Perpetual and vigorous political engagement meant that the Nineteenth Amendment, on the one hand, was a watered-down compromise but, on the other hand, it was possible to pass through parliament. It also kept the process relatively short, compared to public engagement approaches. Although the reforms did not go as far as they could have if the drafting process had been truncated, and although it was the political elites who themselves watered-down the reforms, nonetheless constant engagement with politicians meant that the end product was passable in parliament because it was the political leaders who had agreed to it. Sri Lanka's process was

> chaotic, sometimes fractious, did not meet its own deadlines, and conspicuously failed to meet contemporary benchmarks of transparency and public consultation.[140]

---

[139] Asanga Welikala, 'Editor's Introduction' in Asanga Welikala (ed), *Constitutional Reform and Crisis in Sri Lanka* (Centre for Policy Alternatives 2019) 9.
[140] Asanga Welikala, 'Editor's Introduction' in Asanga Welikala (ed), *The Nineteenth Amendment to the Constitution: Content and Context* (Centre for Policy Alternatives 2016) 13.

Draft amendments were leaked from the outset, MPs whose votes were required for a super-majority worked to weaken the proposals, and the coalition's target to pass reforms within 100 days in office was not met.[141] However, because there was not any public consultation, and because it was highly politicised, the process had great synchronicity with those charged with passing the amendment (the MPs), and compatibility with their interests. Therefore, even though the governing coalition was weakening, and many MPs remained loyal to Mahinda Rajapaksa, they were able to build enough support to get the Nineteenth Amendment over the finish line.[142] Furthermore, although the government was not able to abolish the executive presidency within 100 days (as promised), and although the process could have been done more efficiently, nonetheless the elite-driven, centrist approach to reform ensured a relatively short timeframe compared to public consultation processes. Therefore, the reformist coalition's short shelf-life was not as much of a factor as it may otherwise have been. The Nineteenth Amendment was not perfect, but it was made possible by pragmatic drafting and negotiation.

After the instability of the Wickremesinghe/Sirisena relationship and, particularly, the terrorist attacks on Easter Sunday 2019, Gotabaya Rajapaksa's SLPP (Sri Lanka Podujana Peramuna) convinced the electorate that the only solution was a return to a strong Rajapaksa presidency.[143] The original plan was start with the Twentieth Amendment, which enhanced presidential power again, and then introduce an entirely new constitution.[144] Of course, Gotabaya's tenure ended in even worse instability, with the *Aragalaya* protests against economic mismanagement and corruption that eventually caused Gotabaya to flee the country and abandon office.[145] This led to the Twenty-First Amendment, which re-introduces certain weakened reforms from the Nineteenth Amendment.

While these events mark some of the most significant advancements and curtailments in presidential power, successive presidential candidates have run campaigns promising to abolish the executive presidency as a path to better democracy. Clearly,

---

141 Jayakody (n 135).
142 Welikala, 'Editor's Introduction' (n 140) 13.
143 Gotabaya Rajapaksa is one of Mahinda Rajapaksa's brothers, a former military officer, and secretary to the ministry of defence and urban development during Mahinda Rajapaksa's presidency.
144 Welikala, 'The Coming Constitution of the Civilization-State' (n 134).
145 'Sri Lanka: President Gotabaya Rajapaksa Flees the Country on Military Jet' *BBC News* (12 July 2022) <https://www.bbc.com/news/world-asia-62132271> accessed 1 May 2023.

therefore, the executive presidency is still an office at once both tainted and valuable in Sri Lankans' eyes. It is attractive because many of the original arguments for stability and development are still seen to hold weight, even if Gotabaya's tenure may have weakened this. It is also, nonetheless, tainted by historical baggage from an era of centralisation and one-man government. This impression was created by Jayewardene himself and then worsened by Mahinda Rajapaksas. These trends are discussed in the next chapter. Re-democratisation therefore focuses on a move back to parliamentarism.

4.2 Guyana

In Guyana, the 1980 Constitution has only been significantly reformed once, a few years after the contested results of the 1997 general election. There were a series of amendments in 1991 too, however these were only made for the specific circumstances of the time in order to facilitate democratic elections. During the post-1997 election period, the opposition PNC refused to accept the results, alleging election rigging. PNC supporters took over the capital, Georgetown, and the country seemed to be on the brink of civil war. An agreement was mediated between the two sides by international actors and part of this agreement included constitutional reform, which was implemented between 2000-2003 through a series of constitutional amendment acts.

The Guyana elections commission (GECOM) declared the PPP/C the winners of the 1997 general election on December 19 after a protracted counting process and with 61,000 votes still to be counted.[146] Thereafter, between 300 and 500 PNC supporters "laid siege to the offices of GECOM and headquarters of the PPP at Freedom House".[147] The PNC also sought injunctions against the chancellor of the judiciary swearing in Janet Jagan as president and against Janet Jagan, *inter alia*, from assuming the presidency.[148] Thakur reports that

[146] Rishee S Thakur, 'Crime, Ethnicity, and the Political Impasse in Guyana' in Arif Bulkan (ed), *Unmasking the State: Politics, Society and Economy in Guyana 1992-2015* (Ian Randle Publishers 2019) 127.
[147] ibid.
[148] ibid.

> On receipt of the writ Mrs Jagan turned a pirouette and tossed it over her shoulder.[149]

The PNC adopted an increasingly hostile stance against the new government

> The leader of the PNC [Desmond Hoyte] announced a campaign of “defiance and civil disobedience” and threatened to make the country ungovernable. He also seemed to be signalling to his “kith and kin” in the protective services (90 percent of the GDF had voted for the PNC) that they should mutiny against the PPP regime.[150]

There were incidents of bombings and arson and the protests “led many to fear that Guyana was on the brink of civil war such as it had witnessed in 1963”.[151]

A three-person CARICOM mission was dispatched to Guyana in January 1998.[152] This team mediated a seven-point agreement between the two parties, known as the ‘Herdmanston Accord’ (signed on 17 January 1998), which included a commitment to constitutional reform.[153] The accord specifically mentioned that there would be a constitutional reform commission and

> Among the matters to be addressed by the Constitutional Reform Commission will be measures and arrangements for the improvement of race relations in Guyana.[154]

The accord was also followed by the St Lucia Statement in July 1998, which aimed to quell renewed unrest after the election audit commission (part of the accord) found that there had been no fraud in the original count.[155]

A constitutional reform commission was established by the Constitutional Reform Commission Act (No.1 of 1999). The twenty-member commission consisted of

---

[149] ibid 128.
[150] Selwyn Ryan, ‘The Crisis of Governability in Guyana’ (2003) 8 Caribbean Dialogue 1, 4.
[151] ibid.
[152] ibid.
[153] ‘Caribbean Community Mission to Guyana’ (CARICOM 1998).
[154] ibid 4(iii).
[155] ‘Guyana: The St Lucia Statement’ (*CARICOM*, 2 July 1998) <https://caricom.org/guyana-the-st-lucia-statement/> accessed 15 March 2024; Ryan (n 150) 4.

nominees by the major political parties as well as civil society and religious representatives.[156] The commission's terms of reference required it to

> review the Constitution of Guyana, to provide for the current and future rights, duties, liabilities and obligations, of the Guyanese people; and for that purpose shall receive, consider and evaluate submissions for the alteration of the Constitution; and report its recommendations to the Special Select Committee for transmission to the National Assembly.[157]

The terms of reference made specific reference to the Herdmanston Accord and the need to review "the full protection of the fundamental rights" and also "the functioning of the National Assembly and any measure which can enhance its capacity and effectiveness as a deliberative body".[158] No specific mention was made of the executive presidency or cabinet. Ramkarran notes that, in conducting its work, the commission consulted widely and received 4,601 proposals through public hearings.[159]

Despite wide, if hasty, consultation, the commission seems to have been very aware of the low political feasibility of wholesale constitutional reform. Bulkan goes as far as to describe this period as Guyana "embracing authoritarianism" with "mild" reforms.[160] As far as structural adjustments to the legislature and executive are concerned, the commission did propose some significant reforms that were passed by the National Assembly, even if these did not truly address the imbalance of power between the president and other branches of state.[161] As mentioned in this chapter, these included the re-introduction of no-confidence votes, the requirement that the president assign a minister to answer to the National Assembly for portfolios retained by the president, the removal of the president's power to unilaterally dismiss public servants 'in the public interest', the requirement for 'meaningful' consultation with the leader of the

[156] Constitutional Reform Commission Act (Act No.1 of 1999), s. 4.
[157] ibid s. 6(1).
[158] ibid ss. 6(2)(a) and (k).
[159] Hari N Ramkarran, 'Seeking a Democratic Path: Constitutional Reform in Guyana' (2004) 32 Georgia Journal of International and Comparative Law 585, 598.
[160] Arif Bulkan, 'Constitutional Architecture and the Production of Authoritarianism' in Arif Bulkan and Alissa Trotz (eds), *Unmasking the State: Politics, Society, and Economy in Guyana 1992-2015* (Ian Randle Publishers 2019) 9.
[161] For reform of individual rights during this process, see Arif Bulkan, 'Democracy in Disguise: Assessing the Reforms to the Fundamental Rights Provisions in Guyana' (2004) 32 Georgia Journal of International and Comparative Law 613.

opposition in certain appointments, and the requirement to appoint a tribunal on the advice of the judicial service commission under Article 225(4)(a). As explored later in this thesis, not all of these provisions have had a significant impact in practice. Also, the president's powers of dissolution were not removed, despite this being recommended by the commission.[162] As in Sri Lanka, therefore, reforms were dominated by elite interests, which were against wholesale reform of executive power. Nonetheless, as far as reform did take place, it revived mechanisms of parliamentary independence and accountability.

Conclusion

The move to presidentialism is measured across time and space. The executive presidencies were part of an ongoing process of centralisation in each country and they co-exist with WMCFs. Indeed, beyond the executive president, there has been lots of continuity in both constitutions. Not only did WMCFs survive the move to presidentialism (albeit often in an altered state), but some features were even revived or enhanced thereafter.

Sri Lanka first adopted a ceremonial president and then, just a few years later, the executive president. Since this change, it has moved back-and-forth between president-parliamentary and premier-presidential government. Throughout these changes, some constant WMCFs have been that ministers are members of parliament, cabinet responsibility, and (by and large) public finance procedures and the role of the speaker. The president reserves an unrestricted power of prorogation. Dissolution powers have remained fairly constant, too, however they have been somewhat limited. Not only this, but other WMCFs have been enhanced. The leader of the opposition (which existed under the Soulbury Constitution, but was not mentioned in the text) now has recognition in the 1978 Constitution. There is also the Constitutional Council, which is designed to uphold the independence of public services. However, this council has also given a new role to the speaker, which is closer to speakers' roles in francophone systems than those in the Westminster tradition.

[162] Ramkarran (n 159) 602.

Guyana amended its 1966 Constitution to become a republic in 1970. For the next ten years, it continued as a parliamentary republic, before incorporating the executive president into the 1966 Constitution and then, shortly after, passing the 1980 'Burnham' constitution. Guyana has never operated separate elections for the president. Joint elections for the legislature and presidency instead emphasise the presidential candidate (and down-play the parliamentary candidates with the alphabetical list system). The president does not necessarily command an outright majority of votes or a majority of seats in the legislature. A plurality of seats suffices. While the president originally had a secure tenure, he is now subject to the confidence of the National Assembly.

Guyana has perhaps kept the most WMCFs out of the two case studies, and it still identifies itself as part of the 'Westminster model'. Prorogation, dissolution, collective responsibility, the role of the speaker, public finance procedures, cabinet ministers being members of the legislature, a recognised leader of the opposition: all of these features have proven durable. There have been certain changes, such as the leader of the opposition at one time being nominated by the executive president, but largely they have remained intact. Public services have had their independence eroded since the PNC first came to power. Although there have been some reforms to mitigate against this, totally independent public services have never existed.

Constitutional reform in both case studies shows important similarities and differences. The two cases were similar in the substance of constitutional reform, but distinct in terms of process. The process of reform in Sri Lanka depended on a reformist coalition uniting against an autocratic president. The *yahapalanaya* coalition believed that it was imperative to remove a particular individual from power and to enact reforms that would protect against executive abuse in the future. The coalition candidate, however, once winning the presidency, struggled to hold his alliance together and there was a short shelf life before the fall into conflict with other high-ranking figures. In Guyana, elite-driven bargaining to prevent the outbreak of conflict delivered more substantial reforms than in Sri Lanka. Rather than a reformist coalition, Guyana relied on a deal mediated between the two major parties.

Re-democratisation in Sri Lanka and Guyana has revived parliamentary (particularly Westminster model) features as a way of constraining executive power. Reformist

coalitions in Sri Lanka have succeeded in limiting the powers of the president over cabinet and parliament temporarily, however these reforms were ultimately dialled-back by the Twentieth Amendment. The Twenty-First Amendment, while an improvement, does not fully restore the Nineteenth Amendment framework. In Guyana, the executive president is now a broadly accepted feature of the constitutional landscape, however this was only after no-confidence mechanisms were re-introduced, along with other restraints.

Chapter III

The Communal Presidencies

Introduction

This chapter describes how the executive presidencies and WMCFs have been developed and invoked in constitutional practice. It is the first of two chapters that build on the doctrinal work in Chapter II and show the real-life context and consequences of these changes in the constitutions. While the next chapter focuses on WMCFs and the executive presidencies during times of constitutional crisis, this chapter takes a broader view and examines the workings of these hybrid constitutions more generally. It is shown that the executive presidencies have, in fact, become 'communal presidencies', whereby they are symbols and drivers of centralised executives and politicised public services that promote communal domination. It is further shown that WMCFs have continued to play a role in shaping the executives, legislatures, and their relationships with each other. Two WMCFs not mentioned here are public finance procedures and prorogation/dissolution powers. There is little to say on these constitutional features until the next chapter.

The first section frames the presidencies in their sociological contexts. In both Sri Lanka and Guyana, presidentialism was not a sudden break with preceding constitutional trajectories. In both countries, communal presidencies were the institutional culmination of pre-existing patterns of executive centralisation that had begun at independence. In Sri Lanka, this had taken place under multiple governments and there had already been two constitutions. The 1972 republican constitution also represented more centralised executive power and politicised public services compared to the independence document. In Guyana, Burnham had already laid the foundations of a party-state before the 1980 Constitution was passed. As well as consolidating his rule within the PNC and subsuming his coalition partners, Burnham had also introduced the policy of 'party paramountcy', whereby the state was merely an extension of the PNC's own power. The communal presidencies were the institutional crown jewels in this ongoing process.

Furthermore, by politicising public services and weakening intra-cabinet checks within communally divided polities, the presidencies also became symbols of communal dominance. These sociological mantles are part of the institutions to this day. While this was a deliberate development by Burnham, in Sri Lanka Jayewardene initially saw the presidency as a way of rising above communal politics and perhaps providing an answer to the national question. However, he and the institution were hostage to the deteriorating territorial situation and the presidency became an important part of the security state and, eventually, the high-casualty conclusion to the civil war. This section therefore describes the real-world effects of both the presidencies and the eroded independent public service provisions discussed in the previous chapter.

Subsection 2.1 concerns ministerial responsibility, which continues to be routinely invoked in Guyana's parliament, but is a far less prominent part of parliamentary discourse in Sri Lanka. In holding ministers to account, and defining their relationship with the National Assembly, individual and collective responsibility are constitutional duties that Guyana's parliamentarians view through a Commonwealth lens. In interpreting these provisions in the constitution, parliamentarians (and at times the judiciary) draw on comparative experiences from other Commonwealth nations. Going beyond this, they have also adapted these conventions and deployed them in substantively and procedurally unique ways. In Sri Lanka, on the other hand, there are just a few court judgments that have regulated parliament-executive relations based on the constitutional requirements of ministerial responsibility.

In subsection 2.2, this chapter examines one of the most distinctive Dualminster features compared to other executive presidential systems, the close cabinet-parliament nexus whereby ministers must also be members of the legislature. This is a double-edged sword for the executive. Combined with collective cabinet responsibility, it gives the communal president a guaranteed number of non-critical supporters within a numerically small, unicameral assembly. Inflated cabinets are used to co-opt MPs and ensure party discipline. Therefore, government backbench culture struggles to flourish in both Guyana and Sri Lanka. On the other hand, the opposition has ready access to ministers, who can be routinely called upon to answer questions and debate government policy in what are still adversarial chambers. In Sri Lanka, ministerial consultative committees have become forums for MPs to bargain for their

constituencies and supporters. Overall, the legislatures struggle to hold governments to account with technical scrutiny, however the close cabinet-parliament nexus allows the opposition to air their grievances and put ministers ‘on the spot’.

The role of the Dualminster speaker is discussed in subsection 2.3. In both Sri Lanka and Guyana, lingering conventions of impartiality are still the benchmark of a good speaker. However, this impartiality is difficult to achieve in practice. Particularly in Guyana, the deputy speaker (who normally comes from an opposition party) tends to be kept out of the chair by the government because they prefer their own appointee. In Sri Lanka, the speaker has constitutional functions that distinguish the officeholder from others in the Westminster model tradition. The speaker’s role in certifying bills as the final act before they become law occasionally draws the officeholder into the political arena.

Subsection 2.4 sets out the political practice around the leader of the opposition. In both Guyana and Sri Lanka, the leader of the opposition is a communal president in waiting. Despite PR electoral systems, the offices continue to exist within distinctly adversarial political climates. On the other hand, in Guyana, the selection process for the opposition leader can give them some responsibility towards other opposition parties and the PR substitution/recall mechanisms for MPs has given the office a distinctive flavour where there is mid-term leadership change in the main opposition party. In both countries, the opposition leader also plays a role in certain key appointments – through consultation in Guyana and the Constitutional Council in Sri Lanka. While Guyana continues to operate shadow cabinets, Sri Lanka does not replicate this tradition.

1. The Communal Presidencies

In both Guyana and Sri Lanka, the executive presidency has become an institutional symbol of domination that concretises and reinforces communal trends that were already underway in both countries’ politics and constitutions. As institutions, the presidencies have a sociological character that is part of a particular historical trajectory. The institutions are cloaked in this sociological mantle. This was an immediate and deliberate connection in Guyana, where Burnham used the presidency to entrench his ethnically driven power base. In Sri Lanka, Jayewardene saw the

presidency as an opportunity to rise above communal politics and strike a deal with Tamil nationalists. However, in practice, his hands were tied by increasing communalism as Sri Lanka slipped into civil war. Mahinda Rajapaksa's presidency legitimised the institution as a communal tool, especially its role in ending the civil war. The presidencies as a tool for communal domination have been inseparable from the politicisation of public services, another pre-existing trajectory of which the presidencies have become institutional symbols. This section represents the real-life context and consequences of the changes to independent public services and collegial cabinet constitutional provisions discussed in the previous chapter. Public services have become increasingly politicised and the soft executive check of a collegial cabinet has also been eroded. Instead, the president's writ runs directly through the entire executive. While the executive presidency has evolved into an exclusively Sinhalese-Buddhist tool in Sri Lanka, in Guyana it has been used by both Indo-Guyanese and Afro-Guyanese leaders.

1.1 Pre-Existing Patterns of Executive Centralisation

1.1.1 Guyana

Increasing executive centralisation prior to the executive presidency in Guyana had three main components: removing the need for coalition government with the UF, consolidating Burnham's control over the PNC, and developing a party-state through the doctrine of party paramountcy.

Burnham was an egotistical leader that preferred sycophants to those that might challenge him. Appointees closest to Burnham seldom gave critical input.[1] Although he was able to form and maintain an alliance with Peter D'Aguiar's UF, the coalition government was unstable and the D'Aguiar-Burnham relationship eventually broke down in 1967 when D'Aguiar baulked at the increasingly untrammelled PNC corruption. While the coalition did not formally end (keeping the PPP out of power), nonetheless the key UF figure – D'Aguiar – resigned from cabinet.[2] D'Aguiar did not

[1] Thomas J Spinner, *A Political and Social History of Guyana. 1945–1983* (Westview Press 1984) 116.
[2] ibid 122.

formally withdraw the UF from the coalition until October 1968.[3] Anyway, by this point defections to the PNC had given them a majority.[4] Hintzen describes how

> Party leaders offered elected representatives of the opposition, whom it convinced to "cross the floor," powerful and lucrative positions in the state sector and in government […] This provided the party with the parliamentary majority that allowed its leaders to sever their relations with the UF and to gain absolute control of the executive branch of government.[5]

Burnham later described this period of coalition government as the PNC having the "millstone of the United Force around our necks" and blamed it for a lack of progress.[6]

Furthermore, even in the PNC party loyalty was not airtight. Although Burnham exercised thorough control over his party, there were some dissenters within the ranks. Burnham used the excuse of 'true believers' in Guyanese co-operative socialism to run opponents out of the party. The Declaration of Sophia spoke of the need for the PNC to "purge itself" and remove "the hanger-on, the bandwaggoner, the opportunist, the luke-warm".[7] Local party leaders were purged and replaced with state-level party bureaucrats, leading to the "demobilization and regimentation of those engaged in party-political activities".[8] Presidentialism fed into this predilection for unquestioning loyalty. Burnham's desire for total control was reflected also in his co-option and intimidation of the press, which eventually became an arm of the PNC.[9]

'Party paramountcy' (the party-state) was the keystone of Burnhamite government. Although Burnham had made attempts to blend party and state since assuming power in 1964, this only became an explicit policy in during a special 1973 PNC congress and was reiterated in the Declaration of Sophia:

---

[3] ibid 124.
[4] Percy C Hintzen and Ralph R Premdas, 'Guyana: Coercion and Control in Political Change' (1982) 24 Journal of Interamerican Studies and World Affairs 337, 345.
[5] Percy C Hintzen, *The Cost of Regime Survival: Racial Mobilization, Elite Domination and Control of the State in Guyana and Trinidad* (Cambridge University Press 1989) 70.
[6] CA Nascimento and RA Burrowes (eds), *A Destiny to Mould: Selected Discourses by the Prime Minister of Guyana* (Longman Caribbean Ltd 1970) 157–8.
[7] LFS Burnham, *Declaration of Sophia* (Guyana Printers Ltd 1974) 14.
[8] Hintzen (n 5) 11–2.
[9] Rudolph James and Harold A Lutchman, *Law and the Political Environment in Guyana* (Institute of Development Studies 1984) 66.

> the Party should assume unapologetically its paramountcy over the government which is merely one of its executive arms.[10]

Quinn notes that this “overturned any lingering Westminster presumptions of institutional neutrality” and all branches of government, including the judiciary, were bent to the party’s ends.[11] Writing in 1982, Clive observed that

> The ideological line is to identify Burnham as the PNC, the PNC as the State and the State as the country as a whole or the society at large. All anti-PNC or anti-Burnham activity is therefore projected as being anti-state or anti-national interests and hence subversive.[12]

This process included forcing state employees to attend PNC events.[13] Hintzen also notes that the executive presidency was part of an ongoing process that was already well underway by 1980.[14]

In addition to the executive presidency, another institutional embodiment of party paramountcy was the “symbiotic creation” known as the Office of the General Secretary of the Peoples’ National Congress and the Ministry of National Development.[15] This institutional combination of party and state gave the PNC access to state finance and capital resources, and it organised the gathering of crowds when support needed to be demonstrated. Opaque funding mechanisms pumped millions of dollars a year into the office.[16] Hintzen and Premdas describe this as a gradual process of state capture. The PNC, unable to win the confidence of the larger populous, built an oligarchic circle around itself and eroded spheres of institutional autonomy.[17] Just as Burnham argued that the move to a republic with a ceremonial president was an important symbol for Guyanese independence, so too was it a signal

---

[10] Burnham (n 7).
[11] Kate Quinn, ‘Colonial Legacies and Post-Colonial Conflicts in Guyana’ in Rosemarijn Hoefte, Matthew L Bishop and Peter Clegg (eds), *Post-Colonial Trajectories in the Caribbean: The Three Guianas* (Routledge 2016) 20.
[12] Clive Thomas, ‘The Current Crisis in Guyana’ (1982) 12 Ufahamu: A Journal of African Studies 107, 116.
[13] ibid 117.
[14] Hintzen (n 5) ch 3. See pages 97-8 in particular.
[15] *Guyana: Fraudulent Revolution* (Practical Action Publishing and Latin America Business Bureau 1984) 54 <https://practicalactionpublishing.com/book/971/guyana-fraudulent-revolution> accessed 28 November 2022.
[16] ibid.
[17] Hintzen and Premdas (n 4).

to the country when he absorbed these powers himself a few years later. Presidentialism was part of a wider political project whereby power was increasingly vested first in the PNC as a party and thereafter in Burnham himself.

From the outset, the presidency in Guyana was associated with Burnham's desire for a party-state. The drafting and passage of the 1980 Constitution was both un-consultative and un-consensual. Opposition politicians viewed the constitution as illegitimate, claiming it was little more than a PNC power-grab. Many in the PPP, for example, were happy to contemplate a move away from the Westminster model, but distrusted the PNC to deliver a fair and workable system.[18] They felt vindicated in these beliefs when they saw the content of the constitution and the programming of its passage. The government handed itself unrestricted power (given its two-thirds majority) by removing the referendum requirement for changing specially protected articles. This was itself achieved by referendum, and people were asked to put blind faith in the government to pass the constitution it wanted. The Guyana Bar Association issued a statement that described the referendum as a request to "sign a blank cheque and put our future in the hands of a dying parliament".[19]

In the end, many people boycotted the referendum, but the PNC again abused its power in the handling of the vote, claiming a massive turnout and an impossibly high 98% 'yes' vote.[20] Not only this, but the PNC seemed to delay the passage of the constitution in order to effectively extend the life of parliament.[21] It was only under pressure that the PNC agreed to create a Constituent Assembly.[22] Consultations appeared to be extensive, but were ultimately unresponsive to the proposals put forwards. The Constituent Assembly was also boycotted by the PPP.[23] James and Lutchman write that "the draft constitution which emerged out of the Sub-Committee was in form and substance that submitted to the Constituent Assembly by the PNC".[24]

The 1980 Constitution was therefore a foregone conclusion. The PNC handed itself unrestricted power in a rigged referendum. The main opposition party boycotted the

---

[18] James and Lutchman (n 9) 62.
[19] *Guyana: Fraudulent Revolution* (n 15) 76.
[20] James and Lutchman (n 9) 71.
[21] ibid 62.
[22] ibid 71.
[23] ibid 74.
[24] ibid 75.

Constituent Assembly. Then, input from interest groups who took the trouble to engage with the PNC's process was dismissed and the original government plans were put into effect anyway. Guyanese still, on occasion, refer to the 1980 Constitution as 'Burnham's Constitution', capturing its historical place as an instrument of personal rule. As O'Brien writes,

> The 1980 Constitution was forever dogged by the controversy surrounding the discredited referendum which had preceded its adoption, and by the suspicion that the real purpose of the switch to an executive presidency was to enable the Peoples National Congress (PNC) to entrench itself in office by increasing the power at its disposal over the other organs of state.[25]

Bulkan similarly observes that, with the executive president, "prime ministerial powers of the Westminster model were amplified, while safeguards were neutralised".[26] Quinn most aptly captures the constitutional change and its context when she writes that "party paramountcy was effectively replaced by presidential paramountcy".[27] Jeffrey observes that "Burnham was an autocrat long before he became a president".[28]

1.1.2 Sri Lanka

In Sri Lanka, the 1978 Constitution was also part of a broader pattern of executive centralisation. Bandaranaike Socialism emphasised statism and this was eventually cemented into the 1972 Constitution. De Silva and Wriggins write that the 1972 Constitution had left most of the Westminster model system unaltered, and focused simply on centralising executive power.[29] Sirimavo's United Front drafted the document as a means of tightening state control over individuals, corporations, and the public sector. This is particularly clear in cabinet control over public service appointments and removals. The previous chapter discussed how the 1972

[25] Derek O'Brien, *The Constitutional Systems of the Commonwealth Caribbean: A Contextual Analysis* (Hart 2014) 122.
[26] Arif Bulkan, 'Constitutional Architecture and the Production of Authoritarianism' in Arif Bulkan and Alissa Trotz (eds), *Unmasking the State: Politics, Society, and Economy in Guyana 1992-2015* (Ian Randle Publishers 2019) 7.
[27] Quinn (n 11) 20.
[28] Henry B Jeffrey, *Political and Ethnic Dominance in Guyana* (Gateway 2015) 215.
[29] KM de Silva and Howard Wriggins, *J.R. Jayawardene of Sri Lanka: A Political Biography*, vol II: 1956-1989 (Leo Cooper 1994) 384.

Constitution vested control of the public service in cabinet, and how it has proved difficult to dial back this politicisation ever since. Article 106(1) read

> The Cabinet of Ministers shall be responsible for the appointment, transfer, dismissal and disciplinary control of state officers and shall be answerable therefor to the National State Assembly.

Not only this, but this was a self-contained system and

> no institution administering justice shall have the power or jurisdiction to inquire into, pronounce upon or in any manner call into question any recommendation, order or decision of the Cabinet of Ministers".[30]

Similarly, fundamental rights were subject to Article 52, which allowed parliament to pass laws inconsistent with the constitution, without amending the constitution, as long as they were passed with a special majority. This survived the change to presidentialism and a similar provision can also be found in the 1978 Constitution.[31] All fundamental rights were also subject to a wide set of derogations, as prescribed by the law, including national economy and giving effect to the Principles of State Policy.[32] Another sign of centralisation was the switch from a bicameral to a unicameral parliament. Enhanced power for the legislature coincided with enhanced cabinet control over the legislature. Again, this was to minimise any institutionalised scrutiny of cabinet. This was another change that the 1978 Constitution built upon rather than reversing.

Coomaraswamy highlights the deeper changes in personnel that accompanied the 1972 Constitution. These changes accentuated its authoritarian tendencies:

> The radical difference between the 1947 parliamentary elite and the MPs of 1971 was that the latter were unschooled in the customs and conventions which made Parliament the 'self-restrained' sovereign body of the people. They brought with them a sense of Parliament as an instrument to achieve certain

[30] Constitution of Sri Lanka 1972, Art. 106(5).
[31] Constitution of Sri Lanka 1978, Art. 84.
[32] Constitution of Sri Lanka 1972, Art. 18(2).

> ends. They were therefore easily manipulated by the party leaders in support of any Machiavellian scheme of power.[33]

Kumarasingham similarly describes how this trend, whereby Ceylon became an *Eastminster* after independence, began even earlier than 1972 and had both political and constitutional components:

> tribulations with executive power, accountability, institutions, offices of state, conventions and many others did not, of course, arise with the establishment of the republic in 1972 nor the Executive Presidency six years later. Questionable executive practices that eroded democratic integration were already evident and prevalent from at least the end of British rule on 4 February 1948.[34]

Therefore, the 1978 Constitution was not a sudden break with the past. Instead, it was another (if very important) step in an ongoing process of executive centralisation.

In both Sri Lanka and Guyana, the presidencies were therefore the culmination of a gradual process of executive centralisation that had been ongoing since independence. The presidencies were the product of these statist trends of increasingly centralised and personalist rule. In Guyana, this process also included non-democratic practice and rigged elections. The 1980 Constitution was part and parcel of this political and constitutional climate. While the 1978 Constitution in Sri Lanka was passed in a resilient democratic, albeit authoritarian, political climate, Guyana's constitution was passed in a polity where democratic legitimacy had been obfuscated by sham elections. The next subsection discusses how this executive centralisation tied into communal domination in both countries, and how the executive presidencies continue to be both symbols and drivers of these practices.

[33] Radhika Coomaraswamy, 'The 1972 Republican Constitution in the Postcolonial Constitutional Evolution of Sri Lanka' in Asanga Welikala (ed), *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Centre for Policy Alternatives 2012) 131.

[34] H Kumarasingham, 'Unconventional Conventions: Power Partnerships in the Sri Lankan Executive' in Asanga Welikala (ed), *Reforming Sri Lankan Presidentialism – Provenance, Problems and Prospects* (Centre for Policy Alternatives 2015) 834.

1.2 The Presidencies as Symbols and Drivers of Communalism

Rather than merely executive presidencies, the institutions have morphed into 'communal presidencies'. The communal presidencies have two components. Firstly, the symbolic dominance of one community over others. This arose out of the communal electoral patterns that the presidencies were built upon and worsened over time. Secondly, and relatedly, the presidencies' direct control over public services and centralisation of the political executive. This was achieved by weakening independent services, the doctrinal dimension of which was described in the previous chapter. The two components go hand-in-hand, whereby presidents serve their own political ends (which often include communal domination) through holistic executive action.

1.2.1 Sri Lanka

Jayewardene, in creating the executive presidency, did view it as a strong device for executive action, but did not view it as an inherently communalist office. During his time in office, however, he increasingly turned against accommodation of Tamil interests and altered the constitution to make the presidency a more exclusionary tool, particularly with the Sixth Amendment. Jayewardene did enhance the separation of powers between the branches of government somewhat by putting the judiciary on a more independent footing. However, he also believed that a more centralised executive that was less responsive to parliament was needed to make 'correct but unpopular' decisions. Therefore, the presidency was very much part of a centralising programme within the executive. Nonetheless, Jayewardene also (originally) believed that direct elections for the head of government and PR for parliament could elevate the president above communal politics. Initially, it was also hoped by some that the president's freedom to make unpopular decisions could result in durable deals with Tamil groups. Ultimately, these hopes were overtaken by political reality and the presidency became an increasingly communalist office in an increasingly violent polity.

It was originally hoped that direct presidential elections would facilitate better accommodation of Tamil groups. To win an election, the president would require the support of minorities, particularly the numerically significant Tamils. Guruparan points out that, although this was closely linked to faith in Jayewardene as a leader, it was initially hoped that a directly elected executive president with some level of minority

support would be able to resist growing political resentment towards the Tamils and use their powers to strike deals that might avoid further escalating the conflict.[35] He compares this to "naive belief in a benevolent dictatorship", whereby parliamentary pressures had stymied past attempts to deliver a solution to the territorial debate, but an unaccountable head of government was never going to be the answer.[36] Despite this, some deal with Tamil factions was probably one of the correct but unpopular decisions that Jayewardene would have had in mind when advocating for the 1978 Constitution. In the same chapter, Guruparan goes on to reject Horowitz's argument that direct presidential elections would promote moderation on the national question because one candidate would need to win more than 50% share of the vote and therefore appeal to Tamil voters. In fact, this has not proved to be the case and Sri Lankan electors have picked winners in the first round.[37] While increasing and centralising executive power, therefore, the presidency has done little to boost accommodation of Northern Tamil interests in presidential campaigns and ethnic out-bidding is a lingering feature in politics.

As relations with the Tamils became ever more strained, Jayewardene also modified the presidency and parliament to be more exclusionary institutions. Perhaps counterintuitively, the PR system was intended to limit Tamils' ability to destabilise the government while also providing the Tamils with a clear voice in the legislature. The main purpose of PR was probably to limit the massive electoral swings under FPP. This can be seen in Jayewardene's decision to use a referendum to extend the parliament where he had a 4/5 majority left over from the FPP elections rather than hold another general election under the new PR system.[38] Another perceived benefit of the PR system was that, along with its high minimum thresholds for winning seats, it would also reduce regional parties' hands in destabilising governments in the legislature. The system was designed to ensure that major parties could win majorities but without massive swings after every election. Regional parties would be able to win a proportional share of seats without "expanding their areas of influence to other parts

---

[35] Kumaravadivel Guruparan, 'Flawed Expectations: The Executive Presidency, Resolving the National Question, and Tamils' in Asanga Welikala (ed), *Reforming Sri Lankan Presidentialism – Provenance, Problems and Prospects* (Centre for Policy Alternatives 2015) 437.
[36] ibid 440.
[37] ibid 448.
[38] Wiswa Warnapala, 'Seeking Sanction for Dictatorship: The Referendum in Sri Lanka' (1983) 18 Economic and Political Weekly 17.

of the island".[39] However, Jayewardene effectively disenfranchised many Northern Tamils with the Sixth Amendment in 1983. This required MPs to take an oath that rejected support for a separate seat and led to the Tamil United Liberation Front refusing to take their seats. This led to a situation where

> at a time when they are particularly in need of an organised political group able to act on their behalf through the normal parliamentary process and when it is particularly important to encourage Tamil participation in Sri Lankan political life, the Tamil people of the north and some of the people of the east find themselves in a situation in which they are no longer represented in Parliament.[40]

This lost hope is captured in AJ Wilson's reflections on Sri Lankan territorial politics and the 1978 Constitution. Wilson was a leading Tamil academic and Jayewardene's main advisor on the 1978 Constitution. In a description of the document and its rationale published in 1980, he claims that the constitution's "prime purpose" was to "promote economic growth and national unity".[41] The contrast between these intentions and the reality of the executive presidency are captured in his later book, *The Break-Up of Sri Lanka* in 1988. Wilson observes that, since independence, safeguards for the Tamils were replaced with 'dictatorship'

> first of the Cabinet (1948-77) and later of the Executive President (1977-), placing the Ceylon Tamil ethnic minority in particular at the mercy of an ethnic majority unaccustomed to the exercise of power.[42]

Just at the point when Sri Lanka was slipping into civil war, the presidency went from the last hope for a speedy resolution to the national question to the institution that only made a solution more difficult to find.

This thesis describes the gradual institutional changes that took place in Ceylon's constitution from independence. Nonetheless, this is still compatible with Kumarasingham's description of brewing communal politics, inadequately dealt with

[39] A Jeyaratnam Wilson, *The Gaullist System in Asia: The Constitution of Sri Lanka (1978)* (Macmillan 1980) 93.
[40] Patricia Hyndman, 'Human Rights, the Rule of Law and the Situation in Sri Lanka' (1985) 8 University of New South Wales Law Journal 337, 345.
[41] Wilson, *The Gaullist System in Asia: The Constitution of Sri Lanka (1978)* (n 39) xiii.
[42] A Jeyaratnam Wilson, *The Break-Up of Sri Lanka: The Sinhalese-Tamil Conflict* (C Hurst and Co 1988) 21.

by political elites, as a critical juncture in Ceylon's post-colonial politics. Kumarasingham observes that

> With their commitment to short-term political benefit they neglected real power-sharing strategies or institutional and constitutional accommodation that might have addressed the issue of communalism and defused its tensions. Instead, they left it to fester and later reach almost uncontrollable levels for state management. This era is therefore a critical juncture period in Sri Lankan history.[43]

While the constitution is adjacent to politics, and is therefore affected by it, nonetheless the constitution is a separate object of analysis. This thesis focuses, as far as possible, solely on constitutional and institutional development. In this regard, Sri Lanka shows patterns of gradual institutional change – especially in the central state. Nonetheless, this change was not totally insulated from other political tides. The communal presidencies show how these political tides seeped into patterns of constitutional change. The presidency was meant, primarily, to address economic failures and Chapter V describes how it triggered gradual institutional change in other institutions. Nonetheless, the office was caught up in the unstoppable downward spiral of communalism, too. Therefore, the 'communal presidency' reflects the complexity of constitutional and, on the other hand, political change in Ceylon after independence. The 1978 Constitution and the executive presidency were events where agentic dynamics strongly influenced outcomes. Therefore, they are not part of the path dependent processes (communalist politics) depicted by Kumarasingham. Nonetheless, they were adjacent to these politics and communalism deeply affected the character of the presidency in practice. Obviously, communalism was not the be-all and end-all of Sri Lankan constitutionalism, even by the late 1970s. However, by acknowledging path dependent features in other areas of Sri Lankan political life during this era, we can account for why communalism was still so influential in the spheres of constitutional change examined in this thesis – parliament, the head of state, cabinet, and the public service.

[43] H Kumarasingham, *A Political Legacy of the British Empire: Power and the Parliamentary System in Post-Colonial India and Sri Lanka* (IB Tauris and Co 2013) 172.

Although communalism and the presidency were linked from the start, it was not until almost thirty years later that the presidency as both a symbol and a driver of communal politics in Sri Lanka was solidified under Mahinda Rajapaksa. Rajapaksa built on the presidency's statist character and linked it to victory in the civil war. Jayewardene, while he centralised power in the executive president, also worked with some restraint. De Silva and Wriggins write that

> In drafting the new constitution, he had used de Gaulle as a model; in the practical working of the new constitution he followed the British parliamentary conventions, in which he was steeped, and was no more than a powerful Prime Minister".[44]

For Rajapaksa, on the other hand, the presidency was a tool that could be used to capture the state and imprint his own dynasty upon it. It was Jayawardene himself who fused presidentialism with monarchical imagery. Jayawardene "imagined himself as an Asokan monarch" and the executive presidency was an institutional embodiment of this desire.[45] However, while it may have been Jayewardene who linked presidentialism to monarchism in peoples' minds, it was Mahinda Rajapaksa who took this link to its extremes. Rajapaksa adopted what Roberts has called an 'Asokan Persona' and combined this with populist credentials. An Asokan Persona refers to

> a distilled picture of the conceptions of authority and symbols of status and power embodied in a *cakravarti* figure in Sinhala society over the past centuries. It assumes varying contexts of hierarchy and focuses upon the relationship between a superior and a subordinate. It seeks to delineate the images of authority and status that inform such interpersonal exchanges. It argues that such conceptions of authority and status are both embodied in, and reproduced within, the mechanisms of social distancing and the verbal and kinesic symbols of status.[46]

---

[44] De Silva and Wriggins (n 29) 386.

[45] Roshan de Silva Wijeyeratne, 'Cosmology, Presidentialism and J.R. Jayewardene's Constitutional Imaginary' in Asanga Welikala (ed), *Reforming Sri Lankan Presidentialism: Provenance, Problems and Prospects* (Centre for Policy Alternatives 2015) 544.

[46] Michael Roberts, 'Mahinda Rajapaksa as Modern Mahavasala and Font of Clemency? The Roots of Populist Authoritarianism' in Asanga Welikala (ed), *Reforming Sri Lankan Presidentialism: Provenance, Problems and Prospects* (Centre for Policy Alternatives 2015) 644.

Rajapaksa succeeded in combining these ancient, context-specific motifs with populism.[47] The presidency, with its institutional distance from other branches and untrammelled executive control, fused with this imagery and became synonymous with it.[48] As mentioned in the previous chapter, the Eighteenth Amendment was also a further institutional dimension to this. Welikala writes that

> the Eighteenth Amendment [passed under Rajapaksa] consolidated the hyper-presidential state by the abolition of term limits, the removal of restraints on presidential powers over key official appointments, and the enervation of the independent governance commissions.[49]

The armed forces and security services increasingly became an extension of Rajapaksa's own political power. "The deification of the President who was portrayed as a paternal protector figure played a crucial role in securitisation and militarisation" and this led to a 'shadow state' of unaccountable security apparatus.[50] Senaratne writes that by ending the civil war, Rajapaksa

> convinced vast segments of the Sinhala majority of the need to maintain the executive presidential system.[51]

Guruparan similarly describes this as a "constitutional moment" that re-defined the debate in favour of a strong presidency,[52] while de Votta says that Mahinda Rajapaksa portrayed himself as the "new Dutugemunu destined to eradicate terrorism".[53] Therefore, the presidency was appendaged to monarchical governance from the outset and this character has stuck with the office ever since. However, under Rajapaksa, monarchism gained a new and more concrete status. The executive

---

[47] ibid 651–2.

[48] Asanga Welikala, 'Yahapalanaya as Republicanism' in Asanga Welikala (ed), *The Nineteenth Amendment to the Constitution: Content and Context* (Centre for Policy Alternatives 2016).

[49] ibid 95.

[50] Ambika Satkunanathan, 'The Executive and the Shadow State in Sri Lanka' in Asanga Welikala (ed), *Reforming Sri Lankan Presidentialism: Provenance, Problems and Prospects* (Centre for Policy Alternatives 2015) 372.

[51] Kalana Senaratne, 'The Executive and the Constitutional Reforms Process in Sri Lanka' (2019) 108 The Round Table 625, 627.

[52] Kumaravadivel Guruparan, '18 May 2009 as a Constitutional Moment: Development and Devolution in the Post War Constitutional Discourse in Sri Lanka' (2010) 11 Junior Bar Law Review 41.

[53] Neil DeVotta, 'Sri Lanka: From Turmoil to Dynasty' (2011) 22 Journal of Democracy 130, 136.

presidency has fused with this symbolism and the victory over the Liberation Tigers of Tamil Eelam ('LTTE') lent the presidency to ideas of communal supremacy.

Behind the imagery of the president as ancient monarch and victor of the civil war, Mahinda Rajapaksa's control of the public services also served a personal purpose. Wickramasinghe notes that

> In the years that followed the brutal crushing of the Tamil insurrection, Mahinda Rajapaksa's administration was busy weakening the institutions that could have allowed the opposition one day to become a political challenge [...] These measures were cleverly embedded within a deeply entrenched form of cultural politics where, by spreading the idea of national heritage and instilling pride in a glorious national past, citizens became convinced of the legitimacy of the postwar patriotic state constructed by Rajapaksa.[54]

This involved inflating the public sector and investing heavily in infrastructure projects that both enriched the Rajapaksa family and increased their control over the country.[55] Despite malpractice, for a time at least these policies were seen to deliver for the people, too, and Rajapaksa's approval ratings were high as the quality of life seemed to improve.[56] This combination of a corrupt executive that also delivered tangible results for the people was facilitated by the changes made with the Eighteenth Amendment (from the Constitutional Council to the Parliamentary Council) discussed the previous chapter. One such example was the purchase of four MiG-27 aircraft from Ukraine in 2006. Journalists alleged that Rajapaksa and a relative made 10 million dollars from the deal and this led to charges against Gotabaya Rajapaksa in 2016. Journalists were targeted by the family and Lasantha Wickrematunge, the editor of the *Sunday Leader* was assassinated. Although the murder remains unsolved, Abeyagoonasekera links this to investigations into the deal.[57] During election time, "state employees, vehicles, and media were blatantly used to support the president's candidacy"[58] and Rajapaksa's opponent in the 2010 election, Sarath Fonseka, had his

---

[54] Nira Wickramasinghe, 'Mahinda Rajapaksa: From Populism to Authoritarianism' in Alain Dieckhoff, Christophe Jaffrelot and Elise Massicard (eds), *Contemporary Populists in Power* (Springer 2022) 114.
[55] ibid 121–5.
[56] ibid 124.
[57] Asanga Abeyagoonasekera, 'Sri Lanka's Political-Economic Crisis; Corruption, Abuse of Power and Economic Crime' (2023) 30 Journal of Financial Crime 1432.
[58] DeVotta, 'Sri Lanka: From Turmoil to Dynasty' (n 53) 136.

hotel surrounded by troops on election day.[59] Commenting on the same election, Kadirgamar writes that "those employed in the state sector – where patronage is prevalent – are likely to vote for the incumbent".[60] Mahinda Rajapaksa's strengthening of the executive and control over the public sector was therefore not merely a means to win the war, but also a tool for personalised power.

1.2.2 Guyana

While the link between presidentialism and communalism in Sri Lanka was neither direct nor immediate, in Guyana the executive presidency was conceived as an integral part of communal government. Hintzen's comparison of racial mobilisation for state survival in Guyana and Trinidad, published in 1989, continues to be an authoritative work on exclusionary practices in Guyana. Hintzen describes how a politicised executive, replete with patronage networks and use of force, was nurtured to entrench Burnham at the head of an ethnically exclusionary state.[61] In Chapter I, we saw how Guyana's politics became divided along almost solely ethnic lines after independence. Neither Burnham nor Jagan had a strong commitment to democratic government and interference from Britain and the United States ensured that Guyana began independence with a PNC coalition government. In an earlier subsection, we also saw how the executive presidency was linked to Burnham's desire for a party-state. Predictably, a politicised executive that could be used to quash Indo-Guyanese opposition was an important part of this. Hintzen describes how Burnham rapidly brought private sector companies into public ownership while minimising the role played by foreign banks.

> The growth of the public sector was dramatic, incorporating about 80 percent of the productive sector by the latter half of the 1970s. Government ministries increased from 12 in 1968 to 21 in 1977. The number of state corporations also increased dramatically from 3 in 1968 to over 25 in 1977 in addition to 5 government banks.[62]

---

[59] ibid.
[60] Ahilan Kadirgamar, 'State Power, State Patronage and Elections in Sri Lanka' (2010) 45 Economic and Political Weekly 21, 23–4.
[61] Hintzen (n 5).
[62] ibid 67.

The public sector determined most peoples' livelihoods and advancement depended on PNC loyalty. In effect, this gave Afro-Guyanese a disproportionate advantage across the entire state.[63] As in other contexts of communal domination, patronage was also used to bridge the communal gap to a limited extent insofar as it served the regime's interests. Griffith points out that

> Over the years since 1964, the PNC has enjoyed considerable success in broadening the racial composition of both the party and the government. People of Indian descent were placed in influential, or high-profile, positions. Some of them, like former PNC General-Secretary and Vice-President Ranji Chandisingh, now Ambassador to Moscow, had defected from the PPP.[64]

This does not detract from the overall trend in public service patronage being used to serve the PNC's mainly Afro-Guyanese support base.

Communalism did not only take the form of patronage, but also coercion:

> The Guyanese regime effectively employed a racial appeal to secure absolute control of the military-bureaucratic state apparatus that was dominated by the country's black and colored middle class.[65]

Burnham developed a range of armed organisations that were used to enforce political control while also providing a solution to unemployment. The Guyana National Service, for example, was used to develop the hinterland and provide training and benefits to otherwise jobless black youths. It was also a strong forum to promulgate the PNC's vision for Guyana to large chunks of the population. As well as the GNS, however, there were also other military and paramilitary bodies: the Guyana Defence Force, the People's Militia, the Women's Revolutionary Socialist Movement, and the Young Socialist Movement are just some examples. It is estimated that, by 1976, 1 in 35 Guyanese was a member of a military or paramilitary organisation.[66] In a

---

[63] ibid 72.
[64] Ivelaw L Griffith, 'The Military and the Politics of Change in Guyana' (1991) 33 Journal of Interamerican Studies and World Affairs 141, 151.
[65] Hintzen (n 5) 90.
[66] *Guyana: Fraudulent Revolution* (n 15) 55.

comprehensive study of the Guyanese police in 1982, Danns links this to colonial race-based domination

> White racist dominance and economic ascendency have given way to a personalized rational-legal system of rule that fosters the ethic of the paramountcy of a single political party in a society in which political processes have always been flavoured with racial overtones and in which political parties are interest-aggregating and interest-articulating institutions of particularistic ethnic groups.[67]

In a 1983 edited book chapter, Danns described the surge in uniformed personnel as "the most conspicuous feature in Guyanese society over last five years" that could not be escaped in daily life.[68] During this era, when Burnham's rulership became increasingly tyrannical in the early 1980s, there was also a growth in so-called 'kick-down-the-door gangs'. These groups' purpose was to terrorise the Indo-Guyanese by breaking into their homes to commit robbery and, less frequently, rape and murder. They exhibited advanced training and it was widely believed that they were PNC-backed, or at least the party chose to turn a blind eye. Certainly, the end of Burnham's rule marked the demise of the gangs, too.[69] The 'House of Israel', a cult whose followers believed Afro-Guyanese were the true Hebrews, was another well-armed, Afro-Guyanese force that Burnham depended on to break strikes and attack opponents.[70]

Burnham's successor, Hugh Desmond Hoyte, liberalised the economy but avoided democratic reform until the end of his presidency. Elections were still criticised as unfair and Hoyte continued to rely on Burnham's party state to remain in power.[71] Hoyte was pragmatic, and even economic liberalisation (with its subsequent loss of patronage) had to be done in a gradual way. Ramrattan and Szenberg observe that "the tail end of Hoyte's period witnessed a slow paradigmatic shift from socialism back

[67] George K Danns, *Domination and Power in Guyana: A Study of the Police in a Third World Context* (Transaction Books 1982) 106.
[68] George K Danns, 'Decolonization and Militarization in the Caribbean: The Case of Guyana' in Paget Henry and Carl Stone (eds), *The Newer Caribbean: Decolonization, Democracy, and Development* (Institute for the Study of Human Issues 1983) 66.
[69] Tim Merrill, *Guyana and Belize* (2nd edn, Library of Congress 1993) 143.
[70] ibid 142–3.
[71] Heiko Meinhardt, 'Government and Opposition in Guyana' (1990) 23 Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America 434.

to capitalism".[72] Beyond the economy, structural government reforms were limited, however Hoyte did allow for free and fair elections in 1992, overseen by Jimmy Carter and the Commonwealth Secretariat.[73] Although important reforms were made in some areas and "few would deny that the Burnham-era situation of permanent fear has changed under Hoyte", the military and police remained political forces.[74]

Cheddi Jagan's government of 1992-1997, under the PPP/Civic ('PPP/C') banner, made some attempts to diffuse communal politics in Guyana. However, Jagan ultimately remained attached to unchecked executive power. Even where there was commitment to removing communalism from politics, a centralised executive in an ethnically divided party system weighted perceptions against equitable rule. Reflecting on decision-making structures for Guyana's Economic Recovery Plan, France writes that

> While the PNC's decision-making process was opened to only a few participants, the PPP's decision-making process was even further narrowed to include only the President, his American born Jewish wife Janet Jagan (who would later succeed him as President of Guyana upon his death in 1997), his newly appointed Minister of Finance, Asgar Ally, and to a lesser extent the Governor of the Bank of Guyana.[75]

Jagan, a lifelong Marxist, was forced to exclude left-wing elements of the PPP from economic policy because Guyana was still dependent on foreign aid, which would only be provided so long as liberalisation was government policy. Although Jagan operated a close-nit executive, the early days of his government did give hope that Guyana would depart from communal exclusion. Jagan inherited a mainly Afro-Guyanese bureaucracy and his policies were restrained by international relations and the Civic part of his coalition, which relied on a business/professional powerbase. Cooperation and compromise seemed possible. Jeffrey, a Guyanese academic and former cabinet minister, including under Jagan, writes that "Cheddi spent his entire political life

---

[72] Lall Ramrattan and Michael Szenberg, 'Colonial Dependency, Coreperiphery, and Capitalism: A Case Study of the Guyana Economy' (2010) 44 The Journal of Developing Areas 51, 54.
[73] Griffith, 'The Military and the Politics of Change in Guyana' (n 64) 141.
[74] ibid 152.
[75] Hollis France, 'Continuity or Change?: Structural Adjustment Decision-Making in Guyana (1988–1997) the Hoyte and Jagan Years' (2005) 54 Social and Economic Studies 83, 113.

searching for practical solutions to our ethnic problems".[76] Despite these hopes, however, Jagan was perhaps doomed from the start. He inherited a bureaucracy that was historically allied with his rivals in the PNC. Jagan used his presidential powers to increase Indo-Guyanese, PPP-supporting representation across the public service.[77] Scott compares this to "stepping on hot coals in a political end game".[78] Certainly, top public service positions during the 1990s PPP governments were filled with known political activists.[79] Whatever Jagan's intentions, his presidency sent the message to Guyanese that the president would run public services on a communal basis. The Afro-Guyanese reaction to this system change can be seen in the 1997 security breakdown, discussed in the previous chapter.

Subsequent presidents have continued this pattern of using the office to build on communal power bases. Notably, the executive presidency has been a unique instrument and symbol of this unaccountable executive power beyond what might be expected of a prime minister in an equally communalist political environment. Khemraj characterises early PPP governments as elected oligarchies where the prize of the executive presidency was an important part of maintaining control

> First, democratic centralism is used by an entrenched group of PPP leaders to select a presidential candidate […] Second, given the persistent ethnic voting patterns, the candidate is likely to win the national election and therefore enjoy the immunities of the mildly reformed 1980 Burnham Constitution. Third, this candidate then surrounds himself with chosen like-minded individuals. Fourth, generous government-sponsored incentives are then offered to chosen members of the business class. This allows a few powerful leaders to direct the economic space in Guyana.

The president's unfettered control over appointments and legal immunities are therefore inseparable from communal-based parties' control. In the same vein, Merrill notes that although the constitution purports to divide power between the six 'Supreme

---

[76] Jeffrey, *Political and Ethnic Dominance in Guyana* (n 28) ix.
[77] Derek O'Brien, *The Constitutional Systems of the Commonwealth Caribbean: A Contextual Analysis* (Hart 2014) 133.
[78] Michael E Scott, 'Public Sector Transformation in Guyana' in Paul Sutton (ed), *Modernizing the State: Public Sector Reform in the Commonwealth Caribbean* (Ian Randle Publishers 2006) 110.
[79] ibid 113.

Organs of Democratic Power', in reality it continues to vest almost unlimited power in the president.[80] Haynes similarly describes the office as the "indomitable Executive President" with powers and immunities that are "unparalleled" in the rest of the Caribbean.[81] Recent examples of abuse include when former-president Jagdeo claimed immunity in 2017 when he was arrested for, allegedly, selling under-valued land to himself and his ministers while in office. The 'Pradoville 2' mansions had been developed with state funds.[82] In 2014, President Donald Ramotar used his Article 70(1) powers to suspend the National Assembly in a last-ditch attempt to avoid a no-confidence vote.[83] More recently in the 2020 elections, after massive disparagements between the statement of poll and the statement of recount on one hand and a returning officer's spreadsheet on the other hand, it was finally decided in court that David A. Granger was not the winner, as had previously been declared, but Irfaan Ali. Head of the Organisation of American States observer group and former prime minister of Jamaica Bruce Golding said he had "never seen a more transparent effort to alter the results of an election".[84]

The presidency is left unreformed because it suits the leaders of both major parties so well. Just as Burnham intended, it elevates the officeholder above political and judicial checks and gives them firm reigns over the public service. The executive presidency is the most vivid Burnhamite vestige remaining in the reformed 1980 Constitution and subsequent presidents have conformed with the same patterns of communal dominance. These two dimensions to the presidency – the symbolism of Burnham's office and the utility of an unchecked executive – have endured since 1980.

1.2.3 Collegial Cabinet

In both Sri Lanka and Guyana, the communal presidencies have also eroded collegial cabinet norms that can be a soft check on the head of government. Concrete evidence of norms in cabinet relations can be difficult to come by in an institution that runs on

---

[80] Merrill (n 69) 113.
[81] Jason Haynes, 'The Constitutional Law of Guyana: Challenges and Prospects' in Richard Albert, Derek O'Brien and Se-shauna Wheatle (eds), Jason Haynes, *The Oxford Handbook of Caribbean Constitutions* (Oxford University Press 2020) 166.
[82] ibid 167.
[83] Quinn (n 11). This is discussed further in the next chapter.
[84] Stabroek News, 'Golding Exposes Electoral Fraud at OAS Meeting' *Stabroek News* (14 May 2020) <https://www.stabroeknews.com/2020/05/14/news/guyana/golding-exposes-electoral-fraud-at-oas-meeting/> accessed 27 February 2023.

convention and understandings, particularly confidential discussions, rather than codified structures.[85] However, there is anecdotal evidence in both Guyana and Sri Lanka that the executive presidency eroded pre-existing norms of a collegial cabinet. Also, as seen in the previous chapter, what codified structures there are in the constitutions clearly intended a change in cabinet relations.

In Guyana, Hoyte used presidential powers to establish a committee that would bypass cabinet government when implementing economic reforms. The economic monitoring committee was established to avoid pressure from prominent Burnhamite PNC members.[86] In one of the most up-to-date appraisals of Guyana's constitution, Bulkan says that presidentialism cemented "absolute control of the president over the cabinet".[87] In his *Future Notes* series, Jeffrey also discusses the collapse of cabinet government into what has become known as "unipersonal executive responsibility".[88] Jeffrey favours a stricter separation of powers between the president and legislature rather than a return to parliamentarism, which he believes could also descend into total rule by a prime minister.[89] Ramkarran, a Guyanese lawyer and former speaker of the National Assembly, identifies immunities and cabinet control as the two parts of the 1980 Constitution that fundamentally altered the status of the head of government

> The combined effect of these provisions created an executive presidency, enshrined it with "supreme executive authority," removed the power of the cabinet for the "general direction and control of the government," gave that power to the president, made the cabinet advisory and granted immunity to the president for private acts.[90]

Therefore, academics and those with experience of government have acknowledged a change in cabinet relations where the head of government has drifted from *principes senatus* to *imperator*.

---

[85] Dennis C Grube and Anna Killick, 'Groupthink, Polythink and the Challenges of Decision-Making in Cabinet Government' (2023) 76 Parliamentary Affairs 211, 216.
[86] France (n 75) 109.
[87] Bulkan (n 26) 7.
[88] Jeffrey, *Political and Ethnic Dominance in Guyana* (n 28) 213.
[89] ibid 218–20.
[90] Hari N Ramkarran, 'Seeking a Democratic Path: Constitutional Reform in Guyana' (2004) 32 Georgia Journal of International and Comparative Law 585, 593.

In Sri Lanka, echoes of Guyana's change in cabinet relations can be heard in President Kumaratunga's approach to cohabitation:

> Under our constitution the prime minister is merely a glorified minister. It takes just a one-sentence letter from me to dismiss the prime minister and his entire cabinet.[91]

During the strained era of cohabitation, the president wanted to emphasise where real power lies under the 1978 Constitution. The Sri Lankan judiciary has similarly echoed this change, but with varying limpidity. For example, in Reference No. 2/2003, the Supreme Court held that

> under the 1946 and 1972 Constitutions the executive power including the defence of Sri Lanka was exercised by the Cabinet of Ministers headed by the Prime Minister. By the second Amendment to the 1972 Constitution the reference to the Cabinet of Ministers in section 5, which dealt with the exercise of executive power and the defence of Sri Lanka was removed. That removal of the Cabinet of Ministers as a repository of executive power including the defence of Sri Lanka was further entrenched by Article 4(b) of the present Constitution, which links the exercise of such power to the mandate received by the President from the People who are sovereign. On the other hand, the role of the Cabinet of Ministers is functional in nature in relation to the subjects coming within the Government of the Republic. These functions are attended to by the respective Ministers within the purview of the executive power including defence of Sri Lanka which is solely vested in the President elected by the People.[92]

The Second Amendment to the 1972 Constitution, as in Guyana, incorporated the executive presidency into the existing document before the new constitution was passed. This extract from the court's judgment encapsulates the change in cabinet relations brought about by the executive presidency under the law. Rather than being a repository of executive power, cabinet is merely "functional in nature" and the court

[91] 'Sri Lanka 2003: The Continuing Deadlock' (*orfonline.org*, 12 January 2004) <https://www.orfonline.org/research/sri-lanka-2003-the-continuing-deadlock> accessed 9 March 2024.
[92] SC Reference No. 2/2003, at pp. 8-9.

went on to state that the president has "pervasive control" of the executive.[93] The people's executive power is vested in the president and the president alone. These sentiments were repeated in *Re Twenty-First Amendment to the Constitution*:

> So long as the President remains the Head of the Executive, the exercise of his powers remains supreme or sovereign in the executive field and others to whom such power is given must derive the authority from the President.[94]

In this case, the Court seemed to curtail a previous discussion of executive authority where it was held that "the President is not the sole repository of Executive power under the Constitution".[95] The Sri Lankan judiciary and political practice have therefore rejected the idea that cabinet has inherent executive power. The next chapter discusses the effects of the Nineteenth Amendment, which limited the president's powers to dismiss the prime minister. Although it has since been replaced, the Nineteenth Amendment did give the prime minister independence from the president. However, despite this legal change, the president continued to view cabinet through the overall 1978 Constitution paradigm and attempted to bypass these constitutional limitations with other tactics.

Other writers may argue that, even at independence, the idea of Ceylon possessing a 'collegiate' cabinet system is misleading. Kumarasingham points out that

> Sri Lanka's elite operated British institutions in an anachronistic eighteenth-century manner – such as in having a patronage-based Cabinet dominated by its prime ministerial leader/patron rather than by collegial attitudes or values.[96]

Certainly, Kumarasingham demonstrates that, to the extent that power was dispersed in cabinet, it was not a mere transplant of British cabinet government and its values. Also, the governor general and prime minister were far more dominant than, for example, the British prime minister and monarch.[97] Nonetheless, while the prime minister may not have been an exact transplant of the British *primus inter pares,* the discussion above does suggest that the executive presidency was accompanied by a

---

[93] *In Re Twenty-First Amendment to the Constitution* SC (SD) No. 31/2022, at p. 9.
[94] ibid at p. 28.
[95] Decisions of the Supreme Court on Parliamentary Bills (2014-2015) Vol. XII, page 26 at 31-32.
[96] Kumarasingham, *A Political Legacy of the British Empire* (n 43) 7.
[97] ibid 6.

tightening of cabinet control. Kumarasingham's work on the late development of a party system in Ceylon and the idea that DS Senanayake and other prime ministers depended on patronage to hold together somewhat loose coalitions after independence adds to this, too.[98] While the idea of a 'collegiate' cabinet in Ceylon may conjure up images of a past that never was (especially if this is taken to be the same collegialism of British cabinet), nonetheless, it does help to capture the change with executive presidentialism where cabinet ministers became less autonomous than under previous constitutions.

To conclude, executive presidencies in Guyana and Sri Lanka are, in fact, 'communal presidencies'. Presidentialism was the culminating institutional pinnacle in ongoing processes of executive centralisation and the erosion of accountability. Where political support was built on communalist politics, executive centralisation became state domination by particular groups. While this was deliberate in Guyana, Jayewardene miscalculated the effects of the executive presidency and how it would be caught up in the political tides of the national question. The communal presidents also became more dominant within their cabinets.

2. Westminster Model Constitutional Features in Practice

This section discusses four more WMCFs and how they have survived and adapted under the communal presidencies. These are ministerial responsibility, the close cabinet-parliament nexus, the speaker, and the leader of the opposition. It is seen that these features have played a mixed role. Generally (with the exception of the recognised opposition) they have helped to strengthen the executive, however they have also had other effects, too. In some cases, such as ministerial responsibility in Sri Lanka, these codified conventions have even fallen into disuse. These WMCFs, and the Commonwealth as a point of constitutional reference, have become particularly important during periods of political instability. The presence of the communal presidencies, as institutions, has been significant in the changing nature of these codified conventions.

[98] H Kumarasingham, 'Elite Patronage over Party Democracy – High Politics in Sri Lanka Following Independence' (2014) 52 Commonwealth and Comparative Politics 166; Kumarasingham, *A Political Legacy of the British Empire* (n 43) 142.

2.1 Collective and Individual Ministerial Responsibility

Collective and individual ministerial responsibility continue to be important facets of Guyanese parliamentarism. These are invoked by both governments and oppositions as pillars of the constitution. A prominent example of this is when the National Assembly passed a vote of no-confidence against the minister of home affairs, Clement Rohee, on 30 July 2012. On July 18, three individuals taking part in a protest against the scrapping of the electricity subsidy were shot dead by police.[99] During parliament's next sitting, on July 25, a motion of no-confidence in Rohee, specifically, was tabled by the leader of the opposition, David Granger. It was argued that Rohee, whether he gave a direct order to use live ammunition or not, was constitutionally bound to accept responsibility and resign. In his opening argument in favour of the motion, Granger stated

> somebody must be responsible and we have to deal today, and henceforth, with the doctrine of ministerial responsibility.[100]

Naturally, this was but one part of a broader discussion around individual rights, police brutality, and the character of the Guyanese nation.[101] Nonetheless, as the Rohee saga unfolded, discussions became increasingly technical and focused on the requirements of ministerial responsibility.

Discussions focused on ministerial responsibility when, after passing the motion of no-confidence in Rohee, certain MPs began to call for him to no longer be recognised as a minister and have his rights in the chamber restricted (the motion was both one of no-confidence and censure). The next time Rohee was called on to address the chamber after the vote, the speaker was forced to adjourn the National Assembly due to disturbances by the opposition, specifically chants of 'Rohee must go'.[102] In justifying his decision to continue to recognise Rohee's right to address the National Assembly, the speaker drew on the comparative Commonwealth example of Dominica, stating that only a substantive motion explicitly limiting the minister's rights

---

[99] 'Guyana Deals with Aftermath of Deadly Protests' *BBC News* (27 September 2012) <https://www.bbc.com/news/world-latin-america-19747052> accessed 13 February 2024.
[100] Official Report, 10th Parliament, 25th Sitting (Wednesday 25 July 2012), p. 45.
[101] See, for example, the speeches given by both Granger and Catherine Hughes on Wednesday 25th July 2012.
[102] Official Report, 10th Parliament, 30th sitting (Thursday 8 November 2012), p. 11.

in the National Assembly would suffice.[103] The speaker further asserted, not for the last time, that the president was not "constitutionally and or legally obliged to adhere to the Motion" and remove Rohee from office.[104] At this point, commentators began to weigh in on the issue of ministerial responsibility and how it ought to apply to Rohee. In a letter to Stabroek news, Ally argued that the original motion was itself improper. Drawing on de Smith and comparisons with India, he argued that, due to collective responsibility, the motion "ought not to have been put up for debate in the first place".[105] While collective responsibility does require cabinet to take political and constitutional ownership of the sum of its parts, another interpretation is that a vote of no-confidence in a single minister is a vote of no-confidence in the entire government. Even if this should have been the proper interpretation in Guyana, this again raises the question of whether the motion should have been allowed in that particular manner and form and not as a motion of no-confidence in the government. On Rohee's right to address the National Assembly, the High Court found that the only relevant part of his status was that of MP, not minister, and that (as an MP), both he and his constituents had a right for him to address the chamber.[106]

The speaker's ruling on the no-confidence motion unpicked ministerial responsibility as it applies in Guyana through comparative examples and institutional support from across the Commonwealth. The speaker restated that only the president can decide whether to dismiss a minister and, on the matter of resignation, this is solely down to the individual minister.[107] In determining this, the speaker relied not only on standing orders and the constitution but also comparative experience and expertise. Guyana's standing orders provide that where the standing orders of the National Assembly of Guyana are silent, the

[103] ibid p. 10.
[104] ibid p. 10.
[105] Ally Hydar, 'No-Confidence Motion against Rohee Was Constitutionally Impermissible' *Stabroek News* (16 November 2012) <https://www.stabroeknews.com/2012/11/16/opinion/letters/no-confidence-motion-against-rohee-was-constitutionally-impermissible/> accessed 9 March 2024.
[106] 'Chief Justice Rules Rohee Has a Right to Speak in the National Assembly' *Guyana Chronicle* (12 January 2013) <https://guyanachronicle.com/2013/01/12/chief-justice-rules-rohee-has-a-right-to-speak-in-the-national-assembly-as-gag-order-against-minister-rohee-dismissed-by-high-court/> accessed 9 March 2024.
[107] Speaker's Ruling No. 2 of 2013, p. 2.

> usage and practice of the Commons Assembly of Parliament of Great Britain and Northern Ireland, which shall be followed as far as the same, may be applicable to the Assembly.[108]

Working on the back of this standing order, the speaker described the application of ministerial responsibility in the UK and Australia and how it might relate to this case. In Guyana, the

> legislature operating in the Westminster construct, cannot legally prevent a Minister from speaking or carrying out his/her ministerial functions in the House.[109]

In analysing law and convention in these comparative examples, the speaker had received written advice from the clerks of the House of Commons (UK) and House of Representatives (Australia). The speaker emphasised that these comparative examples are useful in that they are part of a common parliamentary model, but only insofar as Guyana's own constitution and procedures are silent. Indeed, he went so far as to question the extent to which Guyana's constitution requires individual ministerial responsibility given that only collective responsibility is explicitly mentioned in the codified constitution. Ministers are certainly responsible to parliament, however the convention is of an "obviously different nature" to collective responsibility.[110]

This episode demonstrates that ministerial responsibility in Guyana is something that inherently requires a comparativist approach while still being unique to the country. It is a convention that has common historical roots with that in other systems, but it exists within Guyana's own legal framework and parliamentary practice. For example, the speaker was clear that parliament in Guyana comprises two equal components – the president and the National Assembly. Therefore, to interpret this convention there must be regard for both components. The speaker drew attention to this "equal and symbiotic relationship",[111] and found that

[108] Standing Orders of the National Assembly of Guyana, standing order 113.
[109] Speaker's Ruling No. 2 of 2013, pp. 11-13.
[110] ibid p. 5.
[111] ibid p. 4.

> refusing the right to a Minister to address the House is tantamount to refusing the President the right to speak in the House; a very unconstitutional and untenable situation.[112]

These two components of parliament existed in Guyana's independence constitution, which were "Her Majesty and a National Assembly", and they survived when that constitution was amended to make Guyana a republic.[113] However, the texture of these provisions has clearly been changed by the political presidency, just as they have helped to define the texture of the presidency itself. Jeffrey similarly comments that, in Guyana, no-confidence motions in a minister should be interpreted through a more Washington-style lens, where they can simply be passed to embarrass the government, rather than in Westminster traditions, where they would require the minister to resign. He argues that

> we are not such a system: the president is not a member of the National Assembly and as such the PPP/C can legitimately look to other traditions to support its position.[114]

The president has inherited a status in the National Assembly from less- or non-political forbearers. Rather than a strict separation of powers, the president is an integral part of parliament and has inherent rights within the National Assembly. This influences how this WMCF operates in practice.

In addition, the speaker was willing to accept a motion that included censure of a minister, a motion of no-confidence against him, and also an expression of sympathy with the protest's victims and their families. In this regard, Guyana has probably cut its own path compared to other Westminster model systems. It seems unlikely that such a combined motion could be passed in the British House of Commons, for example. In addition to this, as mentioned above, governments in the UK would perhaps be inclined to announce in advance that they treat a motion of no-confidence in a specific minister as a motion of no-confidence in the government, given collective

---

[112] ibid p. 10.
[113] Constitution of Guyana 1966, Art. 57.
[114] Jeffrey, *Political and Ethnic Dominance in Guyana* (n 28) 115.

responsibility. Motions of censure are less serious and they have been passed against specific ministers before in the UK.[115]

Ministerial responsibility has also been invoked at other times in Guyana either by the government as a way of politically protecting cabinet or by the opposition as a way of holding it to account. When a motion of no-confidence was tabled against the minister of labour (Mansoor Nadir) in June 2010, the leader of the opposition emphasised that ministers' responsibility to parliament is a constitutional provision with concrete duties. Acknowledging that the minister did not respond to parliamentarians' enquiries on his portfolio, Robert Corbin invoked the minister's constitutional duty to be responsible to parliament

> while the President appoints the Minister, he is not a law unto himself. He has to advise the President because that is the source of his appointment, but he is also answerable to this Parliament. This is why we are here. We are here because the Minister has even disregarded representation from Members of this Parliament to get some clarity and so we had to formally bring it here. He has not only "*dissed*" the workers; he has "*dissed*" the entire National Assembly.[116]

Collective responsibility has also been invoked to protect former ministers against prosecution for actions taken while in office. When both Winston Jordan (former finance minister) and George Norton (former minister of public health) were arrested on separate charges in 2021, collective responsibility was invoked as a kind of immunity:

> To charge and prosecute a former Minister for taking actions pursuant to a decision(s) of Cabinet is vulgar, abusive, unlawful and unconstitutional, and as the PPP recognised when it withdrew false charges against Dr. George Norton,

[115] 'Confidence Motions and Parliament' (*Institute for Government*, 1 March 2018) <https://www.instituteforgovernment.org.uk/article/explainer/confidence-motions-and-parliament> accessed 9 March 2024.

[116] Official Report, 9th Parliament, 124th Sitting (Tuesday 3 June 2010) p. 100.

> an individual should not be singled out and persecuted while acting on behalf of the collective of the Constitutional body known as the Cabinet.[117]

Collective responsibility has also been invoked to assure ministers of political protection and to broaden political expertise on important national issues.[118]

Collective and individual ministerial responsibility are far less frequently invoked in Sri Lanka, however collective responsibility has been important in some court cases. This is with the exception of constitutional crises, where cabinet has lost the confidence of parliament, discussed in the next chapter. Collective responsibility took centre stage in *Silva*.[119] In this case, Silva sought a writ of *certiorari* to quash the decision of the prime minister (Wickremesinghe) to sign a cease fire agreement with the LTTE. Rejecting the petitioner's prayer, the Court of Appeal held that cabinet's role under Article 43(1) gives it direction and control of the government and that

> When these provisions are considered, in the light of the concept of collective responsibility of the Cabinet the President and the Cabinet are part of one unit that is collectively responsible.[120]

The petitioner's claim that the decision to enter into the ceasefire agreement required the clear concurrence of the president was rejected because

> Once the act is considered to have been carried out by the Cabinet or consequent to a Cabinet decision then it necessarily follows the President – member and Head of the Cabinet – is part of it and in the collective nature of the Cabinet decision. Hence the decision of the Cabinet to enter into a CFA [cease fire agreement] with the LTTE cannot be said to have been taken without the concurrence of the President.[121]

---

[117] 'Arrest of Jordan Despicable – AFC' *Stabroek News* (3 December 2021) <https://www.stabroeknews.com/2021/12/03/news/guyana/arrest-of-jordan-despicable-afc/> accessed 9 March 2024.

[118] Johann Earle, 'Matter of Full Disclosure of Exxon Contract Is a Live Consideration before Cabinet' *Stabroek News* (15 November 2017) <https://www.stabroeknews.com/2017/11/15/opinion/letters/matter-of-full-disclosure-of-exxon-contract-is-a-live-consideration-before-cabinet/> accessed 9 March 2024.

[119] *Tilwin Silva v. Ranil Wickremasinghe and Others* [2007] 2 Sri LR 15.

[120] ibid at p. 15.

[121] ibid at p. 16.

The court therefore relied on the constitutional status of collective responsibility (enshrined in the constitution and derived from Westminster model conventions) to understand the proper powers of the prime minister within an executive presidential system.

Beyond this, in the case of *Gamini Dissanayake v. M.C.M. Kaleel and Others,* Justice Fernando took the unusual step of equivocating a minister's responsibility of honesty to cabinet with their individual responsibility of not deliberately misleading parliament. In this case, a number of cabinet ministers had signed a motion to impeach the president in August 1991. Later, and while it was not yet known by the president that they had signed this motion, they also voted in favour of a cabinet (not parliament) confidence motion in the president. Fernando remarked that

> The Cabinet is charged with the direction and control of the government, and operates on the basis of collective responsibility. Deception completely undermines loyalty, trust and confidence, vital for its functioning […] A Member of Parliament who lies to or otherwise deceives Parliament is guilty of a serious breach of privilege […] No lesser standard can be accepted for a Minister in relation to the Cabinet and Cabinet proceedings.[122]

Here, we see the judiciary willing to delve into cabinet's internal proceedings and reflect on ministers' duties to their colleagues as required by collective responsibility. Not only this, but collective responsibility within cabinet is given equally rigorous *constitutional* requirements of honesty as a minister's individual responsibility to another branch of government, the parliament. This is distinct from the *Silva* case, which decided on whether an agreement entered into by the government of Sri Lanka (by the prime minister) was legally valid. It may also indicate how the codification of collective responsibility has opened the door to judicial action that may not have been possible in the case of an unwritten convention. Therefore, although collective and individual responsibility may not be invoked in Sri Lanka as commonly in the political sphere as in in Guyana, these codified conventions have nonetheless been important in some judicial proceedings.

---

[122] *Gamini Dissanayake v. M.C.M. Kaleel and Others* [1993] 2 Sri LR 135, at p. 200-1.

2.2 Ministers as MPs and the Cabinet-Parliament Nexus

The close nexus between cabinet and parliament – whereby all ministers are MPs and there is a cap on the number of 'technocrat'/unelected ministers – is a double-edged sword for the legislature. On the one hand, it provides MPs with enhanced access to ministers, who are subject to interrogation in debates and must also provide answers to questions. On the other hand, the combination of unicameral parliaments with a low number of MPs (as well as other factors) means that backbench opposition from the governing party is limited. By assigning MPs ministerial responsibilities, governments can co-opt them into silence as well as binding them with collective responsibility. Despite this, Sri Lankan MPs consistently ask high numbers of parliamentary questions, as have Guyanese MPs since re-democratisation. The parliaments have sectoral committees that provide close contact with ministers and recent reforms have also made attempts to strengthen committee oversight. An issue common to both countries has been how to hold presidents to account when they take on ministerial portfolios. All in all, the parliaments still struggle to hold ministers to account, however there are some unique successes thanks to the cabinet-parliament nexus.

In both Sri Lanka and Guyana, ministers' joint status as MPs enhances political jousting between the government and the legislature. Although commentators consider actual scrutiny of the executive to be weak, political performance and debate within the legislature (not an unimportant part of parliamentary life) is strong. In 2023 alone, 373 questions were asked in Sri Lanka's parliament.[123] In Guyana, the tenth, eleventh, and twelfth parliaments have also developed a strong tradition of parliamentary questions.[124] Guyana made attempts to strengthen its questions procedures after a seminal report by Sir Michael Davies in 2005 on behalf of the Commonwealth Secretariat ('the Davies report') highlighted weaknesses in the system.[125] Indeed, at the time of the report, the National Assembly clerk ran a system (inherited from his predecessor) whereby parliamentary questions would be given to

[123] See the Questions page on the Parliament of Sri Lanka website: <https://www.parliament.lk/en/business-of-parliament/parliamentary-questions> accessed 9 March 2024.

[124] See the Questions page on the National Assembly website: <https://www.parliament.gov.gy/chamber-business/notice-papers/> accessed 9 March 2024.

[125] Michael Davies, 'Needs Assessment of the Guyana National Assembly: Report of the Commonwealth Senior Parliamentary Staff Advisor to the Guyana National Assembly' (2005).

the president's office, who would "strike out questions and motions" they did not like.[126] Not only this, "ninety percent" of questions were asked by a single MP who was not part of the main opposition party.[127]

Political performance and debate with the executive are strong in both legislatures. The close proximity between cabinet and the legislature means that parliament is a valuable forum for airing opposition grievances and political criticism of government policies. Ministers are forced to defend their departments' actions in-person, on the floor of the chamber, and on an equal footing with other MPs. Standing orders in both parliaments provide for oral questions to ministers. Under standing order 18 of Guyana's National Assembly, MPs may pose ministers oral questions without notice, and twenty minutes of each sitting is allocated for this activity. In the order of business, these twenty minutes come between reports from committees and questions on notice.[128] The Sri Lankan parliament's order of business is similar, with oaths, messages from the president, and announcements by the speaker coming first, oral questions roughly half way down the order of business, and public business last.[129] Other than at the committee stage of the appropriation bill, the time limit for the oral questions part of business is one hour.[130] Also, questions may be posed to the minister responsible for the subject area or alternatively to the prime minister.[131] If a minister is not able to be present to answer questions, they must "obtain prior leave of the Speaker and inform the Speaker the arrangements that such minister has made to have the question answered".[132] Supplementary questions (limited to two) may also be used to try and catch ministers off-guard as long as they are properly related to the first question.[133] Prime minister's question time is limited to four questions in total (two for the government and two for the opposition) once a month.[134]

Therefore, thanks to the cabinet-parliament nexus, MPs may use a portion of each sitting orally questioning ministers on their portfolios. Rather than written questions,

[126] ibid 32.
[127] ibid 42.
[128] Standing Orders of the National Assembly of Guyana, standing order 13(1).
[129] Standing Orders of the Parliament of Sri Lanka, standing order 22.
[130] ibid standing order 35.
[131] ibid standing order 31.
[132] ibid standing order 32(3).
[133] ibid standing order 33(1).
[134] ibid standing order 38.

common to most legislatures around the world, which are somewhat technical in nature, parliaments in the Dualminster system have preserved the politically animated tradition of oral questions. Indeed, ministers in Guyana have complained that there is little need for them to attend committee meetings related to their department because their presence in the chamber makes this "Congressorial" check irrelevant.[135] However, as this author has written with others elsewhere, the time allocated to oral questions in Sri Lanka, and by extension Guyana where it is less, is somewhat restricted compared to other Commonwealth parliaments.[136] This political check (if not necessarily scrutiny) is made possible by ministers' status as MPs, where they attend and take part in parliament's sittings on an equal footing with other members.

The close cabinet-parliament nexus also has distinct advantages for the government. The ability to co-opt their own MPs with cabinet posts while also binding them under collective responsibility gives governments a stable voting base within the legislature. Inflated cabinets have been identified as an issue in Sri Lanka, where this patronage has stifled backbench culture. The Nineteenth Amendment contained provisions that aimed to address this. This amendment capped the number of cabinet ministers at thirty and non-cabinet ministers and deputy ministers at forty.[137] Perhaps surprisingly, these caps were preserved under the Twentieth and Twenty-First Amendments.[138] Writing in 2011 (before the Nineteenth Amendment) De Votta pointed out that

> Currently, his [Mahinda Rajapaksa's] government has 92 ministers and deputy ministers-fewer than the 109 that his previous government boasted, but enough to give almost three out of every five MPs in his coalition access to the perquisites and rents that come with a minister's or deputy minister's portfolio.[139]

Similarly in Guyana, in the parliament of 1980 to 1985, there were thirty-four executive MPs in a parliament of just sixty-five seats (the governing PNC had fifty-three seats). Some of these were technocrat/unelected MPs without voting rights, but this

---

[135] Davies (n 125) para 104.
[136] Pasan Jayasinghe, Peter Reid and Asanga Welikala, *Parliament: Law, History and Practice* (Centre for Policy Alternatives 2019) 99.
[137] Nineteenth Amendment to the Constitution, s. 9.
[138] Twentieth Amendment to the Constitution, s. 7; Twenty-First Amendment to the Constitution, s. 3.
[139] DeVotta, 'Sri Lanka: From Turmoil to Dynasty' (n 53) 138.

demonstrates how government appointments can quickly envelop numerically small parliaments.[140] At the time of writing, there are twenty-four cabinet ministers in the National Assembly where the governing PPP/C holds thirty-three seats. Government MPs struggle to assert their independence in small, unicameral legislatures where cabinet positions are always within reach.

The cabinet-parliament nexus has also given rise to an unusual committee system in Sri Lanka. In addition to more conventional committees, Sri Lanka's standing orders also provide for 'ministerial consultative committees', which aim to give MPs direct access to cabinet ministers.[141] These committees are chaired by the cabinet minister in charge of the relevant subject and the state minister and deputy ministers are also members, along with five other MPs nominated by the committee of selection.[142] Meetings are summoned by the cabinet minister and must take place at least once a month.[143] The standing orders describe the duties of the committees to

> consider and report such matters as are referred to the Committee by the Chair or by Parliament or by any Member of Parliament including motions, regulations, or papers, etc.[144]

Given the unique structure of these committees (chaired by the minister) and their distinction from other committees in parliament charged with scrutiny (such as sectoral oversight committees and select committees) the purpose of these forums is perhaps to grant MPs direct access to ministers. As this author has written with others elsewhere, the 1978 Constitution carried over the committee system that had existed since the Soulbury Constitution and the consultative committees were the most meaningful change in that period. Wilson compared these committees to the executive committees under the pre-independence Donoughmore Constitution.[145] However, committees have consistently failed to hold departments to account or participate

---

[140] Frank A Narain, 'Historical Information, Events, and Dates on the Parliament of Guyana from 1718-2006' (Parliament of Guyana 2007) 78.
[141] Standing Orders of the Parliament of Sri Lanka, standing order 112.
[142] ibid standing order 112(1).
[143] ibid standing order 112(6).
[144] ibid standing order 112(4).
[145] Wilson, *The Gaullist System in Asia* (n 39) 69–70.

meaningfully in the legislative process. Instead, they became forums for lobbying the executive and winning benefits for constituents.[146] Warnapala remarks

> Constituency oriented issues such as appointments, promotions, vacancies and transfers and basic constituency needs … began to dominate.[147]

Despite attempts to reform Sri Lanka's committees, the consultative committees have remained, perhaps exactly for this reason.[148] They are facilitated by the cabinet-parliament nexus, but they entrench patterns of clientelism rather than enhancing political debate or legislative scrutiny.

Naturally, the close cabinet-parliament nexus does not cover the head of cabinet – the president. In both systems, this has created an accountability deficit. Even if ministers can avoid technical scrutiny by the legislature, at least they are subject to performative adversarialism in the chamber. On the other hand, the presidents may retain government portfolios for themselves and escape even this check on power.

Lingering traditions of responsible government remained in the early years of the 1978 Constitution in Sri Lanka. Jayewardene had a self-expressed fondness for cabinet government and he was surrounded by other serious political figures who were not willing to surrender this aspect of the constitution, even with the executive president. Jayewardene "did not use the full panoply of presidential power" and "consulted his cabinet on all matters, sometimes on issues on which it was not necessary for him to do so".[149] Despite the durability of responsible government in the early days of the 1978 Constitution, President Wijetunga retained the finance portfolio for himself in 1993-4. Eran Wickramaratne MP acknowledged in 2012 that

> Even though Article 44(2) of the constitution provides that the President may retain any subject or function, doing so transgresses the spirit of the constitution when taken as a whole. As a result, the people's control over public finance has

[146] Jayasinghe, Reid and Welikala (n 136) 75–6.
[147] Wiswa Warnapala, *Parliament and Public Accountability in Sri Lanka* (Godage International Publishers 2004) 223.
[148] Jayasinghe, Reid and Welikala (n 136) 77–83.
[149] De Silva and Wriggins (n 29) 386.

> diminished. It is a further erosion of the principle of public accountability through the people's representatives.[150]

This episode brought to the fore a deeper problem in Sri Lanka's constitution that the president can administer government departments without reporting to parliament in a system where checks and balances are built around ministers being *answerable.* This was particularly important here because finance is, arguably, the most important portfolio. This is offset somewhat by the office of prime minister, who is expected to answer for cabinet more generally. Again, this can be seen in the standing orders mentioned earlier in this section.

In Guyana, the president is now constitutionally required to appoint a parliamentary secretary to be answerable to the National Assembly on his or her behalf. This was discussed in the previous chapter. Despite this, Bulkan comments that

> Already extensive on paper, executive presidential authority was made even more absolute by the removal of standard mechanisms of accountability […] this alone represented a drastic break with the Westminster tradition of accountable government, by which those with the power are required to attend Parliament and, in the normal course, answer questions, disclose policies and defend action and inaction.[151]

The lingering importance of individual responsibility and answering to parliament has remained an issue past the move to presidentialism because, as seen in this subsection, the performative adversarialism associated with these conventions is still the main check and balance on executive power within the legislatures. The executive presidency escaped this by partially breaking the cabinet-parliament nexus. In order to correct this, the legislatures have continued to invoke ministerial responsibility against other cabinet ministers and presidential appointees even where the president has retained the relevant portfolio.

---

[150] Eran Wickramaratne, 'Parliamentary Oversight Committees' [2012] The Parliamentarian 46, paras 148–9.
[151] Bulkan (n 26) 8.

2.3 The Speaker

In Guyana, speakers have traditionally struggled to balance party allegiance with expectations of impartiality. After the 2011 elections, which returned a parliament where no party had an absolute majority, Guyanese academic Baytoram Ramharack argued that the speaker from the previous parliament, Ralph Ramkarran, should continue in office, despite the PPP/C losing its majority. Ramharack argued that Ramkarren was experienced and impartial and that therefore, within the Westminster tradition, there should be continuity of officeholder.[152] However, on the tenth parliament's first sitting, the government and opposition parties failed to find consensus on either the speaker or the deputy speaker. The government nominated Ramkarren for re-election, but Raphael Trotman was elected as speaker on the nomination of the AFC and Deborah Backer as deputy speaker on the nomination of the APNU.[153] Not only was the election seen as partisan by the PPP/C, but also the custom whereby the main opposition party would get its nominee elected as deputy speaker was disrupted. The minority government failed to get its appointee as speaker, and the AFC and APNU banded together to get one appointment from each as speaker and deputy speaker, respectively. Henry Jeffrey, a prominent constitutional and political commentator, drew attention to this as a mistake if Guyana was to take a more consociational path after the election.[154] He nonetheless also pointed out that the PPP/C's claim that Westminster conventions required that their speaker be elected were also false.[155] Jeffrey claimed that "in Guyana, notwithstanding claims to the contrary, the speakership is expected to be partisan!".[156] Persuasively, he pointed out

---

[152] Ramharack Baytoram, 'Ramkarran Meets Impartiality, Experience and Continuity Requirements and Should Continue as Speaker' *Stabroek News* (6 January 2012) <https://www.stabroeknews.com/2012/01/06/opinion/letters/ramkarran-meets-impartiality-experience-and-continuity-requirements-and-should-continue-as-speaker/> accessed 9 March 2024.

[153] Official Report, Tenth Parliament, 1st Sitting (Thursday 12th January 2012).

[154] Henry Jeffrey, 'Opposition Made Huge Blunder' *Stabroek News* (18 January 2012) <https://www.stabroeknews.com/2012/01/18/features/opposition-made-huge-blunder-2/> accessed 9 March 2024.

[155] Henry Jeffrey, 'PPP/C Position on Speaker Pure Propaganda' *Stabroek News* (28 December 2011) <https://www.stabroeknews.com/2011/12/28/features/pppc-position-on-speaker-pure-propaganda/> accessed 9 March 2024.

[156] Henry Jeffrey, 'Constitutional Reform: The Speakership' *Stabroek News* (9 September 2020) <https://www.stabroeknews.com/2020/09/09/features/future-notes/constitutional-reform-the-speakership/> accessed 9 March 2024.

that speakers have seldom allowed the (often opposition-nominated) deputy speaker to chair debates because the governing party would not trust them.[157]

Despite the speakership's somewhat partisan nature, parliamentarians continue to invoke the need for impartiality with reference to Westminster model conventions. Furthermore, speakers themselves also invoke the Westminster model in fulfilling their duties. When Harry Gill MP wrote a letter in Stabroek News criticising Speaker Scotland and questioning his impartiality, the speaker lightly encouraged the house to discipline Gill, justifying this encouragement with reference to Westminster traditions.[158] The speaker drew on Erskine May and Canada's *House of Commons Procedure and Practice*, arguing that Gill had stepped outside of convention by questioning his impartiality and concluded that

> This is the second occasion in two years that such a disregard for the rules of this House has been displayed by Hon. Members and it may be that the silence of this House on the previous occasions has emboldened the Hon. Member, Mr. Gill.[159]

The prime minister tabled a motion that the matter be referred to the privileges committee. In doing so, he also emphasised that Guyana's speakership existed within a Westminster tradition

> I looked at the practice in New Zealand and the practice in Australia […] Like those jurisdictions, they are Commonwealth jurisdictions like Guyana and they protect the integrity of their Speaker […] I know of no allegations of the Speaker of this national assembly being partisan, or being a leader or an executive of a political party. Therefore, it beholds upon us to protect the impartiality of the Speaker, if we are to defend our parliamentary democracy and protect the same.[160]

[157] ibid.
[158] Harry Gill, 'There Are Inconsistencies in the Speaker's Rulings on Sub Judice and Other Matters' *Stabroek News* (30 July 2018) <https://www.stabroeknews.com/2018/07/30/opinion/letters/there-are-inconsistencies-in-the-speakers-rulings-on-sub-judice-and-other-matters/> accessed 9 March 2024.
[159] Official Report, Eleventh Parliament, 95th Sitting (Monday 30th July 2018), p. 2.
[160] ibid p. 5.

Therefore, although speakers have had to balance impartiality with party pressures and a polarised environment, impartiality does, nonetheless, remain an important aspiration and litmus test for the Guyanese speakership. In assessing the status and duties of their speaker, MPs situate the office within a Westminster tradition.

Finally, while speakers in Guyana have traditionally drawn on Commonwealth precedents in larger countries such as the UK, India, Canada, and Australia for guidance, recent speakers have noted the value in Caribbean nations consciously weaving their own tapestry of precedents. In an address to a regional conference of presiding officers and clerks, Speaker Trotman encouraged parliaments to develop their "own stream of parliamentary procedures" and that Westminster model procedures should be viewed with a sceptical eye to determine whether they are still fit for purpose.[161] Parliaments do not need to be "wedded and welded" to the Westminster model.[162]

Sri Lankan speakers are also expected to act impartially and in their legislature's interests, however (as in Guyana) the aspiration and the reality do not always match. The next chapter discusses events where the role of the speaker was brought to the constitutional forefront and the officeholder (Karu Jayasuriya) was forced to take a stand against the executive president and uphold parliament's rights. In this chapter, it is useful to highlight some instances where the speaker has been accused of failing parliament or of becoming party-partisan.

The most vivid example of a partisan speakership that blurred the distinction between parliament, cabinet, and president was the appointment of Speaker Chamal Rajapaksa in 2010. During this period, three Rajapaksa brothers held the presidency (Mahinda), the economic development portfolio (Basil), and the speakership (Chamal). Mukarji ties these familial appointments to the Rajapaksa dominance of central government and remarks that "it was widely believed that between them, the four

---

[161] 'Parliaments Must Adapt to Serve the People's Needs -Trotman' *Stabroek News* (29 October 2013) <https://www.stabroeknews.com/2013/10/29/news/guyana/parliaments-must-adapt-serve-peoples-needs-trotman/> accessed 9 March 2024.
[162] 'Caribbean Parliaments Should Create, Export Precedents' *Demerara Waves* (29 October 2013) <https://demerarawaves.com/2013/10/28/caribbean-parliaments-should-create-export-precedents/> accessed 9 March 2024.

Rajapaksa brothers [including Gotabaya] controlled about seventy per cent of the national budget".[163]

Before this, in 1991, Speaker MH Mohamed was criticised for his role in the attempted impeachment of President Premadasa and the president's subsequent move to prorogue parliament. It is believed that the speaker initially helped to orchestrate the impeachment after the president removed his son as Mayor of Colombo. However, the speaker later changed sides, with allegations of financial inducement.[164] Not only did the speaker play a politicised role in the initial impeachment attempt, but he was also subsequently criticised for not standing up for parliament during the prorogation. He survived a subsequent no-confidence motion by some of the impeachment leaders. One commentator writes that

> It would not be incorrect to say that the impeachment saga haunted Mohamed for the rest of his life as he never quite managed to shake these allegations off. In fact, whenever the impeachment saga is mentioned, most people think of Mohamed first, even before Premadasa himself.[165]

Clearly, the Sri Lankan speakership is not a rigidly impartial office and it has been shaped by the characters and circumstances of various eras. Despite this, as in Guyana, impartiality is still the yardstick by which speakers are measured.[166] Speakers exist within a complex political and institutional reality and the strict requirements of impartiality associated with the Westminster model are difficult to sustain unbrokenly.[167]

Sri Lankan speakers have a significant constitutional role in certifying legislation. At times, this has dragged them into the political arena, where their personal political histories, duties to the legislature, and duties under the constitution have all been

---

[163] Apratim Mukarji, 'The Sri Lankan Polity: A Case of Constitutional Autocracy' (2014) 18 World Affairs: The Journal of International Issues 100, 101.
[164] Marshall R Singer, 'Sri Lanka in 1991: Some Surprising Twists' (1992) 32 Asian Survey 168, 172–3.
[165] Pramod de Silva, 'Life and Times of Former Speaker Mohamed Haniffa Mohamed Who Passed Away on April 26 at the Age of 95' *Sunday Observer* (1 May 2016) <https://archives.sundayobserver.lk/2016/05/01/fea14.asp> accessed 9 March 2024.
[166] Buddhika Samaraweera, 'Allegations of Partisan Parliamentary Procedure: I Did Nothing Wrong: Speaker' *Latest in the News Sphere | The Morning* (9 July 2023) <https://themorning.lk//articles/RIJDMCWHHAHZ3C317eKj> accessed 9 March 2024.
[167] Matthew Laban, 'More Westminster than Westminster? The Office of Speaker Across the Commonwealth' (2014) 20 The Journal of Legislative Studies 143.

operative. Recently, Speaker Mahinda Yapa Abeywardana was criticised by the opposition for certifying parliament's Online Safety Bill. The bill was ostensibly passed to prevent damaging statements and bot accounts in the online sphere, however it has been criticised as an instrument for undemocratic censorship and control.[168] The bill was referred to the Supreme Court in October 2023 after it received first reading. The Supreme Court found that the bill was unconstitutional as it stood, and would therefore require a two-thirds majority to be passed, however amendments proposed by the additional solicitor general would bring the bill within *vires* and therefore (if they were made) the bill would require only a simple majority to be passed.[169] In the end, the amendments proposed in this case were not all made and there was therefore doubt as to the bill's constitutionality. The bill was passed with only a simple majority but the speaker nonetheless certified it while parliament was prorogued. The Supreme Court found parliamentary privilege (codified in Article 124 of the constitution and the Parliament (Powers and Privileges) Act (No. 21 of 1953)) prohibited it from enquiring into whether the Act was validly passed after the legislative process was complete. The Supreme Court recalled Erskine May, noting that where parliament "erred, its errors could be corrected only by itself".[170]

The Sri Lankan speaker's role in certifying legislation was included even in the Soulbury Constitution, where Jennings criticised it as creating the opportunity for "judicial review by a side-wind".[171] In this case, the speaker perhaps struggled to balance political allegiances (and arguably duties as the legislature's champion, although this these should also include protection of the opposition's rights) with an unusual constitutional duty. A comparable role for the presiding officer in the Scottish parliament in assessing constitutionality has also sat uncomfortably with that legislature's Westminster heritage.[172] The important constitutional element here was

[168] 'Sri Lanka: Online Safety Act Major Blow to Freedom of Expression.' (*Amnesty International*, 24 January 2024) <https://www.amnesty.org/en/latest/news/2024/01/sri-lanka-online-safety-act-major-blow-to-freedom-of-expression/> accessed 9 March 2024.
[169] 'Online Safety Bill' SC (SD) No. 66/2023.
[170] *Sumanthiran vs. Speaker of Parliament and Attorney General* SC (FRA) No. 37/2024, at p. 13.
[171] W Ivor Jennings, 'Limitations on a "Sovereign" Parliament' (1964) 22 Cambridge Law Journal 177, 179.
[172] Peter Reid, 'Scottish Parliamentarism and the Presiding Officer's Certificate' [2024] Commonwealth and Comparative Politics 1.

the finality of the speaker's certificate, which cures any unconstitutional procedures in a bill's passage and ends the possibility of judicial recourse.

2.4 The Leader of the Opposition

While Guyana retains an official leader of the opposition, the office has undergone significant changes compared to what it was at independence and compared to other Westminster model systems. The officeholder had their autonomy diminished under the original 1980 Constitution only to have it restored later on. The leader of the opposition also plays a role in certain appointments. Furthermore, since the post-1997 electoral reforms, and the increased likelihood of third parties gaining more seats, leaders of the opposition have had to become more adapt at piecing together opposition coalitions. Not only this, but the office has also been mooted as a potential avenue for power sharing.

As mentioned in the previous chapter, under the 1980 Constitution as originally passed the 'minority leader' was appointed by the executive president. Despite this, however, Cheddi Jagan remained minority leader from 1980 until the PPP's election victory in 1992. Although Burnham gave himself this significant power in the 1980 Constitution, politically it may have been meaningless for him or President Hoyte to use it in practice. Jagan continued to dominate the PPP and, although there were defections, it would perhaps have undermined the president's authority had he appointed someone else the minority leader only for Jagan to continue to lead the PPP in practice. Nonetheless, the change back from 'minority leader' to 'leader of the opposition' was symbolically important. Also, the reforms that removed the president's appointment and dismissal powers and replaced them with a process led by non-government MPs became important in the leader of the opposition working with other non-government parties, discussed in the next paragraph.

The PR electoral system allows for some flexibility when changing the leader, as was seen in the 2022 ascension of Aubrey Compton Norton to the office after he replaced Joseph Harmon as party leader of the 'People's National Congress Reform' ('PNCR'). At the time of becoming PNCR party leader, Norton did not have a seat in the National Assembly. The situation raised questions around the role and status of the opposition leader. Was this constitutional position parasitic upon the leadership in the political

parties? If not, what relevance was the alphabetical list system, where Harmon had been specified as the representative of the list of candidates and elected on this basis? If Norton was to be given a seat in the National Assembly, what was the proper procedure for doing this? And what say did the coalition partner (the AFC) have in the matter?

Despite being removed as party leader, Harmon initially resisted calls to relinquish his post as leader of the opposition. He argued (correctly) that the post is constitutionally distinct from party leader. Less convincingly, Harmon argued (with the support of the coalition AFC leader Khemraj Ramjattan) that the constitution prohibited Norton from becoming opposition leader because he had not been specified as the representative of the list of candidates.[173] Eventually, Harmon resigned his seat in the National Assembly when another resignation by Nicolette Henry meant it was impossible for him to block Norton's entry into the legislature. Henry resigned in order to give her seat up for Norton. The PR system meant that he could simply be appointed to the legislature rather than standing in a by-election. Norton struck a deal with the AFC and the speaker appointed him leader of the opposition on 13 April 2022, almost three months after he was elected party leader.[174]

This episode demonstrates both a certain level of continuity in the leader of the opposition's role, but also a distinctive texture to the office, as it has been influenced by other parts of the constitution and political culture. At its core, the office continues to symbolise a government in waiting. The position gives special recognition (a constitutional office) to the leader of the largest opposition party and allows them to construct a shadow cabinet that gives an alternative vision of governance across all ministries.[175] Conventions have arisen that give the leader special status and time

---

[173] Denis Chabrol, 'AFC Leader Rubbishes PNCR's Efforts to Remove Harmon as Opposition Leader' *Demerara Waves* (8 January 2022) <https://demerarawaves.com/2022/01/08/afc-leader-rubbishes-pncrs-efforts-to-remove-harmon-as-opposition-leader/> accessed 9 March 2024; 'Harmon Resisting Calls for Him to Go' *Village Voice News* (7 January 2022) <https://villagevoicenews.com/2022/01/07/harmon-resisting-calls-for-him-to-go/> accessed 9 March 2024.

[174] Marcelle Thomas, 'Norton's Accession to Parliament Closer' *Stabroek News* (2 April 2022) <https://www.stabroeknews.com/2022/04/02/news/guyana/nortons-accession-to-parliament-closer/> accessed 9 March 2024; 'Norton Finally Elected Leader of Opposition' *Kaieteur News* (14 April 2022) <https://www.kaieteurnewsonline.com/2022/04/14/norton-finally-elected-leader-of-opposition/> accessed 9 March 2024.

[175] See, for example, debates over Norton's reshuffle of the shadow cabinet in January 2024 'Opposition MPs Reshuffled for More "Effective, Efficient" Representation – Norton' *Guyana Times* (12 January 2024) <https://guyanatimesgy.com/opposition-mps-reshuffled-for-more-effective-efficient-

allocations in debates, including budget debates.[176] Beyond this, however, the office has been influenced by both political culture and amendments to the constitution. The PNCR still expected their party leader to become opposition leader by right, but this inevitably involved some give-and-take with their coalition partners. Ramjattan has been careful to preserve his party's autonomy from the PNCR.[177] Also, because the office and its appointment process is specified in the constitution, this means that there can be periods of disjunction between the *de facto* political leader and the leader of the opposition. It took three months for Norton to become leader after he had already assumed the political mantle. It could have been an even more complicated process if Henry had not agreed to resign her seat. On the other hand, the PR electoral system meant that there was more flexibility for who could become opposition leader. The PNCR did not have to agree in advance who would give up their seat in the National Assembly and they did not have to risk a by-election after the change was made. Because of the alphabetical list system, which gave him special political and constitutional recognition during the election, Harmon initially argued that the change was not even constitutional.

In Sri Lanka, the onus of identifying the leader of the opposition ultimately rests with the speaker, and is governed by convention. Unlike in Guyana, where the leader is elected by a caucus of all non-government MPs, in Sri Lanka the leader is simply the leader of the largest non-government party. Although both leaders therefore exist within an adversarial PR system, there is therefore an important difference in the politics of the offices. While Guyana's leader's duties towards other non-government parties are more amorphous, the Sri Lankan leader's duties are wholly to their own party. This can be seen in the Sri Lankan leader's role in constitutional appointments, which is distinct from the role played by other non-government parties. For example, appointments to the regularly-amended Constitutional/Parliamentary Council discussed in the previous chapter include minority leaders as well as the leader of the

representation-norton/> accessed 9 March 2024; 'Norton Will Be the End of PNC/R' *Guyana Chronicle* (14 January 2024) <https://guyanachronicle.com/2024/01/14/norton-will-be-the-end-of-pnc-r/> accessed 9 March 2024.

[176] 'PPP/C Says MPs Being Muzzled by Gov't in Budget Debate' *Stabroek News* (19 August 2015) <https://www.stabroeknews.com/2015/08/19/news/guyana/pppc-says-mps-being-muzzled-by-govt-in-budget-debate/> accessed 9 March 2024.

[177] '"Norton Can't Make Decisions for Us"' *Guyana Chronicle* (17 February 2024) <https://guyanachronicle.com/2024/02/17/norton-cant-make-decisions-for-us/> accessed 9 March 2024.

opposition. Under the Twenty-First Amendment, the Constitutional Council included various mechanisms for the president, governing party, and main opposition party to have a say in nominations to the council as well as

> one Member of Parliament nominated by agreement of the Members of Parliament other than those representing the Government and those belonging to the political party or independent group to which the Leader of the Opposition belongs, and appointed by the President.[178]

Clearly, the leader is not required to make accommodations for other non-government parties. Despite the PR system, in this regard the role remains closer to its Westminster model heritage than that in Guyana. The leader of the opposition leads the largest opposition party as a government in waiting. However, the leader's role in sitting on and/or making appointments to the Constitutional/Parliamentary Council shows how the office has changed since independence. This is a new function for the leader first brought about by the Seventeenth Amendment. While this is a new function for the historical office of leader of the opposition, it was also a political attempt to bring Sri Lanka back to a foregone era of government where public services were less politicised. A Westminster model office (the leader of the opposition) was given novel responsibilities in order to reive a tradition of impartial civil/public services not seen since the original independence constitution.

The responsibility of the speaker to recognise a leader of the opposition in Sri Lanka was put under pressure when Ranil Wickremesinghe began to lose control of his UNP party in late-2019. Wickremesinghe, leader of the opposition and leader of the UNP, faced a successful leadership challenge from Sajith Premadasa for leadership of the parliamentary group on 5 December 2019.[179] Significantly, and with some similarities to Guyana, the propriety of someone acting as opposition leader when they begin to lose control of their party, and the role of the party parliamentary group particularly, came under scrutiny. Wickremesinghe had already lost his bid to be the UNP's

---

[178] Twenty-First Amendment to the Constitution 2022, s. 2.

[179] 'UNP Decides to Nominate Sajith as Opposition Leader' *Colombo Gazette* (5 December 2019) <https://colombogazette.com/2019/12/05/unp-decides-to-nominate-sajith-as-opposition-leader/> accessed 9 March 2024.

presidential candidate in September of 2019.[180] After losing the presidential election to Gotabaya Rajapaksa on 16 November 2019, Premadasa perhaps looked to formalise his role within the parliament. Despite having already won the party's endorsement for the presidency, Premadasa nonetheless required a separate vote by UNP MPs to nominate him as leader of the opposition. In a tweet on 27 November 2019, Speaker Jayasuriya seemed to put the onus on the UNP to give him clear instructions if they wanted a change in the officeholder:

> Recognition of the Leader of the UNFGG [United National Front for Good Governance] as the Leader of the Opposition was done upholding established Parliamentary traditions that should not be violated. While I empathise with the challengers too, it is best that a party's internal disputes are settled from within.[181]

The speaker refused to be drawn in to the UNP's internal politics and instead waited from formal intimation from the party, which came in the form of the general secretary's letter after the parliamentary group vote. In his tweet, the speaker referred to the UNFGG, which was the formal political alliance led by the UNP and that had contested the parliamentary election under the UNP ticket.[182] Therefore, as in Guyana, there can sometimes be friction between the parliamentary office of the leader of the opposition and changing allegiances within parties. Ultimately, the speaker was understandably reluctant to play any inquisitorial role, let alone to try and construct a leader of the opposition, and instead waited for the political party to come forward with a clear preference.

As with many parts of Guyanese constitutional life, the leader of the opposition reflects disparagement between Guyanese political reality on one hand and the country's aspirations on the other hand. The office is an embodiment of a fundamentally adversarial political environment, however it has also been mooted as an avenue for

---

[180] 'Sri Lanka's Ruling Party Nominates Deputy Leader as Presidential Candidate' *Reuters* (26 September 2019) <https://www.reuters.com/article/idUSKBN1WB1FJ/> accessed 9 March 2024.
[181] 'Ranil Recognised as Opposition Leader: Speaker - Breaking News | Daily Mirror' (27 November 2019) <https://www.dailymirror.lk/breaking-news/Ranil-recognised-as-Opposition-Leader-Speaker/108-178575> accessed 9 March 2024.
[182] 'Mapping Sri Lanka's Political Parties: Actors and Evolutions' (Verite Research 2017) 7 <https://www.veriteresearch.org/wp-content/uploads/2018/06/Mapping_Sri_Lanka_s_Political_Parties_Actors_and_Evolution.pdf> accessed 9 March 2024.

meaningful cooperation and power-sharing. Commentators on the office continue to observe its adversarial character. Commentating on Jagdeo as opposition leader, author and two-time Guyana Prize winner Ruel Johnson laments

> What the opposition leader is, when he is not a living, breathing Ozymandias atop a fast sinking pedestal in the centre of our current political desert, is that he is the enfant terrible of our collectively created dysfunctional history, the embodiment of our congenital bickering, pettiness, greed, tribalism, cynicism and distrust of each other, our self-inflicted sins made flesh. In this, he is not at fault in the grand sense, he is without true agency, the social equivalent of a natural phenomenon, a combination of barometrical and ecological circumstance. *Within our present sociopolitical landscape, some manifestation of Bharrat Jagdeo would be inevitable were this one no longer here* [emphasis added].[183]

This strikes at the heart of the office. Like the communal presidency, the leader of the opposition has its own sociological character and it exists within a constitutional and political whole. Indeed, the leader of the opposition is a *communal president in waiting*. While other constitutional provisions have re-textured the office, it preserves its essential Westminster, adversarial character. More jokily, 'The Piper' in *News Guyana* writes that the leader of the opposition "is supposed to oppose the Government (duh!!)".[184]

It is for this reason that attempts to remodel the office as a consociational or power sharing mechanism have been unsuccessful. The post-1997 reforms amended the constitution to give the leader the chance of "meaningful" consultation with the president before certain appointments have been made.[185] However, this has become another flashpoint for political and legal battles. Governments have been taken to court for not consulting with the opposition leader.[186] Also, because the Chief Justice and

[183] Ruel Johnson, 'We Cannot Continue Delaying Shared Governance' *Stabroek News* (27 November 2018) <https://www.stabroeknews.com/2018/11/27/opinion/letters/we-cannot-continue-delaying-shared-governance/> accessed 9 March 2024.
[184] INEWS, 'Eyewitness: Settling Conflicts…in the Courts' *INews Guyana* (26 August 2022) <https://www.inewsguyana.com/eyewitness-settling-conflictsin-the-courts/> accessed 9 March 2024.
[185] See the previous chapter.
[186] Denis Chabrol, 'Opposition Parliamentarian Asks High Court to Scrap Clifton Hicken's Appointment as Police Commissioner' *Demerara Waves* (21 May 2022)

Chancellor require the agreement of the opposition leader, there has been no substantive appointment to these posts since 2005. Successive presidents have instead selected acting appointees and avoided discussions with their political competitor. This state of affairs has been repeatedly criticised by the Caribbean Court of Justice ('CCJ').[187]

The Sri Lankan leader of the opposition can also be seen as a communal president in waiting. Cohabitation is structurally more plausible in the Sri Lankan system than in Guyana, however as seen in the next chapter, cohabitation governments have ultimately proved untenable in both countries. Therefore, the leader of the opposition in the parliament will tend to be the leader of the president's main rival party. Given that, at any one time, the two largest parties in Sri Lanka both tend to be Sinhalese-Buddhist-led, there is not a fight over the communal presidency between communities. Instead, the communal presidency at once depends both on Sinhalese-nationalist support but also minority groups that sometimes hold pivotal vote shares. It is taken for granted that the role of the leader of the opposition is to *lead opposition* against the government. Sri Lanka's politics have been described as "highly adversarial",[188] and that there is "no doubt that adversarial politics always reign in the formality of the parliamentary Chamber".[189]

Unlike Guyana, the leader of the opposition in Sri Lanka does not appoint a shadow cabinet. After being removed from power in the 2015 parliamentary elections, Mahinda Rajapaksa's 'joint opposition' MPs attempted to form a shadow cabinet in July 2016 ahead of the following year's local government elections.[190] The MPs were widely

---

<https://demerarawaves.com/2022/05/20/opposition-parliamentarian-asks-high-court-to-scrap-clifton-hickens-appointment-as-police-commissioner/> accessed 9 March 2024.

[187] Denis Chabrol, 'Substantive Chief Justice, Chancellor to Await Work of Judicial Service Commission' *Demerara Waves* (9 September 2023) <https://demerarawaves.com/2023/09/09/substantive-chief-justice-chancellor-to-await-work-of-judicial-service-commission/> accessed 9 March 2024.

[188] Ranjanee de Alwis, 'Federalism or Devolution of Power? Sri Lanka's Perspectives' (2020) 7 Asia and the Pacific Policy Studies 124, 125.

[189] Ranil Wickremasinghe, 'National Reconciliation and Parliament' [2012] The Parliamentarian 10, 12.

[190] PK Balachandran, 'Rajapaksa Forms Shadow Cabinet to Attack Government Ahead of Local Body Polls' *The New Indian Express* (8 July 2016) <https://www.newindianexpress.com/world/2016/Jul/08/rajapaksa-forms-shadow-cabinet-to-attack-government-ahead-of-local-body-polls-878619.html> accessed 9 March 2024.

criticised for this perceived presumptuousness after losing an election, and they quickly distanced themselves from their own positions in the shadow cabinet.[191]

Conclusion

This chapter has been the first step in unpacking Dualminster's political constitution. It has shown how the sociological and broader constitutional context relates to the communal presidencies and how WMCFs are still invoked in political practice. Rather than existing in neat legal packages, these provisions have been shaped indirectly by the provisions, institutions, and social climates that surround them – especially the communal presidencies. WMCFs have also shaped the communal presidencies, in turn. Very little of this immediately jumps out from the constitutional texts discussed in the previous chapter, but instead it has to be observed from political practice. These themes are developed in later chapters, but for now we have completed part of the task of observation. The next chapter observes further how these constitutional features are invoked during times of crisis.

While this chapter addressed the political constitutions of Guyana and Sri Lanka more generally and not during times of crisis, some of the situations verged on political instability, or were the precursors to constitutional crises. Examples include the motion of no-confidence in Rohee and Speaker Mohamed's role in the abortive impeachment attempt. Two points should be made here. Firstly, it is perhaps natural that the most interesting tests of constitutional conventions (those which help to expose their true nature) come during times of political instability. Where politics is tranquil, for example after one party winning an election landslide, the constitution is perhaps more likely to lurk in the background and MPs will not invoke it directly. Secondly, and relatedly, WMCFs and the Commonwealth as a reference point have become particularly important in Guyana since third parties have begun to win more seats in the legislature and government majorities have become more precarious. Few of the incidents discussed in this chapter predate the 2000s reforms. It seems likely, therefore, that WMCFs and the Commonwealth as a reference point are beginning to gain new life

[191] 'Joint Opposition's Shadow Cabinet; A Malignancy Beyond Cure' *Colombo Telegraph* (19 July 2016) <https://www.colombotelegraph.com/index.php/joint-oppositions-shadow-cabinet-a-malignancy-beyond-cure/> accessed 9 March 2024; 'The Curious Case of The Joint Opposition's Shadow Cabinet' *Roar Media* (8 July 2016) <https://roar.media/english/life/reports/curious-case-joint-oppositions-shadow-cabinet> accessed 9 March 2024.

as politics enters a more complex period. These provisions and comparisons may be helping Guyanese MPs to fill gaps and untested areas of the constitution as the political landscape changes.

In Sri Lanka, on the other hand, it has been fruitful to take a slightly longer view of the 1978 Constitution since its passage. While Sri Lanka may show a more sustained reliance on these constitutional features, it also shows that not all of them have survived in political practice. Ministerial responsibility *as a convention* shows less signs of being explicitly invoked as in Guyana. Also, while there is a leader of the opposition, this is not coupled with a shadow cabinet.

In both Guyana and Sri Lanka, while these constitutional features may have survived, they have not survived unaltered. They have evolved to fit a changing constitution. The cabinet-parliament nexus in Sri Lanka has been used to lobby rather than scrutinise ministers in some cases. In Guyana, collective responsibility has been relied on to avoid prosecution for decisions made in office. In both countries, the leader of the opposition plays a role in constitutional appointments. The speaker has a similar role in Sri Lanka and (as in previous Sri Lankan constitutions) the speaker's certificate is the final act in passing a bill into law. While the speaker is held to standards of impartiality based on the Commonwealth tradition, this has not always been possible in practice.

This chapter has also placed the communal presidencies in their sociological contexts. Chapter I discussed the political and agentic forces behind the 1978 and 1980 constitutions. This chapter makes the more constitutionalist observation that the executive presidencies were also the institutional culminations of pre-existing patterns of executive centralisation. Section 1 then went on make the more sociological point that the presidencies have become institutional symbols and drivers of communal dominance in Sri Lanka and Guyana. In Guyana, the presidency has been used as a tool for domination by both communities, whereas in Sri Lanka (especially since Mahinda Rajapaksa) it has become a Sinhalese-Buddhist nationalist instrument. The communal presidencies came to lead and symbolise politicised public services and centralised executives that were used to dominate and fight against 'rival' communities. The communal presidencies, in form and in people's minds, are still cloaked in this sociological mantle.

Chapter IV

Cohabitation and Constitutional Crises

Introduction

This chapter explores the interaction between WMCFs and the communal presidents during periods of cohabitation. It looks at the constitutional crises that have unfolded in both countries during periods of cohabitation. It examines how the interaction between communal presidents and WMCFs have triggered, exacerbated, or otherwise shaped constitutional breakdown.

Section 1 describes how the crises unfolded in each context. It examines the post-2011 general election and 2018 crises in Guyana, both of which involved no-confidence motions in the government. In Sri Lanka, the 2018 constitutional crisis also involved parliamentary confidence, however in slightly different circumstances due to the different nature of the constitution. Here, the president attempted to engineer a change in prime minister and sought *ex post* approval from parliament. In both Guyana and Sri Lanka, prorogation and dissolution powers were important parts of the story.

Section 2 discusses how WMCFs and other Westminster influences interacted with the communal presidencies at a more abstract level. It reflects on commonalities in the Sri Lankan and Guyanese experiences. Both countries experienced institutional friction where the combination of different constitutional logics produced difficulties. There are also important differences in the Sri Lankan and Guyanese experiences that relate to differences in their constitutional arrangements.

1. The Crises

1.1 Guyana

On 21 December 2018, the National Assembly passed a no-confidence motion in the governing A Partnership for National Unity/Alliance for Change (APNU/AFC) coalition. What ensued was a more than one-and-a-half-year constitutional crisis.

As discussed in earlier chapters, vestiges of the original Westminster model system have combined with constitutional innovations from Burnham's era to create a unique relationship between the legislature and the president. The National Assembly, rather than being directly elected, is effectively selected by the party leaders through the alphabetical list system. The president, being the leader of the political party that wins a plurality of the votes cast at the combined parliamentary/presidential election, does not necessarily command a majority in the National Assembly. In fact, in an election with three candidates, it is possible to be elected president with only 34% of the popular vote and as small a proportion of MPs.[1] This was originally introduced with fixed-terms for the president, however, as discussed in Chapter II, no-confidence procedures were later introduced as a way of re-strengthening the legislature. A simple majority of votes in the National Assembly can topple the government and trigger a general election.

The crisis began when the People's Progressive Party/Civic (PPP/C) passed a no-confidence motion in the A Partnership for National Unity/Alliance for Change ('APNU/AFC') coalition. In the 2015 general election, David A Granger (PNC, being the largest component of the APNU) was elected president and his APNU/AFC coalition had a one-seat majority in the National Assembly (33 to the PPP/C's 32). In Guyana, party control is absolute and it is almost unheard of for MPs to vote against their party.[2] Therefore, even when opposition leader Bharrat Jagdeo tabled a no-confidence motion on December 21 (the National Assembly's last sitting before Christmas) the government seemed to be in a safe position. This was despite Jagdeo's assertion that

> We can see that all the bluster here is a sign of the intent trepidation in their hearts across there. They are very worried. Just look at their faces. It is what I see. The typical People's National Congress (PNC) behaviour that we see on the streets, we are seeing it manifested here today. It comes out of intense fear,

[1] Tracy Robinson, Arif Bulkan and Adrian Saunders, *Fundamentals of Caribbean Constitutional Law* (Sweet and Maxwell 2015) 114.

[2] Stephen Kissoon, *A Democracy in Distress: Documenting Guyana's Political Crisis 2018-2020* (Amazon 2021) 25–6. This is partly due to stringent anti-defection laws, found under Article 156(3) of the constitution, which provide that the representative of the list (a position often held by party leaders) can recall an MP if the Representative "indicates in writing to the Speaker that after meaningful consultation with the Party or Parties that make up the List that the Party or Parties have lost confidence in that member" (Art. 156(3)(c)).

fear that they would lose the perks and fear that they would lose all the benefits they have gotten.[3]

To the visible shock and chagrin of his colleagues, Charandass Persaud of the AFC voted against the government. While the speaker allowed for the vote to be re-started, he denied the minister for public health's request for a "time-out",[4] retorting "what sort of thing is that… a vote is taken to conclusion".[5] Although MPs implored Persaud to "correct yourself",[6] he stood firm when the vote began a second time, stating "yes, yes, yes".[7] Later claiming that this was the "only time in three and half years as a Parliamentarian that I voted according to my conscience",[8] Persaud had obviously agreed the logistics of the vote with the opposition. Immediately after, he was rushed off to the airport for a flight bound for Canada, reportedly amid death threats from other MPs.[9]

Cases around the validity of the no-confidence vote began in Guyana's High Court. They then moved to the Appeal Court and finally the CCJ. There were three cases that tried to establish whether the vote had been valid. The CCJ addressed these cases jointly in *Ram, Jagdeo, and Persaud*.[10] The court addressed the following questions

(a) Does Article 106(6) apply to 'No Confidence Motions'?

(b) What is the majority necessary for the passage of a no confidence motion?

(c) Does the Court have jurisdiction to inquire into the issue of Mr Persaud's disqualification from being a member of the National Assembly?

(d) Was Mr Persaud precluded from voting in the manner he did in light of the anti-defection provisions (Art 156(3)) of the Constitution?

---

[3] Official Report, 11th Parliament, 111th Sitting (Friday, 21st December, 2018) p. 3.
[4] ibid p. 94.
[5] ibid p. 95.
[6] ibid p. 94.
[7] ibid p. 95.
[8] 'Who Is Charrandas Persaud?' (*News Room Guyana*, 22 December 2018) <https://newsroom.gy/2018/12/22/who-is-charrandas-persaud/> accessed 12 August 2022.
[9] Kissoon (n 630) 30.
[10] *Ram, Jagdeo, and Persaud* [2019] CCJ 10 (AJ).

(e) Does Article 165(2) of the Constitution preserve the validity of Mr Persaud's vote?

(f) What consequences attend the answers to the above questions?[11]

One of the striking features of the CCJ's judgment was how heavily its understanding of no-confidence motions was influenced by the Westminster tradition, despite Guyana's hybrid system and the fact that no-confidence motions were only re-introduced in 2000, under a constitution that is distinct from the independence document. In describing the contours of no-confidence motions, the court relied heavily on a briefing paper from the UK House of Commons Library. The court stated that

> The reference to Kelly's *Confidence Motions* is interesting because Kelly is discussing a core principle of parliamentary democracy as developed in the United Kingdom and as is observed in that and in many other parliamentary democracies. Throughout the course of the proceedings there was much discussion about the uniqueness of Guyana's Constitution. That what Kelly has to say may be relevant to Guyana appears to be an acknowledgment that certain aspects of Guyana's hybrid Constitution are traceable back to its UK parliamentary roots and that in unravelling those aspects one may benefit from an understanding of the history and conventions of Westminster parliamentarianism.[12]

The court also drew a link between the 1966 Constitution's confidence motions and those introduced in 2000.[13] Although this case does not, in itself, show a clear link between hybrid constitutionalism and instability, it is useful for understanding the continuing influence of Westminster constitutionalism in certain areas of Guyana's law. The government was brought down because one of its MPs voted against it in a no-confidence motion. There was no factor that made this any more unstable than if it were to happen in a simple parliamentary democracy. However, what *Ram, Jagdeo, and Persaud* does show is the enduring influence of Westminster constitutionalism both as a doctrinal phenomenon and an interpretive process. Not only have no-

[11] ibid [12].
[12] ibid [14].
[13] ibid [19].

confidence motions survived under the communal president, but they are given life to with reference to other Westminster model democracies.

Cohabitation also led to unworkable government after the 2011 elections. Constitutional design and the interaction of Westminster model provisions with the communal presidency was also a significant part of this.

In the 2011 general election, Guyana elected Donald Ramotar (PPP) as president. Ramotar and his party won only a plurality of the vote (48.6%) and therefore failed to gain a majority in the National Assembly (32/65 seats). The APNU won 26 seats (led by David Granger) and the AFC won 7 seats (led by Khemraj Ramjattan). The APNU and AFC did not run under a single ticket, so their post-election pact did not give them the presidency. The result was "frequent and bitter clashes between the two branches of government".[14] The new parliament began with some expressions of hope, on both sides of the house, for making the new dynamic work. However, there seemed to be an air of fatalism even from the start. The speaker was elected on a party-partisan vote rather than commanding cross-party or unanimous support.[15] The leader of the opposition requested that the president appear more frequently, perhaps annually, before parliament to answer questions in a political (rather than ceremonial) environment.[16] The president also warned that he would not be "held ransom to intractable postures".[17] Furthermore, the difficulties in building consensus quickly became apparent when appointing members to the committee of selection that same day. This committee determines the composition of other parliamentary committees. Traditionally, the committee had been composed of ten members, however the APNU wanted to change this number to nine, which included a change to the standing orders. This seemed to be an attempt to ensure their dominance along with the AFC. PNC stalwart Amna Ally explained that

> Despite the issue of consensus, despite the issue of unity, we have a right to fulfil the mandate of the electorate.[18]

---

[14] Robinson, Bulkan and Saunders (n 1) 117.
[15] Official Report, 10th Parliament, 1st Sitting (12 January 2012), pp. 5-11.
[16] Official Report, 10th Parliament, 2nd Sitting (10 February 2012), pp. 14-15.
[17] ibid pp. 6-7.
[18] ibid p. 21.

From the start, therefore, cohabitation and cooperation seemed untenable.

Public finance was a particular area of friction with the new government. Legislation more generally was fraught, but it was issues of supply that were most pressing and eventually led to parliament's prorogation.[19] The speaker and the attorney general found themselves in a court battle when the National Assembly chose to reduce a line item in the national budget. Thereafter, the PNC/AFC majority, instead of tampering with public finance measures, simply disapproved them in whole.[20] The government, in turn, relied on unapproved finances to carry out its functions. In June 2014, the minister of finance authorised the spending of 4.5 billion dollars even after the National Assembly had voted this spending down.[21] In response, the AFC filed a no-confidence motion in August 2014.[22]

Prior to this motion being filed, on 10 July 2014, the issue of unauthorised spending was raised as a matter of parliamentary privilege. Opposition spokesperson on finance and international economic cooperation, Carl B Greenidge, raised a point of privilege in response to the minister's actions. Greenidge emphasised that the National Assembly had made some allowance for unapproved spending, however these new sums – explicitly disapproved by the legislature – were beyond the pale.[23] The advantage of this approach was that matters of privilege are exempt from strict requirements of notice[24] and take precedence over all other business.[25] The issue was therefore included in Hansard (paving the way for its coverage in the next day's newspapers) and began the process where it could be voted on by the house.[26]

The AFC filed a motion of no-confidence on 8 August 2014, which was to be held on 10 November. Having warned in an address to the nation that he would either dissolve or prorogue parliament if the opposition pushed ahead with the vote,[27] Ramotar

[19] Robinson, Bulkan and Saunders (n 1) 117.
[20] ibid.
[21] Derek O'Brien, 'The Principle of Responsible Government in the Commonwealth Caribbean: Prorogation and Motions of No Confidence' (2022) 60 Commonwealth and Comparative Politics 27, 36.
[22] ibid.
[23] Official Report, 10th Parliament, 88th Sitting (10 July 2014), pp. 41-2.
[24] Standing Orders of the National Assembly of Guyana, standing order 30(k).
[25] ibid standing order 32(1).
[26] Official Report, 10th Parliament, 88th Sitting (10 July 2014), pp. 53-4.
[27] 'Ramotar to Call General Elections If Opposition Pushes No-Confidence Motion' *Demerara Waves* (5 November 2014) <https://demerarawaves.com/2014/11/04/ramotar-to-call-general-elections-if-opposition-pushes-no-confidence-motion-local-govt-elections-possibly-next-year/> accessed 21 September 2022.

prorogued parliament on the day that the vote was to be held, citing the possibility of prorogation forcing compromise rather than having an early election.[28] Although the move was clearly within the scope of the written constitution,[29] Hinds described the move as “like a coup d’état” where the president “seized complete power for the executive” and “smothered democracy”.[30] Hinds also rejected Ramotar’s assertion that the president was interested in dialogue.[31] Although the British high commissioner speculated that prorogation breached the Commonwealth Charter,[32] the CARICOM council of ministers was satisfied that neither the constitution nor the Charter was violated (a statement that was met with protests in Guyana).[33] After three months, on 24 February 2015, Ramotar announced that he was dissolving parliament in four days. Citing the failure to form an agreement with the opposition, Ramotar scheduled a general election for 11 May 2015.[34]

Responsibility for the public purse, the role of cabinet, and the requirements of ministerial responsibility were also raised as issues in December 2013, during the second reading of the Procurement (Amendment) Bill (No.17/2013). The main change made by this bill was that cabinet would continue to have the right of no-objection on procurement contracts above a certain value (15 million GYD) where it would otherwise lose this right after the establishment of the public procurement commission.[35] This raised questions over what the 1980 Constitution’s WMCF requiring cabinet to be ‘collectively responsible’ for matters entailed and how this operates within a hybrid constitution. Concluding his argument in favour of the amendment, Ashni Singh MP (minister of finance) stated that

---

[28] ‘President Donald Ramotar Suspends Parliament’ *Guyana Chronicle* (10 November 2014) <https://guyanachronicle.com/2014/11/10/breaking-news-6/> accessed 21 September 2022.
[29] However, for some doubt on this after the second UK Miller judgment, see O’Brien, ‘The Principle of Responsible Government in the Commonwealth Caribbean’ (n 21) 37–8.
[30] *Implications of a Prorogued Parliament - Opposition Leader* (Directed by Malika Natasha Ramsey-McPherson, 2014) <https://www.youtube.com/watch?v=CAgdXxBU3mY> accessed 21 September 2022.
[31] ibid.
[32] O’Brien, ‘The Principle of Responsible Government in the Commonwealth Caribbean’ (n 21) 36.
[33] ‘AFC Protests Caricom “Indifference” on Prorogation’ *Stabroek News* (21 January 2015) <https://www.stabroeknews.com/2015/01/21/news/guyana/afc-protests-caricom-indifference-prorogation/> accessed 21 September 2022.
[34] ‘Parliament to Be Dissolved on February 28th’ *Stabroek News* (25 February 2015) <https://www.stabroeknews.com/2015/02/25/news/guyana/parliament-dissolved-february-28th/> accessed 21 September 2022.
[35] Official Report, 10th Parliament, 66th Sitting (19 December 2013), pp. 12-3 (per Ashni Singh).

> For as long as we will hold the Cabinet and the Executive responsible for public administration in accordance with the laws of our country; for as long as we will hold the Executive and the Cabinet responsible for implementation and execution of the Budget; for as long as we will hold the Executive and the Cabinet responsible for the fiscal outcomes of our country, we cannot exclude the Executive and the Cabinet from involvement in a process such as this.[36]

Quoting a debate on the original bill from 2003, Manzoor Nadir drew a link between lingering WMCFs (particularly the cabinet-parliament nexus) and the need for checks and balances

> In Guyana, we do not have the American system where the executive is totally isolated from the legislature. We do not have that! What we have is still lots of remnants of the Westminster system, which draws the executive from the National Assembly and, ultimately, ministers are accountable and responsible. What we have tried over the many years, especially in the last decade, was to ensure that there were enough checks and balances in place where subjectivity could creep in to ensure that there are enough checks and balances in place to ensure accountability and transparency.

Although both of these speeches were delivered in favour of the amendment, they approached the issue of public procurement from different perspectives on Guyana's hybrid constitution. For Singh, parliament could not remove cabinet's power over public spending while the constitution still required it to be responsible to the National Assembly on these matters. This point was reinforced later in the debate by Nandlall, who asserted that "When you take Cabinet's role out of the procurement process you are leaving Cabinet exposed to a responsibility without any role".[37] Nandlall believed that this was required by Article 106(2) of the constitution (i.e. the collective responsibility of cabinet) and that "The Government's position is not based upon any whimsical position. The Government position is deeply rooted in a constitutional principle".[38] For Nadir, on the other hand, the close nexus between cabinet and

[36] ibid p. 26.
[37] ibid p. 82.
[38] ibid p. 82.

parliament was exactly the danger that the Act addressed and the only issue was whether it provided enough checks and balances against abuse. Therefore, although this particular debate did not relate to WMCF public finance provisions as discussed in Chapter II, nonetheless it does show how issues with government spending during the tenth parliament brought up considerations around Guyana's constitution and the proper role of cabinet in a hybrid system. This is distinct from the 2014 constitutional crisis over disapproved government spending, which related directly to WMCF public finance provisions and the president's prorogation powers.

1.2 Sri Lanka

In Sri Lanka, cohabitation has also proved unworkable. There have, so far, been four periods of actual cohabitation, i.e. when different parties won synchronised presidential and parliamentary elections or when the president lost an existing parliament's support part of the way through a term: 1994, 2001-2004, 2018-9, and 2022. This chapter focuses on the 2018-9 period and the use of WMCFs. During this crisis, prorogation and the cabinet-parliament nexus were particularly important.

Sri Lanka's constitutional crisis came just a few years after the passage of the Nineteenth Amendment. As described in Chapter II, the *yahapalanaya* movement began to fray soon after the 2015 general election, and the Nineteenth Amendment did not remove the executive presidency as the coalition had promised. The constitutional crisis began when, on the night of 26 October 2018, President Sirisena purported to appoint his predecessor, Mahinda Rajapaksa, as prime minister.[39] This took the form of three announcements. Sirisena and his party's withdrawal from the 'national government', Mahinda Rajapaksa's appointment, and Ranil Wickremesinghe's removal.[40] The first news of Sirisena's actions came in the form of a short video clip that people were so surprised by that they initially thought it to be a fake.[41]

---

[39] Darisha Bastinas, 'The Siege: Inside 52 Days of Constitutional Crisis in Sri Lanka' in Asanga Welikala (ed), *Constitutional Reform and Crisis in Sri Lanka* (Centre for Policy Alternatives 2019) 24.

[40] Asanga Welikala, 'The Sri Lankan Culture of Constitutional Law and Politics: The Lessons of the Constitutional Reform Exercise 2014-19 and the Constitutional Crisis of 2018' in Asanga Welikala (ed), *Constitutional Reform and Crisis in Sri Lanka* (Centre for Policy Alternatives 2019) 288.

[41] Asanga Welikala, 'The Eastminster Viceroy and the Republican Monarch: The Sri Lankan Head of State and the 2018 Constitutional Crisis in Historical Context' in H Kumarasingham (ed), *Viceregalism:*

As the constitution stood at the time, a sitting cabinet (and prime minister) could only be removed by a vote of no-confidence or if parliament rejected the statement of government policy or the appropriation bill.[42] While the president had discretion over the "the number of Ministers of the Cabinet of Ministers and the Ministries and the assignment of subjects and functions to such Ministers",[43] he was forced to appoint as Prime Minster "the Member of Parliament, who, in [his] opinion, [was] most likely to command the confidence of Parliament."[44] Once appointed, the Prime Minster could not be removed or the cabinet dissolved without parliament's explicit loss of confidence as set out above. Some argued that Sri Lanka's Interpretation Ordinance[45] implied a right of dismissal, however the context of the Nineteenth Amendment's passage made this an unconvincing interpretation.[46] Therefore, Sirisena's purported appointment of Rajapaksa was *prima facie* unconstitutional. Unconstitutional, no less, thanks to the Nineteenth Amendment that the president himself had helped to pass.[47] Welikala also writes that

> The sudden, secretive, and abrupt nature of these nocturnal acts pointed not to a legitimate transfer of power but to a constitutional coup.[48]

Instead of rushing to the Supreme Court, the rightful prime minister (Ranil Wickremesinghe)

The Crown as Head of State in Political Crises in the Postwar Commonwealth (Palgrave Macmillan 2020) 231.

[42] Constitution of Sri Lanka 1978 (as amended up until the Nineteenth Amendment), Art. 48(2).

[43] ibid Art. 43(1). See also Art. 43 more generally and the varying degrees of the prime minister's participation.

[44] ibid Art. 42(4).

[45] Interpretation Ordinance 1901, s. 14(f).

[46] 'Of Constitutions, Cabinets and Coups' (*Groundviews*, 29 October 2018) <https://groundviews.org/2018/10/29/of-constitutions-cabinets-and-coups/> accessed 14 September 2022. A discrepancy between the English and Sinhala versions of the Nineteenth Amendments also raised some concerns Ravindra Fernando, *The Fifty-Two Day Saga: Political Crisis in Sri Lanka* (Vijitha Yapa 2019) 76–7.

[47] Kalana Senaratne, 'The Executive and the Constitutional Reforms Process in Sri Lanka' (2019) 108 The Round Table 625, 633.

[48] Asanga Welikala, 'The Sri Lankan Culture of Constitutional Law and Politics' (n 20) 288–9. See also Asanga Welikala, 'Paradise Lost? Preliminary Notes on a Constitutional Coup' (*Groundviews*, 27 October 2018) <https://groundviews.org/2018/10/27/paradise-lost-preliminary-notes-on-a-constitutional-coup/> accessed 14 September 2022.

> challenged his controversially appointed successor to a floor test in Parliament, stubbornly putting his faith in Erskine-May-esque parliamentary traditions even when the ground beneath his feet was shaking.[49]

Wickremesinghe argued that the issue boiled down to one of confidence – whether parliament had confidence in him or Rajapaksa – and it was only parliament that could send this message, not the courts.[50] Sirisena bought time for Rajapaksa by proroguing parliament. Again, Bastinas writes

> The prorogation order, issued without consultation with the Speaker of the House or other political parties, was President Sirisena's second gift to his former party leader. Over the next fortnight, it would be up to the Rajapaksa family, masters in the art of political coercion and intimidation, to engineer some 20 crossovers and seal a parliamentary majority.[51]

Prorogation was made by Gazette on the night of October 27. It scheduled parliament to reconvene on November 16.[52] Normally the president would consult with the speaker before proroguing parliament (and on a previous occasion the speaker had already warned Sirisena not to prorogue), but on this occasion there was no such consultation.[53] The Sirisena-Rajapaksa pact therefore had a clear strategy to retake power. They intended to give political legitimacy to Rajapaksa's unconstitutional appointment by using alternative leavers at their disposal to generate a parliamentary vote of confidence in his favour.

Prorogation was used to both buy Rajapaksa some breathing-space and also weaken the parliamentary and party machines so as to facilitate crossovers.[54] Welikala writes that

---

[49] Bastinas (n 39) 29.
[50] Fernando (n 46) 72.
[51] Bastinas (n 39) 29.
[52] ibid.
[53] Fernando (n 46) 72.
[54] Welikala, 'Paradise Lost?' (n 48) 289.

in trying to dismiss and replace the prime minister, the president was either badly advised, or acted on a political calculation that he could get away with it notwithstanding the patent illegality.[55]

However, even this didn't prove to be enough. Realising that he and Rajapaksa were failing to produce a parliamentary majority on time, Sirisena purported to dissolve parliament on November 9.[56] Again, like the attempted dismissal of Wickremesinghe, this was *prima facie* unconstitutional because the Nineteenth Amendment had shortened the period where the president could dissolve parliament without its consent. Unless parliament consented to be dissolved by a two-thirds majority, the president could only dissolve parliament four-and-a-half years into its term.[57] The proclamation was unanimously annulled by the Supreme Court on December 13.

In the end, parliament resumed two days earlier than Sirisena intended, on November 14. This was because the Supreme Court issued an interim stay on the dissolution after a fundamental rights petition was brought by various political parties and the Centre for Policy Alternatives, a civil society organisation. This was issued on November 13.[58] This allowed Wickremesinghe to engage his challengers on the floor of parliament. The purported Rajapaksa cabinet was defeated in two successive votes of no-confidence, on November 14 and 16.[59] Although some MPs had been lured across the floor with offers of ministerial portfolios, clearly the Rajapaksa machine had

---

[55] Asanga Welikala, 'The Dismissal of Prime Ministers in the Asian Commonwealth: Comparing Democratic Deconsolidation in Malaysia and Sri Lanka' (2020) 91 Political Quarterly 790.

[56] Asanga Welikala, 'Constitutional Reforms in Sri Lanka – More Drift?' (2019) 108 Round Table 605, 607.

[57] Constitution of Sri Lanka, Article 70(1) (as amended to Nineteenth Amendment).

[58] Welikala, 'The Sri Lankan Culture of Constitutional Law and Politics' (n 20) 290. And Michael Safi and Amantha Perera, 'Sri Lanka's Supreme Court Suspends President's Decision to Dissolve Parliament' *The Guardian* (13 November 2018) <https://www.theguardian.com/world/2018/nov/13/sri-lankas-supreme-court-suspends-presidents-decision-to-dissolve-parliament> accessed 14 September 2022. Although it is not covered in this discussion, another important case concerning the coup was a group of MPs seeking a writ of *quo warranto* against the Rajapaksa government. Effectively, this would require them to prove the authority that they acted under. This was the first order of its kind in the Commonwealth and, when the court granted interim relief, was seriously damaging to the purported cabinet's authority. Bastinas writes that "ministers never dared enter their ministries again" Bastinas (n 39) 53. See also Welikala, 'The Sri Lankan Culture of Constitutional Law and Politics' (n 20) 309–10.

[59] Welikala, 'The Sri Lankan Culture of Constitutional Law and Politics' (n 20) 290–1.

not been as effective as originally anticipated. Additionally, on December 12, parliament passed a vote of confidence in Wickremesinghe.[60]

In approaching the president's dissolution powers, the court rejected arguments that suggested continuity in Sri Lanka's monarchical history. It was argued by respondents' counsel that dissolution is a 'plenary' power, and the court thought this would make the powers comparable to royal prerogatives. The court found that this argument

> has to be emphatically rejected. Since 1972, this country has known no monarch and this Court must reject any submission that carries with it a suggestion to the contrary.[61]

The court also cited other cases where similar arguments had been advanced and rejected.[62] Clearly, there was an acknowledgement by both sides that these powers had their roots in earlier monarchical constitutions and the Westminster model tradition. However, the court was clear that the move to becoming a republic marked a break with this aspect of the Westminster model (unreviewable power), even when certain related provisions traced their lineage back to earlier constitutions. The court also alluded to dissolution's historical absorption into the executive president's office by stating that

> While the president may when exercising those powers be doing so *qua* Head of State in a historical sense, any such flavour of acting as Head of State does not detract from the core feature that the President is exercising executive powers.[63]

An instructive example of the Westminster model's influence in Sri Lanka, and the recognition of the fact that although there have been three constitutions since independence, nonetheless there is continuity in traditions and constitutional provisions, can be seen in Mahinda Rajapaksa's own argument in favour of

[60] Despite this, on 24 November, Mahinda Rajapaksa claimed in a speech from the prime minister's office that "Today, I am the leader of the largest group of MPs in Parliament". Quoted in Fernando (n 46) 54.
[61] *Rajavarothiam Sampanthan and others v. Attorney General and others* SC (FR) 351/2018, p. 38.
[62] ibid p. 38.
[63] ibid p. 41.

dissolution. In a speech delivered from the prime minister's office on 24 November, Rajapaksa argued that there was a convention to dissolve parliament where a statement of government policy or appropriation bill was defeated, and that this applied to Sri Lanka not just by virtue of provisions in the 1978 and 1972 constitutions, but also as a convention since independence because "we closely followed the British tradition of Parliamentary government at that time".[64] Rajapaksa argued that any purported restriction of the power of dissolution by the Nineteenth Amendment could not have any effect on this because

> Such traditions are completely contrary to the Parliamentary tradition […] The British constitutional authority A.V. Dicey has said that if the Crown is of the view that the opinion of the public is different to that of the majority in Parliament, the Crown has the discretion to dissolve Parliament and summon a general election. In 1975, the Governor General of Australia sacked Prime Minister Gough Whitlam and called a general election entirely at his own discretion.[65]

Rajapaksa argued that Sri Lanka's is a hybrid constitution and, even with the executive president, the power of dissolution in these circumstances could not be removed, even by constitutional amendment.[66]

The speaker, Deshabandu Karu Jayasuriya, was a crucial player in the 2018 crisis. In challenging the prorogation, standing up to Rajapaksa-led intimidation, and ensuring that key votes could take place, Speaker Jayasuriya played a role seldom required of House of Commons speakers since the seventeenth century. At first, the speaker was criticised by some for being unduly cautious in his role after the prorogation. Jayasuriya emphasised that the power of prorogation was within the president's constitutional authority. Others argued that he should emphasise the undemocratic strategy behind prorogation and the convention of consultation before these powers are used.[67] The speaker also approached the chief prelates of the Asgiriya and

---

[64] Quoted in Fernando (n 46) 63.
[65] Quoted in ibid.
[66] ibid 65.
[67] 'On the Speaker's Inaction: "Flimsy, Unforgivable Excuses"' (*Groundviews*, 4 November 2018) <https://groundviews.org/2018/11/05/on-the-speakers-inaction-flimsy-unforgivable-excuses/> accessed 14 September 2022.

Malwatte Chapters in Kandy and requested that they encourage the president to reconvene parliament.[68] While the speaker wanted to force an early reconvention of parliament, logistically this was difficult. The parliamentary secretariat was loyal to the President and Sirisena was refusing requests to reconvene. An audio system and Hansard were both needed and the mace (the symbol of parliament's authority) also had to be delivered.[69]

The speaker protected parliament's constitutional functions by standing firm on three key days: 14, 15, and 16 November 2018. The first threat of serious disorder in the chamber came on the 14th. When standing orders were suspended to immediately hold a vote of no-confidence in Rajapaksa's government, loyalists shouted angry jeers at the speaker and tried to grab the mace. Amid the growing unrest, Jayasuriya nonetheless managed to take the vote and declared that the purported government lacked the confidence of the house. This was backed up by MPs' actions after, whereby all those who had voted against the government by voice also signed the motion.[70]

The most serious outburst of violence in parliament, watched across the world, came on November 15. Unlike the other two days, this did not concern a confidence motion but instead the president's attempts to dissolve parliament. Rajapaksa delivered a speech calling for early elections, simultaneously threatening the speaker for not referring to him as the prime minister.[71] The purported prime minister was shocked when his speech was followed by a motion calling for a division on its substance. Clearly, MPs intended to register his illegitimacy for the second day in a row. Within minutes, the chamber had descended into anarchy. Rajapaksa loyalists attempted to attack Speaker Jayasuriya, breaking the 77-year-old's microphone and throwing a bin at him.[72] Other MPs rushed to the speaker's defence and brawls broke out. A UNP

---

68 Fernando (n 46) 91.
69 Bastinas (n 39) 42.
70 ibid 56–7.
71 ibid 58; Michael Safi and Amantha Perera, 'Sri Lanka MPs Fight in Parliament as Power Struggle Deepens' *The Guardian* (15 November 2018) <https://www.theguardian.com/world/2018/nov/15/shameful-day-sri-lanka-mps-fight-in-parliament-as-power-struggle-deepens> accessed 14 September 2022.
72 Dharisha Bastians and Jeffrey Gettleman, 'Fists. A Flying Garbage Can. And Maybe, at Last, Negotiations in Sri Lanka.' *The New York Times* (15 November 2018) <https://www.nytimes.com/2018/11/15/world/asia/sri-lanka-parliament-brawl.html> accessed 14 September 2022.

MP, Palitha Thewarapperuma, was photographed carrying what seemed to be a knife.[73] That day, the president said in a private meeting that he would only appoint a new prime minister if parliament again passed a motion of no-confidence and also removed any parts of that motion that could lead to his impeachment.[74]

The next day began with violence. Rajapaksa MPs did not even wait for the sitting to begin before they started damaging equipment and occupying the speaker's chair for almost an hour.[75] While other MPs sat in silence, police suddenly strode in and created a human wall, blockading the misbehaving MPs and restricting them to their side of the chamber. The speaker entered and the sitting began. While being barraged with projectiles, the police officers created the space for the speaker to conduct proceedings and take a vote of no-confidence. This was conducted over headsets and many of the Rajapaksa loyalists did not even know what was transpiring. After multiple attempts, MPs registered their votes by voice and the motion of no-confidence was passed.[76]

Inevitably, this subsection has relied heavily on Bastinas' account of the ordeal – who witnessed the attempted coup and its aftermath first-hand and gives a detailed description. This is the most thorough description of each phase in the crisis. Reflecting on the importance of Speaker Jayasuriya in this process, Bastinas writes

> The restraint shown by the police and the Speaker, in the face of unprecedented violence in the House, became the enduring picture of the coup; when brutality and thuggery had faced off against a gentle 77-year-old, his courageous staff and 122 MPs fighting to preserve Sri Lanka's democracy, and still managed to lose the battle.[77]

The constitutional crisis ended as unceremoniously as it had begun. Having lost at every stage in both parliament and the courts (the Court of Appeal and the Supreme Court), the president and Rajapaksa resigned themselves to their fates. Rajapaksa signed a letter announcing his resignation at a religious service in his home, saying

---

[73] Safi and Perera (n 71).
[74] Bastinas (n 39) 60.
[75] ibid 61.
[76] ibid 63–4.
[77] ibid 66–7.

that he would not encumber the president without fresh elections.[78] Wickremesinghe was sworn-in as prime minister the next day.

2. Reflections on WMCFs

2.1 Cohabitation, WMCFs, and Communal Presidencies

In both Sri Lanka and Guyana, the combination of communal presidencies and cohabitation led to constitutional crises. In Sri Lanka, the personality clashes between Sirisena and Wickremesinghe (discussed in Chapter II) were the precursors to Sirisena's unconstitutional manoeuvres, and these clashes were themselves the product of institutional expectations around the presidency, and also parliament. Jayadeva Uyangoda describes how the conflict between Sirisena and Wickremesinghe was part of an elite power struggle that began early in the *yahapalanaya* coalition government.[79] Uyangoda identified two reasons for the coalition's collapse (and therefore the crisis that followed). Firstly, the Rajapaksas and their erstwhile state clients wanted to restart their process of 'state capture' and also protect themselves from the prosecutions and investigations being initiated by the new government.[80] Secondly, Sirisena felt insecure because he was a president without an independent powerbase. He believed that in order to play the role that a president 'ought' to play, he needed to capture some of the UPFA-SLFP parliamentary group and consolidate his rule within the legislature.[81] The second cause is part of a wider phenomenon: the idea of the communal presidency as the fount and locus of executive power, an institutional idea locked in the founding of the offices, in conflict with the reality of cohabitation and Westminster-influenced ideas of cabinet government.

After the *yahapalanaya* parliamentary and presidential victories, Wickremesinghe and Sirisena were operating under two different, conflicting ideas of the same constitution.

---

[78] 'Sri Lanka's PM Resigns in Effort to Ease Constitutional Crisis' *The Guardian* (15 December 2018) <https://www.theguardian.com/world/2018/dec/15/sri-lanka-pm-mahinda-rajapaska-resigns-in-effort-to-ease-constitutional-crisis> accessed 14 September 2022; Oscar Quine and Marnie Gill, 'Sri Lanka's Disputed Prime Minister Mahinda Rajapaksa Resigns' *The Telegraph* (15 December 2018) <https://www.telegraph.co.uk/news/2018/12/15/sri-lankas-disputed-prime-minister-mahinda-rajapaksa-resigns/> accessed 14 September 2022.

[79] Jayadeva Uyangoda, 'Making Sense of the October Conflict and Its Aftermath' in Asanga Welikala (ed), *Constitutional Reform and Crisis in Sri Lanka* (Centre for Policy Alternatives 2019).

[80] ibid 114–122.

[81] ibid 126–7.

Along with the broader issue of cohabitation, it was these different understandings of what their offices were and what they were meant to do that led to constitutional breakdown. Under Uyangoda's second reason for breakdown (Sirisena's insecurity), these conflicting understandings were especially apparent. Upon assuming the office of president, Sirisena began to depart from his original commitment to being a one-term president and abolishing the executive presidency. Instead, he began to pave the way for a second term and helped to create the Nineteenth Amendment hybrid framework, rather than pure parliamentarism.[82] In his 2011 book, Basil Fernando compares this pattern to Socrates' story of Gyges' Ring. Fernando argues that the presidency, being so extensive and unaccountable in its power, inevitably causes the moral corruption of anyone who occupies the office and their subsequent abuse of the system.[83] As discussed in Chapter III, under this view of the constitution the communal presidency is held as the fountainhead of government power and political action. It, and its individual officeholder, are not meant to be hampered by either parliament or the judiciary and are endowed with all the tools of patronage and coercion necessary to overcome institutional and political opponents. By bringing the UPFA-SLFP into the coalition government, Sirisena intended to realise this expectation of the presidency.

Wickremesinghe, on the other hand, viewed the constitution as returning to its Westminster origins, where he (as prime minister) would govern with the assistance of his parliamentary cabinet. Uyangoda writes that

> Wickremesinghe did show a tendency to monopolise policy-making in almost all areas governance, specifically with regard to the economy, foreign affairs and international relations, education, industry, trade and commerce, rural and regional development, urban development, transport, constitutional reform, legal reform, health, women's affairs, and minority rights.[84]

This was more in keeping with the Nineteenth Amendment framework than Sirisena's vision of the constitution, which was still rooted in the idea of the communal presidency as set up in 1978 and consolidated in the years since. In the end, Sirisena felt side-lined and disrespected on a personal level by Wickremesinghe. As president, he

[82] ibid 127–8.
[83] Basil Fernando, *Gyges' Ring - The 1978 Constitution of Sri Lanka* (Karen Lau and Jessica Punyareka Fernando eds, Asian Human Rights Commission 2011).
[84] Uyangoda (n 707) 133.

expected more deference and consultation. Wickremesinghe, on the other hand, is known for being a forceful personality generally and his vision for the premiership probably exacerbated this. Indeed, Sirisena even cited Wickremesinghe's "arrogance" as a reason for appointing Rajapaksa.[85]

Sirisena's original purported appointment of Mahinda Rajapaksa as prime minister encapsulates the idea of competing constitutional visions within the same timeframe. Even when the Nineteenth Amendment had been passed to explicitly preclude such a move by the president, Sirisena still viewed his role within the constitution along the lines of the communal presidency. Fernando discusses how the president is meant to be his own constitutional gatekeeper, unaccountable to anyone else.[86] Sirisena knew that he was operating against the letter of the law, but he expected that political reality would outweigh legal constraints. If he appointed Rajapaksa and used the powers of his office to co-opt and intimidate a parliamentary majority, then the rest would take care of itself. While parliament (particularly Wickremesinghe) and the Supreme Court may have been living in the constitution as it was changed by the Nineteenth Amendment, Sirisena and his new Rajapaksa allies still occupied the mindset of the previous constitution. Not only this, but for a period it looked as though their vision would win out in practice.

These competing sociological visions of parliament and the presidency help us to understand the two components of the communal presidency in practice: executive centralism and communal domination. While these were interwoven historically in Sri Lanka, this episode demonstrates that they are, nonetheless, distinct. Although executive centralism and stability was one of Jayewardene's original motives for the 1978 constitution, the presidency itself quickly became intertwined with the national question. By the time of the constitutional crisis in 2018, however, the issue was purely one of executive centralism. Sirisena believed that, as president, he had the right to appoint the cabinet he desired and that, even where this was expressly prohibited by the constitution, nonetheless he could use other constitutional levers to subvert the

[85] 'Wickremesinghe's Arrogance Led to His Sacking, Says Sirisena as Political Crisis Deepens in Lanka' *The Times of India* (28 October 2018) <https://timesofindia.indiatimes.com/world/south-asia/wickremesinghes-arrogance-led-to-his-sacking-says-sirisena-as-political-crisis-deepens-in-lanka/articleshow/66405282.cms> accessed 26 September 2022.
[86] Fernando (n 83).

Nineteenth Amendment and generate a majority in parliament that would cure any constitutional impropriety *post hoc.* Not only this, but he almost succeeded.

This is an example of the legal and sociological status of the 'communal president' as an institution. When Sirisena was elected to the office, he felt entitled to a certain degree of deference. When this was not shown to him, he believed it both legitimate and possible to dominate cabinet and parliament despite the recent amendment to the constitution. This came from a sociological vision of the communal presidency that goes beyond its merely legal status *plus* the gaming of constitutional powers in an attempt to produce an unconstitutional result (i.e., dismissing the prime minister without parliament's approval). The implications of these sociological and legal dimensions to the institution of president are discussed further in chapters V and VI.

A comparable dynamic between the communal president and a hostile parliamentary majority was observed in Guyana. In this case, however, the event that encapsulated Ramotar's statist vision of the presidency was the spending of funds without parliamentary approval. When parliament did not grant the president the funds he desired, he saw it as perfectly possible and within his rights to spend them anyway. Again, as in the case of Sri Lanka, the president also got away with this for a substantial period before the other institutions (in this case parliament) caught up with him. Despite a long tradition of debate over power-sharing in Guyana,[87] cohabitation was never taken seriously as an option in 2011. It ran contrary to Ramotar's vision of the presidency and what the opposition thought they could engineer from within parliament. The internalised vision of an alternative to the communal presidency was perhaps stronger in Sri Lanka, where the Nineteenth Amendment was seen as a watershed moment that went some way towards restoring pure parliamentary government and balancing presidential power. Also, in the end the parliamentary vision eventually triumphed in Sri Lanka's constitutional crisis, whereas the president ultimately got his own way in Guyana. Nonetheless, Guyana showed a clear conflict over the extent of presidential power, especially as it applied to public spending.

The use of public finance restraints to put pressure on the president in Guyana is also illustrative of how difficult it is to marry the communal president with WMCFs and

[87] David Hinds, *Ethno-Politics and Power Sharing in Guyana: History and Discourse* (New Academia Publishing 2011).

cohabitation. As discussed in Chapter II, public finance processes have remained largely unchanged since independence. The constitutional provisions are built on the assumption that, if an appropriation bill cannot be passed, then a new government must be formed, perhaps requiring fresh elections. This is opposed to the archetypal presidential system, the USA, where budget procedures and political culture has built up over decades, even centuries, to allow for political bargaining between the president and Congress and also substantial safeguards if a budget is not agreed on time.[88] It is also distinct from francophone constitutions, which allow spending by ordinance where parliament's approval has not been given. In Guyana, on the other hand, the National Assembly was able to hold the government over a barrel with almost no institutional safeguards for the eventuality of spending being refused. Furthermore, strict party discipline made bargaining impossible, even though this type of politics would be essential to make the system work in the absence of either power-sharing or a government majority in the National Assembly. Westminster systems are more closely associated with *ex post* rather than *ex ante* budget review, reflecting these political tendencies.[89]

Again, as in Sri Lanka, the president of Guyana felt able and entitled to contravene the written constitution, given the office's powers and sociology. Ramotar saw the presidency as follows: the president controls the executive and the executive spends the public money. The National Assembly has no right to thwart this. Indeed, this is also how Burnham himself would have viewed the constitution. Even if it was prohibited by the written constitution, the presidency also had the power to back this up. Ramotar was, ultimately, able to spend monies that had been disapproved in the National Assembly. Even when the National Assembly took its only recourse (a vote of no-confidence), the president's dissolution and prorogation powers resolved the problem. Just as in Sri Lanka, the president relied on constitutional levers to do unconstitutional things.[90]

---

[88] Torsten Persson and Guido Tabellini, 'Political Economics and Public Finance' in Alan J Auerbach and Martin Feldstein (eds), *Handbook of Public Economics*, vol 3 (Elsevier 2002).

[89] Joachim Wehner, 'Legislative Arrangements for Financial Scrutiny: Explaining Cross-National Variation' in Riccardo Pelizzo, David M Olson and Rick Stapenhurst (eds), *The Role of Parliaments in the Budget Process* (The International Bank for Reconstruction and Development/The World Bank 2005) 12–3.

[90] Incidentally, President Gotabaya Rajapaksa was also able to stretch the constitution and spend public money during the Covid-19 pandemic in 2020 while delaying the parliamentary elections. For a

2.2 Prorogation, Dissolution, and Cabinet-Parliament Relations

WMCFs with their roots in the independence constitutions were crucial in shaping these crises and their outcomes. In both Guyana and Sri Lanka, prorogation and dissolution were important weapons in the communal presidents' arsenals. The extent of these powers determined whether the parliament was able to ultimately defend itself against presidential coercion (as happened in Sri Lanka) or if the president could engineer an electoral and legislative timetable to his own advantage (as happened in Guyana). In addition, the composition of these cabinets – dominated by sitting MPs, in line with the constitutions' hybrid character – had an effect on their relationship with the president. In Sri Lanka, the cabinet-parliament nexus gave Wickremesinghe his own levers to exert pressure on the president. In Guyana, President Ramotar lacked an independent term and would also face fresh elections if he dissolved parliament. This section also frames these powers in the context of other Westminster model systems and highlights that, while politicised prorogation is by no means unique to these hybrid systems, at least it adds to the standing of the communal presidents in each case and, perhaps, it is also more likely for an executive president to politicise these powers than a system with a ceremonial head of state.

In both Sri Lanka and Guyana, prorogation was used by the president to disrupt parliament's ability to behave in a cohesive manner. It was also used to buy time and prepare for fresh elections. In Sri Lanka, prorogation was originally intended not as a precursor to fresh elections, but as a tool to disrupt parliamentary cohesion and induce crossovers to support the new purported government. Prorogation helped to create panic and distrust amongst MPs which would make them more likely to take cover under the auspices of the communal presidency. MPs could not challenge the president's conduct on the floor of the house and an imbalance in information developed. Having also taken control of major media houses, Sirisena and his allies could suppress their opposition's narrative. It was only after this strategy failed that the president purported to dissolve parliament and call for fresh elections.

---

summary, see Bhavani Fonseka, Luwie Ganeshathasan and Asanga Welikala, 'Sri Lanka: Pandemic-Catalyzed Democratic Backsliding' in Victor V Ramraj (ed), *Covid-19 in Asia: Law and Policy Contexts* (Oxford University Press 2021) 354–5.

In Guyana, on the other hand, dissolution was always the end-goal. Prorogation was also used to disrupt the opposition in the National Assembly and this was done to prevent a motion of no-confidence in the short-term and prepare for fresh elections thereafter. The legislative majority was unable to show that it had galvanised to assert its will over the government for blatant misconduct. Instead, the National Assembly was never given the opportunity to fully debate the government's unlawful spending and demonstrate strength by passing a motion of no-confidence when it suited them. The president could disrupt their institutional base for months on end, all while his own institutional base remained intact, and hold elections when it was most expedient for him to do so. Ramotar may have lost the next round of elections, but this was the gist of the constitutional crisis. The importance of the no-confidence motion was that it did, at least, force the president to prorogue parliament and thereby start a countdown for the next elections (given that parliament can only be prorogued for a maximum of six months).[91]

While evidence is slight, it is likely that the composition of cabinet under these hybrid constitutions – where ministers are drawn from the legislature – acted as a subtle restraint on the presidents' use of dissolution. As a rule, legislators dislike the prospect of fresh elections, especially when they have not finished serving the term for which they were elected. In Guyana, there is the added prospect of the president himself having to go to election along with his party. As described by Uyangoda, there were underlying tensions that led to the *yahapalanaya* coalition's collapse. However, perhaps the trigger for the deterioration was Rajapaksa's stelar, and startling, victory in the February 2018 local elections. Sirisena wanted to side with a winning horse rather than the deflated UNP. As long as Rajapaksa could guarantee places for key players in Sirisena's SLFP in a fresh round of elections, dissolution may not have seemed like such a bad prospect. In addition, forming a new government with the existing cohort was naturally the first choice. This would give the Rajapaksa-Sirisena alliance a chance to prove itself before picking the best moment for new elections. In Guyana, where the government's popularity was shaky and the president also had to risk losing his own office, elections were delayed until the government and its legislators were most confident in their ability to win.

[91] Constitution of Guyana 1980, Art. 69(1).

Politicised prorogation is by no means limited to Guyana and Sri Lanka. As mentioned in Chapter II, prorogation is particularly powerful in the Westminster model compared, for example, to European counterparts. It is absolute and does not require any majority (or super-majority) in parliament. Even before the 1978 Constitution, Sirimavo Bandaranaike prorogued parliament for political expediency in Sri Lanka.[92] When the Queen prorogued parliament in the UK in 2019, the Supreme Court found that the advice delivered by Prime Minister Boris Johnson was unlawful and therefore the prorogation was null and void.[93] Some British commentators were slow to pick up on precedents from Westminster model systems, particularly the Commonwealth Caribbean, where such politicised prorogations have been encountered multiple times before. There are numerous works that discuss politicised prorogation, most recently O'Brien's article that looks specifically at prorogation to avoid no-confidence motions in the Commonwealth Caribbean.[94] What, then, is unique about these hybrid systems? This could be answered in two ways: one assertion clearly backed by evidence and the other more speculative.

The assertion clearly backed by evidence is made with reference to other presidential systems. Whereas these systems tend to be founded on a strict separation of powers, Sri Lanka and Guyana's hybrid systems have retained substantial executive control over the functioning and life of the legislature. This is achieved by preserving WMCFs within a separation of powers context. In practice, we see how these powers can be used to generate outcomes that would not be possible in a pure separation of powers system. Even in other semi-presidential systems, the extent of these reserve powers is exceptional. Even where a president has the power to suspend or dissolve parliament, this is normally limited by requirements such as a supermajority or majority support in the legislature.[95] Again, this distinction has been achieved through the preservation of WMCFs.

---

[92] John Harriss, 'Problems Facing Mrs. Bandaranaike: Sri Lanka and the 1977 Election' (1977) 67 The Round Table 168, 174. For an overview of politicised prorogations before the 1978 Constitution, see JR Jayewardene, *Men and Memories: Autobiographical Reflections and Recollections* (Vikas Publishing House 1992) 20–3.

[93] *R (on the application of Miller) v The Prime Minister* [2019] UKSC 41.

[94] O'Brien, 'The Principle of Responsible Government in the Commonwealth Caribbean' (n 21).

[95] Petra Schleiter and Thomas G Fleming, 'Parliamentary Prorogation in Comparative Context' (2020) 91 The Political Quarterly 641.

The more speculative claim is made with reference to Westminster model constitutions. It may be that politicised prorogation and dissolution without the legislature's consent is more likely in the Dualminster system. Kumarasingham's work on viceregalism and Eastminster is closely related to issues of politicised prorogation and dissolution. It shows how heads of state in the Commonwealth – in both its monarchies and its republics – have not been mere rubberstamps for the political executive. In fact, heads of state rigorously question and sometimes refuse to act on advice.[96] There is scholarly debate over whether prorogation ought to be viewed as a reserve power. At very least, the head of state would normally be entitled to strongly question a prime minister wanting to prorogue parliament to avoid a no-confidence motion in a Westminster model system. This soft restraint was mentioned numerous times when Sri Lanka was passing the 1978 Constitution and many commentators objected to parting with it.

Although prorogation could probably not have been avoided in Guyana when the no-confidence motion was tabled, so strong is the Caribbean precedent for this being a legitimate tactic, nonetheless parliament would not necessarily have had to be dissolved if another government could have been formed. In Sri Lanka, where prorogation was used to engineer an unconstitutional change in leadership, it is unimaginable that such events could take place in a parliamentary system with a separate head of state. We can compare these events to the 1947 Ceylon general election, for example, where convention required Governor Moor to appoint DS Senanayake as prime minister because, despite not winning a majority, Senanayake was best able to command the confidence of the house and anti-UNP factions had failed to form a viable alternative.[97] Kumarasingham writes that 'parliamentary heads of state'

[96] H Kumarasingham (ed), *Constitution Making in Asia: Decolonisation and State-Building in the Aftermath of the British Empire* (Routledge 2016); H Kumarasingham (ed), *Viceregalism: The Crown as Head of State in Political Crises in the Postwar Commonwealth* (Springer International Publishing 2020).
[97] H Kumarasingham, *A Political Legacy of the British Empire: Power and the Parliamentary System in Post-Colonial India and Sri Lanka* (IB Tauris and Co 2013) 146.

> Have in this conception the right to uphold the norms and traditions of parliamentary democracy, including when the accepted constitutional order is under threat.[98]

Naturally, this should be seen in the context of post-colonial Ceylon's close working relationship between the prime minister and governor general, who was not an entirely neutral figure.[99] Ultimately, one thing we can say for sure is that no governor general would have played the role of Sirisena in this situation and prorogued parliament in order to undermine the existing prime minister and engineer crossovers to a new government with purely partisan motives.

This raises a broader point about cohabitation that applies to both Sri Lanka and Guyana. The divided executive and legislature has created the risk of cohabitation in political cultures and constitutional contexts where, as discussed, cohabitation is extremely difficult. Again, therefore, the chance of the communal president having to fall back on reserve powers is heightened compared to Westminster model systems. Therefore, although there are certainly similarities with 'pure' Westminster model systems in the operation of these powers, there are also important differences in the Dualminster system.

2.3 Westminster Office Holders and Westminster as an Interpretive Process

The role of the speaker was particularly important in the Sri Lankan constitutional crisis. The speaker changed from the neutral Westminster model arbiter to a much more assertive figure. The Sri Lankan speakership is one of the offices that has the most visible ties to its Westminster model predecessors. The speaker still has ceremonial robes and a full bottomed wig in the style of previous House of Commons speakers. Although the office has gone through various phases of partisanship and neutrality, as discussed in Chapter III, the norm of impartiality is still invoked as an ideal type.[100] The speaker applies standing orders that have their roots in the

---

[98] H Kumarasingham, 'Viceregalism', in H Kumarasingham (ed) *Viceregalism: The Crown as Head of State in Political Crises in the Postwar Commonwealth* (Palgrave Macmillan 2020) 23.
[99] Kumarasingham, *A Political Legacy of the British Empire* (n 97) ch 6.
[100] Pasan Jayasinghe, Peter Reid and Asanga Welikala, *Parliament: Law, History and Practice* (Centre for Policy Alternatives 2019) ch 4.

Soulbury-era and, as mentioned above, the mace is still a cherished symbol of parliament's power.

In 2018, Speaker Jayasuriya was forced into conduct seldom required of Commons speakers since the seventeenth century and much more comparable to Washington model counterparts. Other work has discussed how the Commons speaker developed gradually into an impartial figure and instances where the speaker is required to defend parliament are, ideally, very rare.[101] On the other hand, the speaker in the House of Representatives is an overtly partisan figure, normally being the leader of the majority party. The idea is that institutional friction is to be expected and the Representatives needs a proactive political champion to protect its status.[102] During the 2018 crisis, the Sri Lankan speakership was repurposed as a much more political and high-profile office needed to defend the legislature's standing against executive encroachment.

Guyana shows how Commonwealth precedents may influence the judiciary's application of the constitution. This is even true when dealing with the executive president. When the CCJ wanted to understand the implications of a no-confidence motion, its first port of call was the British House of Commons' own understanding of this procedure. This was even the case when no-confidence motions had been reintroduced by Guyana as a republic with no direct connection to the UK. When the Procurement (Amendment) Act was being debated, MPs focused on the traditional responsibilities of cabinet in a Westminster model system (as expressed in the 1980 Constitution) and how these related to Guyana's hybrid constitutional features. Therefore, the hybridity of these systems does not simply exist within the constitution as a document. It is something that goes much deeper throughout the institutions responsible for operating under it and applying it. When courts interpret the constitutions, we see remarkable craft in applying and adapting lessons from other contexts. While there is certainly a regional trend (focus on Caribbean cases in Guyana and Indian cases in Sri Lanka) and US cases are also referred to,

[101] Matthew Laban, 'More Westminster than Westminster? The Office of Speaker across the Commonwealth' (2014) 20 The Journal of Legislative Studies 143.
[102] Asher C Hinds, 'The Speaker of the House of Representatives' (1909) 3 The American Political Science Review 155.

nonetheless, there is also a distinctly Commonwealth flavour to constitutional interpretation.

2.4 The Limitations of WMCFs in Explaining Constitutional Crises

It would be a mistake to pretend that this thesis offers a complete historical account of all the intricate and context-specific factors that have influenced constitutionalism in Sri Lanka and Guyana. Instead, it aims to draw out the most significant causal mechanisms and highlight the similarities and differences as they appear. A good example of how constitutionalism can be influenced by mechanisms other than the factors discussed in this thesis comes from Guyana.

In 1953, the newly formed PPP emerged victorious, with an unexpected landslide victory of 18 out of 24 seats in the lower house.[103] Led by Cheddi Jagan, the PPP's first cabinet had an even balance between Indo- and Afro-Guyanese.[104] The party's rule, however, was not to last. The PPP pursued state expansion at a rapid pace, which put it on a collision course with the governor and senior civil servants. One of its biggest mistakes was to challenge the interests of the Bookers company with the Labour Relations Bill, which would have recognised a pro-PPP union as the workers' foremost representatives instead of the union favoured by the company.[105] This policy went back to Jagan's ascent to prominence in the Enmore strike of 1949, where five strikers had been killed by police.[106] While the governor initially had some sympathy for the PPP's agenda, the youthful government created friction by the manner in which they pursued their goals.[107] The PPP tried to pass the Labour Relations Bill in a single day. Also, the government adopted a dismissive stance towards the governor's three *ex officio* members in the lower house:

> The Ministers held caucuses in what they called the "Council of People's Ministers," before meetings of the Executive Council and there arrived at policy

---

[103] Thomas J Spinner, *A Political and Social History of Guyana. 1945–1983* (Westview Press 1984) 38.
[104] Colin A Palmer, *Cheddi Jagan and the Politics of Power: British Guiana's Struggle for Independence* (University of North Carolina Press 2010) 20.
[105] Tim Merrill, *Guyana and Belize* (2nd edn, Library of Congress 1993) 18–9; Kate Quinn, 'Colonial Legacies and Post-Colonial Conflicts in Guyana' in Rosemarijn Hoefte, Matthew L Bishop and Peter Clegg (eds), *Post-Colonial Trajectories in the Caribbean: The Three Guianas* (Routledge 2016) 16.
[106] Ralph R Premdas, 'The Rise of the First Mass-Based Multi-Racial Party in Guyana' (1974) 20 Caribbean Quarterly 5, 12.
[107] Spinner (n 103) 38.

> decisions which were subsequently announced when the Executive Council met.[108]

It was also damaging for the bill to have come on the back of a strike that had been promoted and prolonged by PPP ministers.[109] Notably, however, the promise of having the workers' preferred union recognised was said to be the compromise that ended the strike.[110] At the time, R B Gajraj (future speaker) attributed the breakdown to the government's "methods of approach".[111] Even simple courtesies such as accepting social invitations from the governor – who initially sought to build stronger relations with Jagan and Burnham – were ignored.[112] Palmer argues

> Britain had little experience dealing with colonial leaders in the Caribbean demanding self-government and independence, lambasting the mother country unapologetically. Their language was strident, clothed in the Marxist rhetoric of the times, and designed to intimidate the colonial regime and hasten its departure.[113]

This period is viewed as British Guiana's great missed opportunity, when a multi-racial party united behind policies that could have helped overcome the country's injustices. However, the zeal of an inexperienced government and international dimensions ultimately lead to failure.[114]

Troops were sent to British Guiana on 6 October 1953 in preparation for the governor's suspension of the constitution, which came on October 9.[115] The suspension was justified by the governor in order "to prevent Communist subversion of the Government and a dangerous crisis both in public order and economic affairs."[116] Oliver Lyttelton (colonial secretary) recalls in his memoirs that there were intelligence reports that the

---

[108] Carmen Shirley Reid, 'The Constitutional Development of Guyana' (PhD, Syracuse University 1968) 114.
[109] Maurice St Pierre, *Anatomy of Resistance: Anti-Colonialism in Guyana, 1823-1966* (Macmillan 1999) 101–2.
[110] Spinner (n 103) 42.
[111] ibid.
[112] Palmer (n 104) 23.
[113] ibid 22.
[114] Spinner (n 103) 54.
[115] Palmer (n 104) 13.
[116] Reid (n 114) 114.

PPP planned to use its position to impose a one-party state and bloodshed was on the horizon.[117] Even at the time, these claims were seen as sensationalist, including by members of the British establishment.[118] Nonetheless, Jagan did threaten that police bullets would be "fired on our oppressors".[119] British troops were deployed because the governor was unsure whether he could count on the Guyanese police to carry out the orders.[120] Adding to the communist allegations were allegations against the PPP of trying to secularise the religious schools, indoctrinate children through re-written history and communist youth groups, and attempts to blend the police and civil service with the PPP.[121]

After the suspension, PPP leaders were targeted for imprisonment. Lyttelton wanted to arrest the PPP leadership without charge, a course refused by Churchill because it would have required full cabinet approval.[122] Governor Savage argued that the politicians' sins had been political and not criminal.[123] An unelected interim government, comprising centre-right politicians, businessmen, and officials was installed and remained until 1957. Political activities were prohibited, the PPP leadership was confined to Georgetown, and Jagan and Burnham began a campaign of passive resistance.[124] Britain also boosted investment and tried to alleviate the social and economic issues that were an important driver of the PPP's popularity.[125] 1953 was therefore an instance of constitutional and democratic abuse by the colonial power that still survive in Guyana's political memory. It marked the total overhaul and replacement of elected officials with individuals who had just been rejected in that same election.[126]

After Guyana's 2018 crisis, some commentators pointed to this event as a historical precursor to the conflict. Certainly, colonial misconduct in British Guiana created abusive constitutional instincts that were more apparent than in the early days of

[117] Oliver Lyttelton, *The Memoirs of Lord Chandos* (The Bodley Head 1962) 427–30.
[118] Spinner (n 175) 49–51.
[119] Palmer (n 104) 29.
[120] St Pierre (n 109) 105.
[121] Reid (n 114) 115–6.
[122] Stephen G Rabe, *U.S. Intervention in British Guiana: A Cold War Story* (University of North Carolina Press 2005) 49.
[123] ibid.
[124] ibid 49–50.
[125] ibid 51.
[126] Harold A Lutchman, *From Colonialism to Cooperative Republic: Aspects of Political Development in Guyana* (Institute of Caribbean Studies 1974) 222–3.

Ceylon's independence. This thesis does not attempt to merge its findings with postcolonial studies, but it raises important questions going forwards. For example, considering that both countries had very different attitudes towards their colonial experience at independence, and had also been subjected to very different types of colonial rule, why did similar constitutional trends develop thereafter? Does this thesis' explanation suffice even from a postcolonial perspective or are there also different ways of viewing the same phenomenon? If there are other perspectives, then how does the abusive constitutionalism in British Guiana impact the system there today differently to Sri Lanka? This thesis focuses on trends that formed during both countries' independence, but understanding what kind of links there are between today's constitutionalism and colonialism in each context is also important.[127]

Conclusion

In both Sri Lanka and Guyana, the basic failures in cohabitation can be viewed as political actors (and their institutions) operating different versions of the same constitution that have their roots in different time periods. Sirisena honestly believed that, despite the restraints placed on him by the Nineteenth Amendment, the idea of the communal presidency was still omnipotent in the fabric of the 1978 Constitution. Political reality and other constitutional levers, he believed, would trump procedural impropriety in Mahinda Rajapaksa's appointment. Wickremesinghe, on the other hand, expected to immediately begin a more parliamentary-style premiership after the Nineteenth Amendment, even though the communal presidency's roots were still deep in the constitution. In Guyana, although no-confidence motions were reintroduced as an attempted return to more parliamentary-style governance, Ramotar had little intention of accommodating the legislative majority's interests in his government. The 'opposition' majority adopted similarly intractable stances and, rather than negotiate constructively with the president on issues such as spending, it bided its time until a no-confidence motion would be most devastating.

[127] Although it came in the post-colonial period, a similar historical account of the executive and emergency powers in Sri Lanka can be found in Welikala, 'The Eastminster Viceroy and the Republican Monarch' (n 41). Here, the 2018 constitutional crisis is discussed in the light of the 1953 state of emergency.

WMCFs, particularly dissolution and prorogation, are key to understanding the path of crises in Sri Lanka and Guyana and also their diverging outcomes. Prorogation was used in both contexts to try and destabilise the legislature and subvert its will. Both Sirisena and Ramotar were successful in using prorogation to delay no-confidence motions that would be politically costly to them. For Sirisena, an immediate vote on confidence would have gone against his purported new prime minister, whereas for Ramotar it would have brought down his entire government. Sirisena and Rajapaksa attempted to create a majority for themselves while parliament was prorogued. Ramotar also offered this as an objective (negotiations), however in Guyana's case it was perhaps unlikely in reality. Also, Ramotar wanted to use prorogation to preserve his existing government while Sirisena wanted to use it to assist in creating a new cabinet. Both prorogations were technically lawful, but part of undemocratic strategies – including Sirisena's illegal dismissal of Prime Minster Wickremesinghe. In the end, having failed to bend the legislature to their will, both presidents opted for dissolution. In Guyana this was possible, whereas Sri Lanka's distinct constitutional structure thanks to the Nineteenth Amendment blocked the president.

Parliamentary and presidential objectives and strategies during these crises were influenced also by the cabinet-parliament nexus. Whereas Sirisena was more willing to go for dissolution because the Rajapaksa loyalists had performed well in local government elections and the status of Wickremesinghe within the legislature helped to provoke a breakdown in their working relationship, in Guyana Ramotar had to consider both his own interests and those of his cabinet ministers and other MPs. More importantly, and distinct from the cabinet-parliament nexus, Ramotar himself would be up for re-election when he chose to dissolve parliament. Sirisena, on the other hand, was still secure.

As part of the broader conflicts between presidents and legislatures, we the saw unique application of other WMCFs. One of the quintessential Westminster model officeholders in Sri Lanka, the speaker, suddenly took on the mantle of parliament's partisan champion against the executive. The judiciary, in finding answers to some of the legal questions that arose in these battles, relied heavily on experiences from other Commonwealth, Westminster model jurisdictions.

Chapter V

The Historical Institutionalism of Constitutional Law

Introduction

This chapter applies the experiences of Sri Lanka and Guyana to the field of historical institutionalism. It uncovers how these two constitutional experiences can reshape the ways in which we understand institutional change. By appreciating the profundity of the presidential turn in both contexts, and its relationship with other institutions, we can better understand why institutional change has been conducted in a way that is not fully accounted for in the existing historical institutionalist literature and how historical institutionalism can create new avenues in comparative constitutional law.

This chapter begins with a brief account of what historical institutionalism is. It describes the ideas of space and time as they are studied by scholars in the field. Although scholars in comparative constitutional law do not tend to engage with historical institutionalist theory, its broad time horizons and thick account of institutions should be particularly useful for the field.

The chapter then goes on to introduce the concept of institutional irritants. These are changes to an institutional landscape that affect further change and adaptation in the rest of the institutional landscape. Institutional irritants are defined in contrast to the most dominant concept in historical institutionalism: critical junctures. They are further distinguished from reactive sequences. The concept of an institutional irritant is tied into existing historical institutionalist theories of intercurrence and gradual institutional change. As shown by reference to the case studies, an institutional irritant is introduced by gradual change mechanisms and, thereafter, sends waves across the rest of the institutional landscape that must be adapted to. In both case studies, presidentialism was introduced by displacing the old head of state and government institutions. In both Guyana and Sri Lanka, the response was to adapt the rest of the system according to the alien logic of presidentialism and the new balance of arms.

The chapter concludes with a discussion of the 'plasticity paradox', a growing issue in historical institutionalism as theorists address new patterns of institutional change.

This thesis proposes four levels of plasticity that correspond to different patterns of intuitional change. In Sri Lanka and Guyana, the 'balance of arms' helps us to understand how political actors with heightened agency nonetheless face some institutional restraints.

1. What is Historical Institutionalism?

Before embarking on the quest to blend historical institutionalism with comparative constitutional law, it is prudent to give an overview of the field, which may be unfamiliar to readers. Historical institutionalists seek to explain politics, and the behaviour of political actors, by locating them within space and time.[1] Hall and Taylor write that, to historical institutionalists

> The individual is seen as an entity deeply embedded in a world of institutions, composed of symbols, scripts and routines, which provide the filters for interpretation, of both the situation and oneself, out of which a course of action is constructed. Not only do institutions provide strategically-useful information, they also affect the very identities, self-images and preferences of the actors.[2]

Historical institutionalists therefore have a reputation for very thick accounts of the 'three seminal questions': 'How do actors behave, what do institutions do, and why do institutions persist over time?'.[3] They have rejected 'overly scientifistic' methods of investigating politics through a narrow set of independent variables and instead encourage a more contextual understanding of how different structures operate.[4] Instead of examining institutional features as snapshots against a grey background, historical institutionalists have favoured "big, slow-moving processes".[5] To understand politics through the lenses of space and time means to examine political actors within their unique contexts. To deploy a perfunctory phrase, 'history matters'. Politics is

---

[1] Peter A Hall, 'Politics as a Process Structured in Space and Time' in Orfeo Fioretos, Tulia G Falleti and Adam Sheingate (eds), *The Oxford Handbook of Historical Institutionalism*, vol 1 (Oxford University Press 2016).
[2] Peter A Hall and Rosemary CR Taylor, 'Political Science and the Three New Institutionalisms' (1996) 44 Political Studies 936, 939.
[3] ibid.
[4] Roy Suddaby, William M Foster and Albert J Mills, 'Historical Institutionalism' in Marcelo Bucheli and Rohit Daniel Wadhwani (eds), *Organizations in Time: History, Theory, Methods* (First edition, Oxford University Press 2014) 100.
[5] Paul Pierson, *Politics in Time* (Princeton University Press 2011) 84.

therefore not simply influenced by a set of structures, but also the context in which those structures operate. Orren and Skowronek write that

> the contours of the polity are determined in the first instance by those who seek to change it and by the changes they make and in the second instance by all the arrangements that get carried over from the past and are newly situated in an altered setting.[6]

Context is not simply enjoyable detail, but those circumstances that are critical causal factors.

Writing on the Chicago School in sociology, Abbott argues that overlooking the importance of this kind of context leads to 'scientific disaster'.[7] Historical institutionalists are therefore sensitive to the interaction between variables rather than the importance of variables in isolation.[8] This aligns with Gaddis' view that historians generally offer an alternative approach to models based on independent variables.[9] This methodology is particularly suited to investigating the causes of macro consequences, where events such as revolutions often come after a 'build up' of antecedents rather than a single cause. Smith, for example, discusses how numerous public lawyers have adopted and contributed to the field of historical institutionalism and highlights that there are still avenues for public law scholars to explore.[10]

2. Institutional Irritants

2.1 Definition

This thesis presents the idea of institutional irritants. Institutional irritants are additions to institutions, or an institutional landscape, that introduce an alien institutional logic and a new balance of arms (described at the end of this chapter). They are

---

[6] Karen Orren and Stephen Skowronek, *The Search for American Political Development* (Cambridge University Press 2004) 12.
[7] Andrew Abbott, 'Of Time and Space: The Contemporary Relevance of the Chicago School' (1997) 75 Social Forces 1149, 1171.
[8] Kathleen Thelen and James Mahoney, 'Comparative-Historical Analysis in Contemporary Political Science' in James Mahoney and Kathleen Thelen (eds), *Advances in Comparative-Historical Analysis* (Cambridge University Press 2015) 8.
[9] John Lewis Gaddis, *The Landscape of History: How Historians Map the Past* (Oxford University Press 2004).
[10] Rogers Smith, 'Historical Institutionalism and the Study of Law' in Gregory A Caldeira, R Daniel Kelemen and Keith E Whittington (eds), *The Oxford Handbook of Law and Politics* (Oxford University Press 2008).

characterised further by their effect, which is to upset the status quo until they are rejected by the rest of the system or, alternatively, they and the rest of the system mould themselves around each other. This concept is inspired by Gunther Teubner's article on 'legal irritants' in the context of British courts dealing with good faith in contract law[11] Teubner argues persuasively that Watson's original metaphor of legal 'transplants' is insufficient to explain the consequences of constitutional import/export.[12] He writes that

> [W]hen a foreign rule is imposed on a domestic culture [...] It is not transplanted into another organism, rather it works as a fundamental irritation which triggers a whole series of new and unexpected events. It irritates, of course, the minds and emotions of traditionbound lawyers; but in a deeper sense - and this is the core of my thesis - it irritates law's 'binding arrangements'. It is an outside noise which creates wild perturbations in the interplay of discourses within these arrangements and forces them to reconstruct internally not only their own rules but to reconstruct from scratch the alien element itself. 'Legal irritants' cannot be domesticated; they are not transformed from something alien into something familiar, not adapted to a new cultural context, rather they will unleash an evolutionary dynamic in which the external rule's meaning will be reconstructed and the internal context will undergo fundamental change.[13]

Similarly, institutional irritants do not slip quietly into an existing framework. Instead, they trigger an allergic reaction or, to used Teubner's metaphor, spark an 'evolutionary dynamic' whereby existing rules and norms have to be 'reconstructed' to sit alongside the irritant. This is a reciprocal process, whereby the imported irritant also does not preserve itself as it was in its original context (or perhaps in the minds of the irritant's creators). Instead, it is also reconstructed to a certain extent as it tries to slot into its new surroundings.

[11] Gunther Teubner, 'Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergences' (1998) 61 Modern Law Review 11.
[12] Alan Watson, *Legal Transplants: An Approach to Comparative Law* (Scottish Academic Press 1974).
[13] Teubner (n 11) 12.

2.2 Distinguishing Characteristics

2.2.1 Critical Junctures

Legal irritants are distinct from (although related to) other patterns of institutional change in the current literature. They are distinct from critical junctures in their scale, mechanisms, and origins. Institutional irritants are, instead, one mode of gradual institutional change. By distinguishing institutional irritants from alternative forms of institutional change, we also learn more about their character. This subsection elaborates on critical junctures and describes institutional irritants' distinctiveness.

The term 'critical juncture' has two components. Firstly, there is the idea of a juncture. This denotes that more than one path, or option, is available to the actors upon it. The image of a junction also alludes to the temporary nature of the choice and this leg of the journey's short duration compared to the path that lies ahead. Secondly, there is the idea that the choice of path is 'critical'. The choice itself affects the rest of the journey in a profound way. Critical junctures are

> *Relatively* short periods of time during which there is a *substantially* heightened probability that agents' choices will affect the outcome of interest.[14]

This requires heightened agency during a period of institutional flexibility, however it does not presume the need for actual change.[15] It also accommodates narratives of designed, accidental, and unforeseen outcomes.[16] Ideas of institutional 'innovation' and long-lasting effect are also emphasised by Collier and Munck in their study of critical junctures.[17]

---

[14] Giovanni Capoccia and R Daniel Kelemen, 'The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism' (2007) 59 World Politics 341, 348.

[15] Giovanni Capoccia, 'Critical Junctures' in Orfeo Fioretos, Tulia G Falleti and Adam Sheingate (eds), *The Oxford Handbook of Historical Institutionalism*, vol 1 (Oxford University Press 2016) 95. However, the authors note that the existing framework for analysing critical junctures may be somewhat biased against such an approach and other frameworks may be more appropriate.

[16] Collier and Collier describe the idea of a critical juncture through 'The Road Not Taken', a poem by Robert Frost.

[17] David Collier and Gerardo L Munck, 'Introduction to Symposium on Critical Junctures and Historical Legacies – Building Blocks and Methodological Challenges: A Framework for Studying Critical Junctures' (2017) 15 Qualitative and Multi-Method Research Section of the American Political Science Association 2, 2.

Collier and Collier's seminal study of state responses to organised labour movements in eight Latin American countries is a classic example of how critical junctures explain future trajectories. The authors find that

> Political change cannot be seen only as an incremental process. Rather, it also entails periods of dramatic reorientation-such as the incorporation periods-that commonly occur in distinct ways in different countries, leaving contrasting historical legacies.[18]

Acemoglu and Robinson's work on *Why Nations Fail* exhibits multiple critical junctures operating together to create a unique outcome. Across Europe, the Black Death resulted in labour shortages and therefore the potential for a worker's market. In western Europe, this led to more inclusive and responsive institutions, whereas in eastern Europe landlords engaged in a landgrab and maintained (or even deepened) worker's servility. These responses are attributed to small initial differences in landlords' status in the east and west.[19] This first critical juncture combined with another – expanding world trade after 1600 – to influence the trajectories of eastern and western Europe. With its responsive institutions, western Europe was able to promote and harness technological advancement. At the same time, other differences between France, Spain, and England's institutions created further divergence within this group's development.[20]

Collier sets out the anatomy of critical junctures with a 'five-step template'. This describes five sequential stages that need to be carefully identified and detailed before it can be claimed that a critical juncture has taken place. Along with other advantages, this helps to resolve the issues of infinite regress and distal causation.[21] These are: the antecedent conditions, the shock, the critical juncture itself, the aftermath, and then the historical legacy (period of path dependence).[22] To establish that there has been

---

[18] Ruth Berins Collier and David Collier, *Shaping the Political Arena: Critical Junctures, the Labor Movement, and Regime Dynamics in Latin America* (University of Notre Dame Press 2015) 745.
[19] Daron Acemoglu and James A Robinson, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty* (Profile Books 2012) 96–101.
[20] ibid 110.
[21] Gerardo L Munck, 'The Theoretical Foundations of Critical Juncture Research: Critique and Reconstruction' in David Collier and Gerardo L Munck (eds), *Critical Junctures and Historical Legacies: Insights and Methods for Comparative Social Science* (Rowman and Littlefield 2022) 112–3; ibid 115–6.
[22] David Collier, 'Critical Juncture Framework and the Five-Step Template' in David Collier and Gerardo L Munck (eds), *Critical Junctures and Historical Legacies: Insights and Methods for Comparative Social Science* (Rowman and Littlefield 2022) 38.

a critical juncture, in other words, scholars must situate it within a broader pattern of institutional change and continuity.

'Antecedent conditions' are those pre-existing circumstances that "can set parameters for subsequent change".[23] An under-explored concept, there is little theoretical work on their importance. The most influential paper is from Slater and Simmons in 2010.[24] They divide antecedents into four distinct categories, and argue that "critical antecedents" are those in which historical institutionalists should be most interested. Critical antecedents are

> factors or conditions preceding a critical juncture that combine in a causal sequence with factors operating during that juncture to produce divergent outcomes.[25]

Between the critical juncture and the period of path dependence, there is an 'aftermath' period. The aftermath (or 'mechanisms of production'[26]) are events that link the critical juncture to its eventual legacy. While the critical juncture is the pivotal moment which sets in motion the following period of institutional stability, it may not immediately create the conditions of stability. Instead, the critical juncture may trigger a sequence of events that eventually lead to lock-in. This is known as a 'reactive sequence', and (in addition to explaining the aftermath of critical junctures) Mahoney argues that it can also be characterised as another form of path dependence besides self-replicating equilibria.[27] However, this is disputed.[28]

The mechanisms of reproduction, or the period of path dependency, are those that stabilise and sustain the institution over a relatively long period of time (compared to the critical juncture). This equilibrium is variously described as self-replicating, self-reinforcing, or self-reproducing.[29] One of the most common mechanisms of self-replicating equilibria is increasing returns. In this process, the value a feature provides

[23] ibid 42–3.
[24] Dan Slater and Erica Simmons, 'Informative Regress: Critical Antecedents in Comparative Politics' (2010) 43 Comparative Political Studies 886.
[25] ibid 886.
[26] Collier and Munck (n 17) 6.
[27] James Mahoney, 'Path Dependence in Historical Sociology' (2000) 29 Theory and Society 507.
[28] Munck (n 21) 121–2.
[29] The term 'self-replicating causal loop' was first used by Arthur L Stinchcombe. Arthur L Stinchcombe, *Constructing Social Theories* (Harcourt Brace 1968) 120–30.

increases the more it is used. However, this is just one mechanism of path dependence. Mahoney argues that explanations of path dependence can broadly be divided into four categories: utilitarian, functional, power, and legitimation.[30] Collier and Munck's recent edited volume is helpful for understanding self-replicating equilibria.[31] In essence, the critical juncture's historical legacy must survive independently of the conditions that created it. Causation is indirect and separated by time.[32] This period of stable, reciprocal causation is the critical juncture's historical legacy.

2.2.2 Institutional Irritants

Institutional irritants are distinct from critical junctures in some significant regards. Firstly, they are endogenous changes to the system that are relatively small in their initial scale and long in time. This is opposed to the large exogenous shocks commonly associated with critical junctures.[33] Critical junctures are necessarily large institutional changes in a short time period. They cannot entail the total death of preceding conditions, however within a short period of time something of an 'overhaul' should take place.[34] Critical junctures arise out of a cleavage or shock whereas irritants can be introduced in times of relative stability.

Secondly, critical junctures are also associated with a historical legacy. This entails both the survival of the new institution independent of the reason for its inception and also a period of institutional inertia, or 'lock in'. In both regards, institutional irritants are distinct. A hallmark of institutional irritants is that they trigger further institutional change rather than inertia. This may be something similar to the 'reactive sequences' discussed by Mahoney. However, it also entails a high degree of actor autonomy as individuals calculate their preferred response to the new dynamic. Therefore, irritants are distinct from critical junctures in their scale (critical junctures come out of big shocks or cleavages), origins (exogenous or endogenous), and mechanisms (inertia vs ongoing change).

---

[30] Mahoney (n 27).
[31] David Collier and Gerardo L Munck (eds), *Critical Junctures and Historical Legacies: Insights and Methods for Comparative Social Science* (Rowman and Littlefield 2022).
[32] Munck (n 21) 116.
[33] This distinction is not total. See Johannes Gerschewski, 'Explanations of Institutional Change: Reflecting on a "Missing Diagonal"' (2021) 115 The American Political Science Review 218.
[34] However, influential scholars also argue that critical junctures can be smaller scale events. Mahoney uses the example of a political leader being assassinated. Mahoney (n 27) 514.

Institutional irritants are also distinct from reactive sequences. As mentioned already, there is some debate over exactly how to categories reactive sequences. Some have argued that a reactive sequence can be the final product of a critical juncture, without the need for more common descriptions of 'lock-in'. Others have argued that the reactive sequence is simply part of an aftermath that eventually links the critical juncture to its legacy. In any event, reactive sequences are intimately associated with the punctuated equilibria approach to institutional change. They are therefore bound by relatively short timeframes and are still associated with exogenous change.[35] The second of these distinguishing features is indicative, however not conclusive. The first distinguishing feature is key. Institutional irritants are themselves introduced by mechanisms of gradual institutional change and they trigger further instances of gradual change thereafter. Unlike reactive sequences, they are inevitably gradual rather than time-restricted. Furthermore, as an additional distinguishing feature, institutional irritants need to represent some kind of identifiable, alien institutional logic and new balance of arms to the system into which they are incorporated.

That being said, institutional irritants do share some important similarities with reactive sequences. Both include reactive change to an initial condition. In the case of institutional irritants, this initial condition is an instance of gradual change, to reactive sequences it is more likely to be a critical juncture, or at least an exogenous shock. This makes sequencing particularly important and the irritant or reactive sequence trigger is likely to have a special advantage by virtue of its earlier chronology. However, the sequence will be difficult to predict in advance. Mahoney describes this difficulty in more depth.[36] Institutional irritants can only have two outcomes: rejection (where the irritant is forced out by the rest of the system) or assimilation (where the irritant is accepted into the system but is itself altered in the process). Of these two, the case studies suggest that assimilation is the most likely. Assimilation is also likely to be the most unpredictable. What aspects of the institutions will be bargaining chips or simply unsustainable in the new dynamic? How much will one give and the other take? While

[35] However, Collier says that this could be up to ten years, perhaps this can be taken as a ballpark for a time limit. Collier (n 22) 42. Braudel similarly uses a decade as about the minimum period for something to be defined as a conjuncture. Fernand Braudel, *On History* (University of Chicago Press 1980).
[36] Mahoney (n 27) 528–32.

they are distinct, therefore, irritants and reactive sequences are likely to have some common problems and lessons.

2.3 Irritants, Intercurrence, and Gradual Change[37]

This section discusses the growing body of literature that does not see all institutional change as conforming to the punctuated equilibria (critical juncture) framework. Scholars are increasingly interested in processes of gradual change, whereby institutions change profoundly over long periods of time rather than being formed, abolished, and altered during critical junctures. This work is closely associated with the theory of intercurrence – whereby institutions containing conflicting logics may co-exist and interact with each other. Both these bodies of work, and their relationship with institutional irritants, will be discussed.

2.3.1 Intercurrence

Intercurrence was first identified as a distinct approach to historical institutionalist studies by Orren and Skowroneck in 1994, writing in the context of American political development.[38] In their main work on the subject, *The Search for American Political Development,* the authors defined intercurrence with reference to two other approaches, institutions *in* time and politics *over* time. Intercurrence combines features of these two approaches and also adds some new perspectives. As with approaches that evaluate institutions in time, the authors accept institutions' use by politicians to bring order to politics and their capacity to entrench processes. Also, the authors draw on approaches which describe the path dependent nature of politics over time.[39] However, those who deploy an intercurrent analysis are particularly concerned with the 'partial and uneven' nature of change. Politics and institutions are left partially reformed with embodiments of conflicting eras existing simultaneously – long after the reasons and proponents of their creation. Orren and Skowroneck therefore promulgate an approach that addresses the relationship between multiple institutions over time.

---

[37] This is based on material from an edited chapter that I co-authored and was published in 2023: Peter Reid and Asanga Welikala, 'Scottish Secession and the Political Constitution of the United Kingdom' in Richard Johnson and Yuan Yi Zhu (eds), *Sceptical Perspectives on the Changing Constitution of the United Kingdom* (Bloomsbury 2023).

[38] Karen Orren and Stephen Skowronek, 'Institutions and Intercurrence: Theory Building in the Fullness of Time' (1996) 38 Nomos 111, 111; Orren and Skowronek (n 6).

[39] Orren and Skowronek (n 6) 108.

Institutions (especially political ones) may coexist and influence each other even though their underlying purposes, temporalities, and logics are distinct. The authors select four case studies from different historical institutionalist traditions and demonstrate why their proposed mode of analysis is a useful categorisation tool. On the case studies that typify the intercurrent approach, they write

> the institutions of a polity are not created or recreated all at once, in accordance with a single ordering principle; they are created instead at different times, in the light of different experiences, and often for quite contrary purposes. As these studies suggest, politics in the United States, like politics elsewhere, consists, in large part at least, in acting out the consequences.[40]

This continues to influence writers across multiple fields.[41] Orren and Skowroneck also observed that they were building on an existing tradition of intercurrence, even if they were the first to coin the term. For example, Tulis' examination of the American presidency's traditional constitutional and modern 'rhetorical' components illuminates how internal conflicts continue to shape officeholders' actions and their effect on other institutions.[42]

Intercurrence therefore refers to a particular approach in historical institutionalism, one that views institutions as a matrix – each distinct but still affecting the other – in the fullness of time. It addresses politics in an environment where there are "rules evolved in separate centuries, purposes pursued within different professional traditions, experience drawn from separate policy legacies, coexisting laws with separate lineages".[43] This has been described as a "particularly American view of institutions insofar as it emphasizes the conflicts inherent in a system of separated powers authorized by a US Constitution that has remained relatively unchanged for more than two centuries".[44] However, perhaps this simply represents a limitation in the range of case studies to which it has been applied. Even in the context of the United Kingdom, for example, an intercurrent approach is helpful for understanding changes after the

[40] ibid 112.
[41] Paul Baumgardner, 'On Critical Junctures, Intercurrence, and Dynamic Political Orders Remedies Symposium' (2017) 9 ConLawNOW 65; Yonn Dierwechter, *Urban Sustainability through Smart Growth* (Springer International Publishing 2017).
[42] Jeffrey K Tulis, *The Rhetorical Presidency* (Princeton University Press 2017).
[43] Orren and Skowronek (n 6) 112.
[44] Adam Sheingate, 'Institutional Dynamics and American Political Development' (2014) 17 Annual Review of Political Science 461.

1990s devolution reforms.[45] This thesis applies Guyana and Sri Lanka's experiences of institutional development to intercurrence. It views the various institutions in these case studies (particularly the legislatures and executives) as distinct components of a wider landscape of co-existing institutions. This chapter discusses how intercurrence can explain patterns of institutional change, particularly other institutions' adaptation to an institutional irritant. The next chapter presents the political constitution as, in itself, an example of intercurrence.

2.3.2 Mechanisms of Gradual Change

Departing from the punctuated equilibria narrative, historical institutionalists have begun to develop a typology of gradual institutional change. As mentioned in this section's introduction, intercurrence and theories of gradual institutional development are not strictly dependent upon each other, however they are frequently linked in the literature. Works by authors such as Thelen, Streeck, and Mahoney have pushed writers to theorise the various modes by which change, particularly gradual change, takes place.[46] Thanks particularly to Streeck and Thelen's work on *Institutional Change in Advanced Political Economies*, there is now a sophisticated toolbox for the various modes of exogeneous and endogenous institutional change.[47] As an introduction to this edited volume, the authors demonstrated that the trajectory of liberalisation in advanced economies was brought about by incremental and transformative change. They found that an "essential and defining characteristic" of this change is that it was "conditioned and constrained" by the same institutions that it reformed or abolished.[48] This work identifies five mechanisms of institutional change:

---

[45] Reid and Welikala (n 37).

[46] Kathleen Thelen, 'How Institutions Evolve: Insights Form Comparative Historical Analysis' in James Mahoney and Dietrich Rueschemeyer (eds), *Comparative Historical Analysis in the Social Sciences* (Cambridge University Press 2003); Wolfgang Streeck and Kathleen Thelen, 'Introduction: Institutional Change in Advanced Political Economies' in Wolfgang Streeck and Kathleen Thelen (eds), *Beyond Continuity: Institutional Change in Advanced Political Economies* (Oxford University Press 2005); James Mahoney and Kathleen Thelen, 'A Theory of Gradual Institutional Change' in James Mahoney and Kathleen Thelen (eds), *Explaining Institutional Change: Ambiguity, Agency, and Power* (Cambridge University Press 2009); Jacob S Hacker, 'Policy Drift: The Hidden Politics of US Welfare State Retrenchment' in Wolfgang Streeck and Kathleen Thelen (eds), *Beyond Continuity: Institutional Change in Advanced Political Economies* (Oxford University Press 2005); Jacob S Hacker and Paul Pierson, *Winner-Take-All Politics: How Washington Made the Rich Richer-and Turned Its Back on the Middle Class* (Simon and Schuster 2010).

[47] Streeck and Thelen (n 46); Kathleen Thelen and James Conran, 'Institutional Change' in Orfeo Fioretos, Tulia G Falleti and Adam Sheingate (eds), *The Oxford Handbook of Historical Institutionalism* (Oxford University Press 2016) 60–65.

[48] Streeck and Thelen (n 46) 4.

displacement, layering, drift, conversion, and exhaustion. The most important mechanisms for this thesis are displacement, layering, and conversion.

Displacement occurs where the balance between dominant and non-dominant institutions is disrupted and those institutions that hitherto occupied a lesser position gain new standing at dominant institutions' expense. This could be through the revival of dormant powers and the exploitation of new or previously ignored opportunities. It could also be achieved by introducing new institutions, probably embodying a conflicting logic to the traditional ones, that thereby usurp the previously dominant institutions. Exhaustion, on the other hand, refers to a gradual process of institutional death whereby an institution perpetuates actions which ultimately lead to its own destruction.[49]

Layering is the process whereby new features are added to institutions in such a way that alters their "status and structure".[50] This is typified by Hacker's work on the proliferation of private pension schemes in the US after they were added as optional supplements to the public pension. The private system was deliberately expanded to undermine support for the public pension.[51]

Drift describes an unresponsiveness to exogenous change by those tasked with maintaining institutions. In this way, the essential features of the institution may be unaltered on paper, however their status and function are depleted in reality. The authors associate this with deliberate neglect and deterioration, and therefore describe it as a destructive force.[52] It requires that

> (1) the circumstances around policies or institutions change in ways that alter the effects of those policies or institutions on the ground, (2) this change in outcomes is recognized, (3) there are alternative rules that would reduce the degree to which these shifts in outcomes occur (in other words, that the shifts are potentially remediable), and (4) efforts to update these rules are not undertaken or are blocked.[53]

---

[49] ibid 29–30.
[50] ibid 31.
[51] Hacker (n 46).
[52] Streeck and Thelen (n 46) 24–29.
[53] Jacob S Hacker, Paul Pierson and Kathleen Thelen, 'Drift and Conversion: Hidden Faces of Institutional Change' in James Mahoney and Kathleen Thelen (eds), *Advances in Comparative-Historical Analysis* (Cambridge University Press 2015) 184.

Like drift, conversion sees institutions maintain a similar structure, but transform to have new effects. While drift refers to the deliberate neglect of institutions, however, conversion sees ambiguities in their rules exploited for new purposes. Innovators therefore hijack institutions for purposes unintended by the institutions' founders. The innovators could be individuals who were not involved in the institution's establishment, or circumstances could cause founders to change the direction of their own creation.[54]

2.3.3 Gradual Change and Institutional Irritants

Institutional irritants are best understood within a framework of gradual institutional change. Firstly, irritants are themselves introduced by methods of gradual institutional change. As discussed below, the executive presidencies are examples of displacement. Furthermore, other institutions' responses to irritants include further examples of gradual change.

How, then, are irritants distinct from existing concepts in gradual institutional change? They are distinct in their innate character and also their effect. In addition to being instances of gradual institutional change, irritants are also founded on alien logics and a new balance of arms. Rather than simply being examples of institutional change, they are also examples of institutional 'transplant', to borrow Watson's terminology. Furthermore, irritants are the trigger of further gradual change and the hub of new logics (and friction) around which the system starts to adapt.

Existing literature has tended to focus on gradual change as the source of institutional corrosion or decay. However, this thesis shows that it can also be a more complex process of evolution. Irritants trigger a series of institutional changes that may involve the death of pre-existing institutions or could alternatively trigger their rejuvenation. The metaphor of an 'irritant' is good for capturing the reactive process that it creates, however it also has a somewhat negative connotation. This is not the intention behind the metaphor. Rather, it should be seen as a neutral term characterised by its character and effects rather than its merits or deficiencies.

[54] Streeck and Thelen (n 46) 26–29; Hacker, Pierson and Thelen (n 53) 185–186.

2.4 Presidentialism as an Institutional Irritant

In both contexts, the communal presidency functioned as an institutional irritant. It was introduced via means of displacement into constitutions that maintained substantial traits of their predecessors and (contextually) it was also part of a broader pattern of executive centralisation. The changes were not, therefore, cleavages with the old system. Rather, they were carefully designed to fix certain problems while leaving the rest of the system intact. However, over time, the communal presidencies induced incremental changes in the surrounding institutional landscape. Old features were replaced with new ones or were repurposed to respond to new pressures. These changes can be understood as instances of gradual institutional change. While the presidencies were examples of institutional displacement, therefore, this also triggered responses and adaptations from other institutions. Other institutions changed themselves through institutional layering and conversion to address the new balance of arms.

2.4.1 The Communal Presidencies as Institutional Displacement

Chapters II and III showed that the executive presidentialism was introduced alongside some immediate changes to the constitutional texts, however the broader story was one of continuity rather than change, and the president was also part of an ongoing process of executive centralisation. In Sri Lanka, Jayawardene went to some effort to reassure the political elite that the Westminster system they had grown used to was not going to be totally replaced, and parliament in particular would preserve its Westminster character. Jayawardene did not necessarily have any great emotional attachment to the Westminster model of government, however he was well aware that many of the political elite did.[55] The second republican constitution is still steeped in norms from previous constitutions. The president is "responsible" to parliament,[56] while the cabinet of ministers is "collectively responsible and answerable".[57] The president, like all heads of state before him, is bound to appoint as prime minister "the Member of Parliament who in his opinion is most likely to command the confidence of Parliament".[58] Cabinet appointments changed somewhat, but still harkened back to

[55] See Chapter III.
[56] Constitution of Sri Lanka 1978, Art. 42.
[57] ibid Art. 43(1).
[58] ibid Art. 43(3).

previous constitutions. While previous prime ministers had sole control over the appointment of other ministers, under the 1978 Constitution the president determines the number of ministries and the appointment of ministers and responsibilities "in consultation with the Prime Minister, where he considers such consultation to be necessary".[59] Cabinet is still subject to votes of confidence under Article 48(2) and this is textured by Westminster traditions on the rejection of an appropriation bill or a statement of government policy.

The independence of the public service, which had been eroded by the 1972 Constitution, was not restored in 1978. Again, appointment, transfer, and dismissal powers over public servants remained similar to those in the previous constitution. Powers of prorogation and dissolution also remained almost unaltered from the Soulbury and first republican constitutions. In addition, the description of the speaker – modelled on the Westminster counterpart – remained the same throughout Sri Lanka's independent history, and there was little change to public finance procedures.

Guyana's 'Burnham Constitution' initially seemed to represent a more radical departure from the Westminster tradition. The switch to presidentialism was part of a wider move towards becoming a 'cooperative republic'. Along with new provisions on the establishment of cooperatives and untrammelled presidential control over the public service, the most prominent change here was the new election system, which give foremost legitimacy to the party presidential candidates and weakened the connection between the people and their parliamentary representatives. That being said, the influences of previous constitutions were more than just echoes. In just the same way as Sri Lanka, the Guyanese president retained significant powers of prorogation and dissolution over the legislature. Moreover, cabinet remained "collectively responsible" to parliament.[60] Furthermore, the prime minister had to be an elected member of the National Assembly, while other ministers became non-voting members by virtue of their appointment.[61] This deeper relationship between parliament and ministers reflected the move from what was formerly a parliamentary system and was also seen in Sri Lanka. In addition, in a move identical to Sri Lanka, a more sophisticated process of public finance, which anticipated gridlock, was not

[59] ibid Art. 44.
[60] ibid Art. 106(2).
[61] ibid Arts. 101(1) and 105.

introduced with executive presidentialism. Instead, public finance procedures in the constitutional text remained largely unchanged.

Changes in the constitutional texts had real-world importance. Chapters III and IV discussed the evolution of the communal presidencies after their textual birth. Presidentialism was a response to instabilities and insecurities that had arisen after independence and universal franchise replaced the imperial past. Executive presidencies were intended to ensure stability or enhance a particular ruler's control. Burnham was happy to build upon racial divisions and used presidentialism to ensure his own political survival in a racialised climate. Jayewardene, on the other hand, bought into ethno-religious politics as a matter of political necessity, but also hoped that executive presidentialism and PR would allow him to transcend political divides and find a solution to the national question. Despite these differences, the institutions in both Sri Lanka and Guyana ultimately became 'communal presidencies' that were associated with racial dominance. The presidencies, as institutions, carried this normative starting load throughout different timeframes. Even when new leaders occupied the office, the communal presidency kept a distinctive character.

Chapter III showed how this was a sociological component to the executive presidencies that made them 'communal' presidencies rather than simply changes to the balance of arms (discussed below). The presidencies were part of an ongoing process of executive centralisation within communally divided polities. The communal presidency became both a symbol and driver of these trends. It did not just structurally empower the president over other institutions (particularly the public service and cabinet), but it also became an important symbol of these trends. Jayewardene adorned the presidency with motifs of an Asokan monarch and Mahinda Rajapaksa was even more proficient in building on this. The communal presidency has two distinct but interrelated institutional logics, being executive centralism and communal domination. This is the sociological institutional 'logic' that was introduced alongside the new balance of arms, discussed at the end of this chapter.

Therefore, these institutional irritants were themselves introduced through the gradual institutional change mechanism of 'displacement'. In both case studies, dominant features of the old institutional landscape remained and there was no 'exogenous' shock as associated with critical junctures. Instead, the office of the head of

government as it was previously known was replaced with a new communal presidency, which combined the roles of head of government and state. This displacement saw WMCFs revived and re-interpreted in light of the new institutional dynamic.

2.4.2 Triggering Further Change - Conversion

In response to this changing constitutional dynamic, other institutions also underwent a process of conversion, whereby Westminster model roles and norms were altered to meet the challenges of a communal president.

Chapter III discussed the close cabinet-parliament nexus and how this changed with the introduction of communal presidencies. The legislature's pre-existing mechanisms for holding government to account (performative adversarial debate) were weakened in practice because the president was not required to submit themselves to debate in the chamber. In Sir Lanka, there was even a period where the president held the finance portfolio. Although the president in Guyana is now required to appoint someone to be answerable to the National Assembly for any portfolios retained by the president, nonetheless there is still an accountability deficit.

The broader story about the cabinet-parliament nexus was that, despite having the executive advantages of a separation of powers model, the presidents do not have to suffer the disadvantage of a hostile legislature. These numerically small unicameral legislatures are filled with ministers that are responsible for the president's programme. Inflated cabinet numbers and anti-defection rules in both Sri Lanka and Guyana mean that, while the president is distanced from the legislature, nonetheless government MPs are normally well disciplined and normally form the majority in the chamber. Again, this is an example of conversion, where a pre-existing WMCF that ministers must be members of the legislature has taken on a new hue and empowered the presidency further.

Prorogation was, arguably, repurposed from a constitutionally expedient procedure to bring sessions to a close into a political tool to subvert and disjoin parliamentary opposition in Sri Lanka and Guyana. In Guyana, prorogation was used to avoid a no-confidence motion that would have brought down the president. In Sri Lanka, prorogation was used to try and engineer a majority for a change in the prime minister

and cabinet. As discussed in Chapter IV, it is debatable whether this is really evidence of institutional displacement by the communal presidencies. In both Guyana and Sri Lanka, there were examples of politicised prorogation from the previous parliamentary systems.

The Sri Lankan president's power to appoint a prime minister, constitutionally framed in language familiar to those studying Westminster model systems, also became a political weapon. "Most likely to command the confidence of Parliament" was intended as a guide and restraint for a ceremonial president. When Sirisena appointed Mahinda Rajapaksa, on the other hand, he intended to create a new political reality that would overcome this constitutional restraint. Appointment, therefore, also became a partisan process. From the prime minister's (Ranil Wickremesinghe's) perspective, confidence motions were also important in challenging the president's action and demonstrating his own legitimacy. He favoured using parliament as a challenge to Sirisena rather than the courts. Here, we can also use the framework of 'conversion', this time by the prime minister and parliament rather than the president. While confidence motions are naturally a political process, they were not intended as a means of challenging the actions of the head of state and providing an alternative avenue of legitimacy to the president's appointment powers (which are meant to reflect parliamentary confidence). In response to the communal president, parliament re-purposed these procedures to challenge the actions of the newly politicised head of state.

In Chapter III, it was seen that ministerial responsibility in Guyana, a rule within the National Assembly governing the relationship between the legislature and cabinet, took on a new texture after the communal presidency. The speaker (and the courts) held that, even after a vote of no-confidence in a minister, there were limits to what the National Assembly could require of that minister. Because the president and National Assembly are equal components of 'parliament', the WMCF of ministerial responsibility could not force the minister to resign or limit his rights within the legislature because

> refusing the right to a Minister to address the House is tantamount to refusing the President the right to speak in the House; a very unconstitutional and untenable situation.[62]

[62] Speaker's Ruling No. 2 of 2013, p. 10.

Therefore, although there may have been an argument over interpretation, the National Assembly could not force the minister to resign or restrict his rights in the chamber even in a parliamentary system, nonetheless the executive presidency gave this added weight. One of Guyana's most prominent commentators on the constitution explicitly argued that the WMCF of ministerial responsibility, in this case, now had to be understood with reference to presidential comparisons such as the US system rather than Westminster model systems.[63]

Collective responsibility also shapes the judiciary's understanding of Sri Lanka's presidential system, where this WMCF was relied upon to give the prime minister the general authority of cabinet (and therefore the president) in signing a ceasefire with the LTTE and, seemingly, requiring honesty within cabinet's confidential discussions. Here, we start to see that the institutional irritant does not simply affect change in other institutions. Rather, pre-existing rules also texture how the communal presidency is itself construed and operated.

The extent of the speaker's politicisation in Sri Lanka (albeit to protect parliament's autonomy) was something uncountenanced by the creators of the office in Sri Lanka's original assemblies. The UK has also experienced this mode of speakership recently, and when the speakership is taken in a longer-term view it is constitutionally fitting in the right circumstances. However, for the past two hundred years the speaker has helped to facilitate the 'efficient secret' to Westminster democracy while preserving the rights of backbenchers and the opposition, and a speaker that was hostile to the government was only a theoretical possibility.[64] In Sri Lanka, on the other hand, Jayasuriya re-invented the role of speaker during the constitutional crisis of 2018 to stand up for parliament against a hostile head of government.

Similarly, weak public finance backstop procedures, originally not an issue in the overall Westminster framework, were used as a mechanism for shotgun politics in Guyana. The aim was to show the president the abyss of no funding in order to induce political compromise. However, while this was an example of conversion, where the National Assembly applied this WMCF in a new way in order to re-assert itself against

---

[63] Henry B Jeffrey, *Political and Ethnic Dominance in Guyana* (Gateway 2015) 115.
[64] Stephen Laws, 'The Contest to "Take Control" of Brexit' (Policy Exchange 2019) Research Note 4 <https://policyexchange.org.uk/wp-content/uploads/2019/01/The-Contest-to-Take-Control-of-Brexit.pdf> accessed 4 May 2022.

the executive, nonetheless it was not wholly successful. The executive was certainly put under pressure, however the president was still able to spend disapproved funds.

2.4.3 Triggering Further Change – Layering

During formal reform processes, layering was used to rebalance or, alternatively, enhance presidential power.

The minority/opposition leader in Guyana had new rules layered on to the institution after 1980. Burnham initially used layering to disrupt his opponents. The office remained, but by simply ensuring that the minority leader was appointed (and such appointment could be revoked) by the president under the 1980 Constitution, he made his own opponents beholden to him, at least on paper. The office itself survived the democratisation reforms, but again layering was used to enhance the officeholder's independence and ensure appointment was an opposition-only process.

Similarly, Guyana's unusual system of a parliamentary democracy with an executive president can be explained by layering because the constitution could not be totally overhauled in the given political climate. The executive president was kept, as were many of the provisions on powers and functions, however a confidence vote mechanism was introduced on top of the original system to enhance parliamentary control. No-confidence motions were 'layered' back on to the National Assembly.

A similar process can be observed in Sri Lanka. While the Guyana opposition leader had a role in various appointment processes under the 1980 Constitution, the Sri Lanka opposition leader was not mentioned in the constitution until the Seventeenth Amendment, when the officeholder was given (as in Guyana) a role in important appointments. New functions were added to the office. The purpose of these functions was to increase the independence of various public authorities, but it also gave a new dimension to the role of the opposition leader and the speaker, too. Layering various political controls onto public service appointments had been a method of eroding the public service's independence since the 1972 Constitution, which gave cabinet the levers of power, and the original 1978 Constitution, which effectively gave them to the president. Again, these were not total overhauls of the institutions, but instead carefully designed rules added into an existing system that eventually altered the institutions' character.

Therefore, the communal presidencies were not merely instances of institutional displacement. They were institutional irritants. Not only did the presidencies create immediate change in the dynamic between themselves and other institutions, but they also triggered and evolutionary dynamic in those other institutions. The legislatures, speakers, opposition leaders, and public service commissions also adapted themselves to meet the challenges of the communal presidencies.

3. The Plasticity Paradox

Historical institutionalism is running into a 'plasticity paradox'. Put simply, as scholars unpick increasingly fluid patterns of institutional change that do not follow the punctuated equilibrium framework, it becomes more important to describe how behaviour is not solely structured by institutions. What is the relationship between agency and institutional change?[65]

Articulating alternatives to punctuated equilibria raises difficulties for classical historical institutionalist approaches to institutions and political behaviour. As described already in this chapter, historical institutionalism originally coalesced as a discipline around the ideas of critical junctures and path dependency. Scholars uncovered how politics is shaped by space and time, and periods of institutional upheaval may be followed by longer periods of institutional stability where political actors are left with a narrow set of options for action. Scholars tended to pay less attention to the mechanisms at work in making institutional design choices during periods of flux (the critical juncture) and instead focused on the feedback loops that entrenched patterns of political behaviour.

Recent work on gradual institutional change opens new doors for historical institutionalists to see change as an ongoing, less deterministic, process. In creating new opportunities for historical institutionalists, this work also brings scholars into more direct contact with the plasticity problem. Institutional change is not always a 'black box', confined to a brief period of time, that researchers may avoid in favour of more structured periods that follow. Instead, change and continuity must, in some contexts, be examined simultaneously and in the round.

---

[65] Hall (n 1).

3.1 Levels of Plasticity and Types of Institutional Change

This thesis proposes four levels of plasticity, ranging from the lowest to the highest levels of agency: path dependence rigidity, chronic plasticity, enhanced plasticity, and critical juncture plasticity. The two levels for understanding gradual change and institutional irritants are chronic plasticity and enhanced plasticity. Path dependence rigidity and critical juncture plasticity are the types normally dealt with by historical institutionalists. This represents an original way of understanding how agency can coexist with historical institutionalism. These two under-explored case studies offer new avenues for addressing the plasticity paradox.

Path dependence rigidity leaves agents the least autonomy out of the four levels of plasticity. It is referred to as 'rigidity' because it is actually the antithesis of plasticity. Here, agents' actions are shaped almost entirely, for all intents and purposes, by the institutions themselves. A feedback loop takes effect and agents are heavily incentivised to persist with the existing institutions, generating predictable actions. The causes and mechanisms of path dependence rigidity are one of the most thoroughly researched areas of historical institutionalism.

Chronic plasticity is the situation where agents have meaningful, but not substantial, influence over the way in which their institution is operated and the rules governing it are interpreted. They are not subject to positive feedback loops, but instead the balance of arms, discussed in the final subsection. Agents may also have influence over the re-writing or addition of rules governing their institution, although should be constrained by other vested interests within their own institution and other institutions in the institutional landscape around them. Generally, institutional norms will be generated (and existing rules re-interpreted) within the context of the balance of arms. There are no positive feedback loops, but instead background sanctions permeate the entire system and determine the limits of agents' actions. This level of plasticity is the status-quo in both case studies. This thesis refers to this as 'chronic' plasticity because it is an ongoing, low-key institutional flexibility that places considerable restraints on agents' actions, thus providing more continuity than change, but nonetheless allows for more autonomy than path dependency.

Enhanced plasticity lies between chronic plasticity and critical juncture plasticity. Here, agents have significant (rather than just 'meaningful') influence over how their

institution operated and how the rules governing it are interpreted. Unlike chronic plasticity, therefore, agents are largely unrestrained by vested interests within their institution over how the institution is changed, including the rules that govern it. During periods of enhanced plasticity, vested interests in other, surrounding, institutions will still be important in constraining an agent's choices, however even these will be weakened somewhat.

Enhanced plasticity should be understood with reference to critical juncture plasticity and chronic plasticity. There should be a noticeable loosening of restraints, as represented by the balance of arms, at certainly the intra-institutional level and also, to a lesser extent, the inter-institutional level. The difference between 'meaningful' influence and 'significant' influence over institutions will be determined partly by context. Does the context exhibit a status quo that allows agents limited autonomy? While this autonomy is limited, is it nonetheless still important for understanding the way agents behave? Are there periods where this autonomy becomes heightened, but could not be described as a critical juncture? These are the questions needed to determine where the boundaries lie between the intermediate levels of plasticity.

Finally, there is critical juncture plasticity – the level of agency that precedes the critical juncture period of the punctuated equilibria framework. Here, there must be such a shock to the system that gives agents significant influence over how a range of interrelated institutions are shaped. In this situation, unlike the two intermediate levels of plasticity, the institutional landscape is likely to see more change than it does continuity. Although there cannot be a total lack of institutional continuity, there is likely to be an institutional upheaval in at least one institution or else the whole of the institutional landscape.[66] Agents' choices during this period of enhanced plasticity constitute the critical juncture.

Path dependence and critical juncture plasticity are the two levels of plasticity associated with the punctuated equilibria framework of historical institutionalism. The critical juncture and the subsequent period of path dependence have two extreme levels of plasticity associated with them. During the critical juncture, agents come close to being totally unrestrained in re-designing an institution or the institutional landscape.

[66] Munck (n 21) 115.

There is then a sharp contraction in plasticity during the longer period of path dependence.

Gradual institutional change and institutional irritants correspond with chronic plasticity and enhanced plasticity. These intermediate levels, existing between path dependence rigidity and critical juncture plasticity, allow for ongoing institutional change. Gradual change is a symptom of chronic plasticity, while institutional irritants may be (though are not necessarily) introduced during periods of enhanced plasticity.

3.2 Moments of Enhanced Plasticity

This thesis argues that a common trend in both case studies is an ongoing ('chronic') plasticity, where agents are able to change institutions to a certain, limited extent in order to meet their own interests. However, while this plasticity is ongoing, it was only during particularly heightened periods of agency ('enhanced' plasticity) that the institutional irritant, executive presidentialism, could be introduced. This heightened agency is represented by overwhelming electoral success and general discontent with the existing system.

One component of heightened plasticity in both Sri Lanka and Guyana was electoral success, which was overwhelming and accompanied by the promise of constitutional reform. Prime ministers therefore had both the mandate and the legislative numbers to make themselves executive presidents. In Sri Lanka, JR Jayewardene won the biggest electoral majority in Sri Lanka's independence history. In Guyana, Burnham's PNC had begun to hold fraudulent elections. While his electoral success was illegitimate, therefore, his numbers in the legislature were substantial. In 1973, Burnham won the biggest electoral majority in Guyana's independence history (at that time), with 37 out of 53 seats. Therefore, both leaders had an overwhelming legislative majority and a mandate for electoral reform.

The leaders' legislative majority enabled them to overcome vested interests against the executive presidency. Periods of enhanced agency are important for understanding when institutional irritants may be introduced. Jayewardene and Burnham both had to overcome entrenched interests against an executive presidency. Others in cabinet and parliament knew that it would weaken their hand over the executive. In both countries, the leaders were able to change the constitutions

because they had sizable parliamentary majorities. This was important both for the necessary supermajorities for constitutional amendments and, just as significantly, commanding the requisite power within their own parties. The institutional irritants therefore came on the back of enhanced autonomy for both leaders. Vested interests against the executive presidency were not as powerful as they would otherwise have been. While the leaders could not totally overhaul the constitutions, they could nonetheless make strategic adjustments that, although relatively small, would have a knock-on effect on other institutions. Agency was at an intermediate level, where the leaders were not slaves to feedback loops but also not part of a critical juncture where everything was up for grabs.

A second enabling factor was the general perception that the constitutional order inherited at independence had damaged the country. The constitutional order was vulnerable to criticism and therefore change. As discussed in Chapter I, in Sri Lanka, the Westminster model, where cabinet is susceptible to changing political sentiment in parliament, was seen as one of the causes of political bidding at election time and successive governments' inability to control the trade deficit. Not only this, but Jayewardene saw an opportunity to reduce the ethno-religious dimension to politics, or at least co-op religious minorities and reach an agreement on the national question. In Guyana, the Westminster model was associated with colonialism and exploitation by both sides of the political divide. It was viewed as unconducive to a socialist society and partly responsible for bitter ethnic divisions.[67]

Therefore, there were two enabling factors in each case study that opened the door for constitutional change. On the one hand, the independence constitutions were

---

[67] The unpopularity of the Westminster model, and the politics of constitutional change, were explicit in both countries. Jayewardene eventually wrote papers and books arguing a link between cabinet government and political instability in Sri Lanka. He drew particular attention to the fact that Sri Lankan governments, since independence, had consistently failed to serve their full term. Jayewardene also made explicit the link between economic growth, unpopular but necessary economic decisions, and institutional design. He argued consistently before 1978 that Sri Lanka needed an executive president to fulfil its economic potential. See, for example, JR Jayewardene, *Men and Memories: Autobiographical Reflections and Recollections* (Vikas Publishing House 1992) and JR Jayewardene, *Relieved Memories* (JR Jayewardene Centre 1996).

In Guyana, similarly, Burnham drew a link between the Westminster model and exploitation. He argued that he had only agreed to the constitution in the first place to deliver independence, and that now was the time for deeper system change. The executive presidency was just part of the changes introduced by the 1980 Constitution, which was an explicitly politically partisan instrument designed to cement the move towards cooperative socialism.

unpopular and open to criticism as incompatible with local context. Furthermore, particular leaders had heightened autonomy after winning overwhelming legislative majorities with the promise of constitutional reform. Burnham and Jayewardene had such political authority that they were able to change the system in ways that other leaders could not.

The importance of agency in designing the 1978 and 1980 constitutions was seen in Chapter I. Institutional change was shaped by the beliefs and ideologies of Burnham and Jayewardene, personally. Although their decisions proved to be important parts of historical institutionalist trajectories, the existing historical institutionalist toolkit proves inadequate for discussing why the constitutions changed in the way that they did. To understand these two Dualminster constitutions, we need to look at the men themselves and not just the context they the operated within.

For Burnham, presidentialism was carefully designed to entrench him and the PNC in power in a context where national elections were like an 'ethnic census'. Not only did the office give Burnham access to unchecked patronage, direct control of the entire executive, and new symbolic elevation in politics, but it also made him less dependent on parliamentary support. This was a backup plan for remaining in power even if there had to be free and fair elections.

Jayewardene, on the other hand, genuinely believed that an executive presidency was best for the national interest and he proposed this change even when his political opponents were in power in 1972. He believed that Sri Lanka's economy and national question with the Tamils could only be addressed by a head of government removed from parliamentary pressures. These men had their own comparative inspirations for constitutional change (socialism vs the French Fifth Republic) that were embedded within their individual experiences and ideologies.

It is significant that, in both contexts, the reaction to executive presidentialism could not take place while the politician who created the system was still in office. Rebalancing did not happen in Sri Lanka and Guyana until decades later, when new politicians operated the constitution that had been left behind. Jayewardene and Burnham held particular sway over politics and institutions (albeit with different methods). During their tenure, a lot of the constitutional imbalances that would later become flashpoints were not apparent because such issues were 'frozen' by their

personal political power. As new generations of politicians came into office, political power became somewhat more dispersed and the institutions took on a new life.

In Guyana, Burnham's rule was more comparable to a dictatorship than any kind of democratic order. Elections were rigged, the public and armed services were openly politicised as a matter of policy, the opposition spent much of its time boycotting parliament, and many workers in a variety of industries could lose their jobs for criticising the government.[68] Therefore, constitutional battles like the ones seen so far in the twenty-first century were not a viable option. After the 1997 elections, when constitutional reform was the only way to avoid political breakdown, readjustments could take place that were deliberately designed to bring Guyana back in line with the parliamentary systems that dominates the region. Of course, even these had to be piecemeal and the executive president remained.

As time went by and periodic elections came with handovers of power, combined with the on-paper rules for a strengthened legislature, officeholders in parliament could use their position in a way unfathomed a couple of decades earlier. This is not to say that, now this process has transpired, institutions are merely a cover for raw political power. Instead, political power was needed at some stage in the process in order to build the various, sometimes competing offices up and create an environment of institutionalism. After this has happened, the offices have begun to take on more of a life of their own, even if personal political power is still very important.

Jayewardene ruled over Sri Lankan politics not with Burnham's iron fist, but nonetheless in a profound and suffocating way. This boiled down to the collapse of the opposition and the UNP's four-fifths majority – the biggest in Sri Lanka's history. The main reason that a new constitution was possible in this era was because of Jayewardene's majority.[69] Even during Mahinda Rajapaksa's peak popularity, he was unable to match this election success. Furthermore, Rajapaksa's style of rule eventually galvanised opposition in 2015. Those periods when the character of the hybrid system became most apparent (the leadup to and aftermath of the 2001

[68] As immortalised by Burnham's famous quip "if I fire you, you remain fired" *Guyana: Fraudulent Revolution* (Practical Action Publishing and Latin America Business Bureau 1984) 54 <https://practicalactionpublishing.com/book/971/guyana-fraudulent-revolution> accessed 28 November 2022. 50–6.

[69] That being said, there were still meaningful checks on presidential power, particularly by the judiciary and civil society, that are out with the scope of this thesis. It is worth pointing out, however, that unlike Burnham's Guyana, Jayewardene's Sri Lanka was still essentially a constitutional democracy.

election, the 2018 constitutional crisis, and arguably the 2022 crisis) were when the president began to lose support in parliament.

3.3 Plasticity and the Balance of Arms

This subsection presents the idea of an institutional balance of arms. This is the predictable, punitive responses that institutions can make against those who go against their interests. Institutional practice is generated, in substantial part, according to the background threat of the balance of arms. The balance of arms is therefore distinct from the separation of powers, which is a thick description of what powers *ought* to be held by different institutions. The balance of arms simply describes *how* institutions, and agents within them, generate institutional practice. This discussion lays groundwork for 'the political constitution as intercurrence', discussed in the next chapter, where it is seen that written norms have been heavily influenced by background sanctions (the balance of arms) and sociological forces.

'Balance of arms' refers to the predictable, punitive responses that agents and institutions can make against those who threaten their interests. For example, in this thesis' case studies, parliament, cabinet, and the civil service all had tools to defend themselves against an aggrandizing head of government. Parliament could openly debate with and challenge the prime minister in the chamber, backbenchers could withhold support or perhaps cross the floor, the legislative agenda could be brought to a standstill, or at worst it could pass a motion of no-confidence. Where aggrandizement included constitutional amendment, the opposition could vote this down where the government did not have a supermajority. Cabinet colleagues could start to leak material or use their influence within the party to oust the leader. The civil service could similarly leak material or else become static and uncooperative. These are all time-honoured ways that various institutions and agents keep each other in check in a Westminster model democracy. Once in office, agents have autonomy in doing as they please insofar as they do not present an overt threat to other agents' and institutions' interests and insofar as these interests can be protected with threats. Agents and institutions hold each other in check through threat of punitive action.

Balance of arms constraints correspond to chronic plasticity and enhanced plasticity. This theory of institutional inertia therefore leaves more space for autonomy than path dependency. The difference between the 'negative' balance of arms and a 'positive'

feedback loop (path dependency) can be compared to prescriptive and prohibitive norms. Positive feedback loops are like prescriptive norms because they make a particular choice more attractive than any possible alternative. Just as prescriptive norms specify a particular course of action, path dependency makes one course more attractive than any other. Chronic plasticity, on the other hand, and the balance of arms, can be better understood with reference to prohibitive norms. Agents still have a wide selection of possible actions, there are just some choices that are particularly unattractive because other agents and institutions would punish them for choosing these paths. Agents are therefore left with more autonomy than they would have if a particular path was prescribed to them.

The balance of arms obviously draws on the separation of powers in constitutional design. However, the two should not be conflated. The balance of arms is a much thinner, less normative account of constitutions than the separation of powers. Like the balance of arms, the American Founding Fathers, for example, recognised that every branch of government needed its own levers that would protect it against encroachment from the other branches.[70] However, much more than this, the separation of powers also involved specific functions that should not be held by the same institutions. Under the separation of powers, the three branches of government have their own, stipulated roles and this seen as a good thing for the system overall

> When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.[71]

The balance of arms, on the other hand, does not contemplate any specific functions that should be separated between different institutions (even if this is a good thing in reality). It does not necessitate equality of power, just sufficiency of threat to protect institutional interests. The balance of arms simply says that institutional behaviour in these contexts, where there was not positive feedback loops, was instead constrained by the threat of background sanctions. It is a kind of intermediate institutionalism, where there are institutions but not deterministic institutional forces. Agency continues

[70] James Madison, 'Federalist No.48'.
[71] Charles de Secondat, *The Spirit of Laws* (Batoche Books 2001) 173.

to play an important role in shaping institutional practice. The next chapter discusses in more detail how the balance of arms has shaped the political constitutions of Sri Lanka and Guyana.

Conclusion

This chapter has introduced the concept of irritants to historical institutionalism. These are additions to institutions, or an institutional landscape, that introduce an alien institutional logic and new balance of arms to an existing equilibrium. They upset the status quo until they are rejected by the rest of the system or, alternatively, they and the rest of the system mould themselves around each other, eventually creating a new equilibrium.

Historical institutionalism studies politics in space and time. The advantages of this approach are that it is sensitive to long time horizons and complex causal mechanisms. Scholars tend to use historical institutionalism to explore big, macro-level events that have an enduring legacy. It has typically been used to explain events such as the rise and fall of empires and revolutions. The ever-expanding body of scholarship has begun to articulate a sophisticated toolbox for identifying critical junctures – the most commonly discussed category of institutional change. Critical junctures contain numerous components that help scholars to address the difficulties of distal causation and infinite regress. Institutional irritants contrast with critical junctures in their scale (critical junctures come out of big shocks or cleavages), origins (exogenous or endogenous), and mechanisms (inertia vs ongoing change). While the first and last distinctions are definite, critical junctures may (sometimes) arise from endogenous shocks.

Institutional irritants are a component of the gradual institutional change framework. Constitutional lawyers are well adjusted to viewing government and politics as a landscape of different institutions. This brings us to the idea of intercurrence. Institutions, occupying territory within a single landscape and inevitably interacting with each other, are formed and reformed in different time periods, by different actors, and according to different logics. Therefore, a single landscape will likely contain structures designed for competing purposes. This interaction between institutional logics and balances of arms can create trends of gradual institutional change. Relatively small,

endogenous alterations to institutions may have profound effects over the long term. This thesis focuses on three particular mechanisms of gradual institutional change, namely conversion, layering, and displacement.

Institutional irritants may be introduced by mechanisms of gradual institutional change, and they also trigger further change as a response. In both case studies, executive presidencies were introduced not as systemic overhauls, but instead novel additions to an existing institutional landscape. The new constitutions maintained substantial WMCFs, legacies of previous documents. Legislatures, public services, distinct offices, and cabinets were built upon rather than replaced. As a result, institutions coexisting with the presidencies, particularly the parliaments, began to adapt themselves to the new dynamic. The presidencies themselves were also reformed, sometimes to expand their power and other times to constrain it and reassert features of the old system.

Both case studies have a common theme in the temporality of institutional change. Not only was displacement used to introduce the executive president, but the reaction to presidentialism (one of institutional irritants' defining characteristics) could not take place while the dominant political architects of presidentialism were still in the arena. Burnham in Guyana and Jayewardene in Sri Lanka: despite all of their differences in ideology and approach, they were both effective at holding together the system they created while they remained in office.

Readjustments took place when personal political power became more dispersed and new personalities began to lend additional weight to the institutions and offices they occupied. The next step was for institutions to take on a life of their own, independent of this personal political power, however the removal of an omnipotent political figure was necessary before this process could take place. Difficulties, and change in response to these difficulties, was a pattern of power dispersal and subsequent institutional conflict and reform.

Historical institutionalism's 'plasticity paradox' has been addressed in this chapter by proposing four different levels of agency that correspond to different types of institutional change. The institutional irritants (communal presidencies) did not represent a total rupture with the old system and, in fact, there was more continuity than there was change. They did, however, require a loosening of institutional

restraints on the agents of change (Jayewardene and Burnham) in order to be constitutionalised. This was made possible, primarily, by massive electoral success and a clear mandate for reform. National discontent with the existing constitution was also important. This period represents ‘enhanced plasticity’.

Responses to the communal presidency, where other institutions have also been changed to meet the new challenges posed by the office, correspond to periods of ‘chronic plasticity’. In both Sri Lanka and Guyana, agency remains important and the scope for repurposing and altering institutions remains fairly high. Instead of ‘lock-in’, agents and institutions are subject to the balance of arms, where they can be altered but only insofar as they do not conflict with other institutions’ interests. If an institutional or agentic interest is to be enforced in this way, it must be backed up by threat of sanction.

Chapter VI

The Political Constitution as Intercurrence

Introduction

This final chapter presents the Dualminster family of constitutions and its importance for constitutional theory. The chapter is divided in two sections. The first section develops an approach to constitutional law that facilitates a full analysis of Dualminster. This approach is political constitutionalism as intercurrence. It builds on the work of Santi Romano and 'law as institution'. The political constitution is depicted as the product of competing institutions' interactions, strongly influenced by the balance of arms and institutions' sociological characters. The second section uses this approach to identify Dualminster's defining norms. The political constitutions of Sri Lanka and Guyana have five common norms.

The first section begins by presenting *The Legal Order,* the seminal monograph of Italian jurist Santi Romano that has recently been translated into English. Law as institution is a comfortable starting point for approaching Dualminster. It acknowledges the pluralism of an institutional landscape, whereby each institution represents its own legal order. Furthermore, it is a sanctions-orientated account of how norms are produced. The section then goes on to modify Romano's work in two important ways. Firstly, although Romano desired an account of law that would create harmony between institutions, Dualminster shows that the political constitutions of Sri Lanka and Guyana are more characterised by disharmony and tension. Romano addressed the state as a monolith that had to be respectful towards other legal orders. To understand the state as an institution, however, we need to address the various institutions (legal orders) that comprise it and how they relate to each other. Secondly, this thesis appreciates the importance of institutions' sociological character in defining how they interact with each other. Romano wanted institutions to be part of concrete-order thinking that sealed them off from other forces and made them amenable to legal analysis. While this is partly true, we can never wholly discount sociological forces on institutional behaviour. The section then relates this approach to the findings in this

thesis as a whole and shows that the political constitution is, in fact, an example of intercurrence.

The first section concludes by showing how Dualminster and the political constitution as intercurrence is important for constitutional theory more generally. It does this by relating Dualminster to the work of JAG Griffith. Within the political constitutionalist approach to public law, Griffith's work is closest to Dualminster and intercurrence. This thesis' findings are significant for this field because the case studies display tension between the written constitution and the political constitution. This tension shines light on the significance of the balance of arms in shaping constitutional norms. Dualminster forces academic lawyers to look beyond norms to the institutional forces that generate them, having particular regard for the balance of arms and sociological character.

The second section presents Dualminster as a family of political constitutions. The term 'Dualminster' is used to capture the communal presidents' dual role as the heads of state and government in systems that retain WMCFs. Dualminster constitutionalism is defined by the following features: (1) the communal president as government; (2) close nexus between cabinet and the legislature; (3) parliament as a platform for performative politics; (4) the president must command confidence in parliament; (5) the Commonwealth as a point of constitutional reference. Each of these constitutional features represents interactions between the balance of arms, institutions' sociological character, and norms in the written constitution. We see how the balance of arms has the strongest effect on generating norms, and some norms in the written constitution are even ignored in practice because they are incompatible with the balance of arms.

1. Santi Romano and Law as Institution

This section sets out the conception of law and constitutions used to describe and categorise Dualminster as a constitutional family. It begins by giving an overview of Santi Romano and his work, which may be unfamiliar to readers. Romano was one of the great twentieth-century Italian jurists, but his work has only recently been translated into English. The section then unpacks the main ideas of law as institution and the forces that influence the way in which norms operate. This section explains how distinct institutions do, in fact, represent distinct legal orders. The terms 'legal order' and 'institution' should be taken as synonymous. Romano's understanding of

law is tied into this thesis' new idea of the balance of arms. In both Sri Lanka and Guyana, the application of norms is shaped by the balance of arms.

The section then proceeds to modify Romano's approach to law in two significant ways. Firstly, the state should not be understood, for constitutional purposes, merely as an institution in itself. Instead, the state and the constitution represent an ongoing competition between distinct institutions (and therefore legal orders). This modifies Romano's attachment to the juristic process into an image of political constitutionalism that accounts for the balance of arms discussed in the previous chapter. While the state can be treated as a single institution for some analytical purposes, to understand the political constitution we need to address its component parts. Secondly, this thesis addresses institutions' sociological character, which may be rooted in a particular historical and political period, and the significance of this sociological character for the way in which institutions continue to behave.

1.1 Santi Romano

Santi Romano was one of the most prominent Italian jurists of the twentieth century.[1] Romano graduated in Administrative Law from the University of Palermo in 1896, having been supervised by Vittorio Emanuele Orlando. In these early years, Romano taught at the University of Camerino and University of Modena, becoming a full professor at the latter in 1906. In 1908 he held the Chair of Constitutional Law at the University of Pisa. Romano was appointed to the first commission for constitutional reform established by the fascist government in 1924. He moved to the State University of Milan the same year. Romano joined the Fascist Party in 1928 and was appointed president of the council of state. Romano became a member of the Senate in 1934. He retired from the Administrative High Court at the beginning of the Italian civil war (September 1943), but returned after liberation. He retired for a final time in October 1944 after undergoing a purge trial and died in 1947. Romano's *The Legal Order* might seem so tainted by his association with Mussolini's fascists that reference to and examination of his views as expressed in *The Legal Order* should be easily set aside, but it would be misguided to ignore them if they stimulate new knowledge and reasoning, in the same way it would be misguided to ignore another Italian of his era,

[1] The following paragraph is drawn from the longer footnote in Aldo Sandulli, 'Santi Romano and the Perception of the Public Law Complexity' (2009) 1 Italian Journal of Public Law 1, n 9.

Antonio Gramsci, and his work on Marxist philosophy and cultural hegemony, because he was a communist.

Despite his political affiliations, Romano's work continues to be highly regarded. Perhaps surprisingly, given those affiliations, Romano provides a radically pluralist account of law. Distinct from the institutionalism of Carl Schmitt, who saw pluralism as a threat, Romano's view of pluralism (as a value and not just a description) was far more nuanced.[2] Barberis observes that "Romano's role in international debate has been played by others: partly by Norberto Bobbio, but mainly by Herbert Hart and Neil MacCormick".[3] This chapter seeks to reveal and critically examine Romano in the English language.[4] Despite the delay in producing an English translation of Romano, there are nonetheless English journal articles discussing the significance of *The Legal Order*. These are referred to throughout this section.[5] In 2023, Croce also produced a translation of Romano's early writings.[6]

1.2 The Legal Order

This subsection provides an overview of *The Legal Order* and its significance for this chapter. Romano's work can be divided into four periods in his life: his early work maintained an orthodox legal approach, but also laid the foundations for the second period, where he formulated and developed the idea of law as institution (the focus of this chapter).[7] The third and fourth periods were his cooperation with the fascist government and then his retirement, "marked by sadness and resentment", where he authored (among other works) *Frammenti di un dizionario giuridico* (Fragments of a legal dictionary).[8] As mentioned, this chapter focuses on *The Legal Order,* Romano's

---

[2] Mariano Croce and Marco Goldoni, *The Legacy of Pluralism: The Continental Jurisprudence of Santi Romano, Carl Schmitt, and Costantino Mortati* (Stanford University Press 2020) 98.
[3] Mauro Barberis, 'Santi Romano, Neoinstitutionalism and Legal Pluralism' (2013) 21 Digest: National Italian American Bar Association Law Journal 27, 31.
[4] Santi Romano, *The Legal Order* (Mariano Croce ed, Routledge 2017).
[5] Some particularly notable articles are Filippo Fontanelli, 'Santi Romano and *L'ordinamento Giuridico*: The Relevance of a Forgotten Masterpiece for Contemporary International, Transnational and Global Legal Relations' (2011) 2 Transnational Legal Theory 67; Lars Vinx, 'Santi Romano against the State?' (2018) 11 Ethics and Global Politics 25. For a monograph comparing Romano to Carl Schmitt and Constatino Mortati, see Croce and Goldoni (n 2).
[6] Mariano Croce (ed), *Law, Necessity, and the Crisis of the State: The Early Writings of Santi Romano* (Routledge 2023).
[7] The extent to which *The Legal Order* represents a development of earlier work, especially 'The Modern State and its Crisis' (1909) is heavily debated in Italian literature. Croce and Goldoni (n 2) 54. For an English translation of 'The Modern State and its Crisis', see Croce (n 6).
[8] Sandulli (n 1) 31.

conceptualisation of law as institution. The analysis of the monograph is supplemented by English language scholarly works analysing this important text.

Romano's principal argument in *The Legal Order* is that each legal order represents an institution, and each institution represents a legal order. The two terms represent "two sides of the same phenomenon"[9] – hence, 'law as institution'. This derives from Romano's need to turn loose sociological concepts such as 'organisation' into something concrete enough for lawyers to understand through a juristic approach. He writes

> I would like to stress (and this is crucial) that the concept of organization cannot be of any help to jurists unless it is turned into a legal concept […] The solution to this problem, it seems to me, is the one I put forward: the institution is a legal order, a self-standing, more or less complete sphere of law.[10]

Romano's description of what it is for something to be an institution, and a legal order, is based around the idea of a social order that is concrete and identifiable. An institution is "any entity or social body", meaning that it (1) "possess an objective and concrete existence, and its individuality, however immaterial, must be outward and visible"; (2) "it is a manifestation of the social, not purely individual, nature of human beings"; (3) it is "a bordered entity, which can be considered in itself and for itself precisely because it has an individuality of its own"; and (4) "The institution is a firm and permanent unity" so as "its identity does not get lost, at least always and necessarily, as its distinct elements vary, as well as its members, patrimony, means, interests, addressees, norms, and so on".[11]

We can see how this feeds into his desire for a characterisation of 'institution' that is useful for jurists. For analytical purposes, Romano wants institutions to be hermetically sealed from other, more sociological forces. His description of how institutions can interact with each other, how they can be relevant to each other, balances this out considerably, however his basic approach is to make institutions something amenable to juristic analysis. A legal order should be identifiable to both those inside and outside the order and it should be depersonalised – there should be a tangible sense of

[9] Fontanelli (n 5) 72.
[10] Romano (n 4) s 13.
[11] ibid 12.

‘groupness’ (and therefore norms and sanctions) rather than just the will of individuals. From this definition, we already get a strong sense of law and order.

Romano also advances a distinct definition of ‘law’ or, more accurately, the features that law must encompass. We see how this definition and that of ‘institution’ feed into each other as different descriptions of the same phenomenon. Law “must be traced back to the concept of society”, in that it must extend beyond the individual and there cannot be any real ‘society’ unless “the legal phenomenon manifests itself within it”.[12] Society is not just relationships but something more. It “is an entity constituting a concrete unity”.[13] Law means that society is also ordered and not subject to arbitrary rule.[14] This social order that law brings about is also prior to norms. It “oversteps and surpasses them”, meaning that the organisation and concreteness comes prior to the norms themselves.[15] Clearly, this is laying the groundwork for law being that social space where institutions materialise. When we read it in the context of Romano’s definition of institution (in the previous paragraph), we get a more crystalised idea of what this approach to social order means.

The Legal Order in an instructive guide not just to pluralities of legal orders, but also how these orders relate to each other. Romano addresses the possible, legitimate relationships between one institution and another through the test of ‘relevance’. For Romano, ‘relevance’ means

> It should not be confused with the *de facto* importance that an order could have to another; nor should it be confused with the material uniformity of more orders which is pursued or determined not by a legal need, but by political convenience or opportunity. The rationale of this distinction is not questionable in itself, but it is not always easy to keep it in mind and to understand its true meaning. For now, I will content myself with outlining it generally. To condense my thinking into a quick formula, I can say that in order for legal relevance to obtain, the

[12] ibid 10.
[13] ibid.
[14] ibid.
[15] ibid 20.

> *existence* or the *content* or the *effectiveness* of an order has to be conditional on another order on the grounds of a legal *title*.[16]

As Croce and Goldoni note, this "perspectival technique" move takes us out of the realm where others search for one true or supreme legal order.[17] By using the test of relevance, Romano takes all legal orders – all institutions – seriously and sets out how they may relate to or create friction with one another.

The final feature of Romano's work relevant to this chapter is the relationship between law, norms, and sanctions. Romano's account of law was a deliberate challenge to norm-centric accounts. He viewed a legal order as a 'unity', whereby the component parts could only be understood with reference to the whole. Loughlin notes that

> Although jurists pay lip-service to this idea, often referring to the legal order as a 'living whole' or as expressing the 'general will', this claim should not be seen as a metaphorical abstraction."[18]

For Romano, therefore, the unity was a concrete thing that was needed to make sense of any component part of the legal order. He used the twin analogy of a human body and a mechanical device. The limbs from the human or the wheels from the machine cannot be properly understood without the 'unitary concept' of the whole to which they correspond.[19] From this idea of a unity, Romano also provides an account of norms and sanctions. Rather than law being merely a norm backed by a sanction, Romano contests that the sanction is prior to the norm.[20] There is also a complex relationship between specific norms and the overall body of sanctions within a legal order.

> The legal order, taken as a whole, is an entity that partly moves according to the norms, but most of all moves the norms like pawns on a chessboard – norms that therefore represent the object as well as the means of its activity, more than an element of its structure.[21]

---

[16] ibid 34.
[17] Croce and Goldoni (n 2) 89.
[18] Martin Loughlin, *Political Jurisprudence* (Oxford University Press 2017) 115.
[19] Romano (n 4) s 3.
[20] ibid 8.
[21] ibid 5.

The forces that move these norms are not merely sanctions, however:

> It is, in the first place, the complex and multi-faceted organization of the Italian and French states, the numerous mechanisms and gears, the links between authorities and forces, that produce, modify, enforce, guarantee legal norms, but cannot be identified with them.[22]

The importance of sanctions to norms is not simply the sanction that a positivist reading of the law would directly associate with a given norm.

> the sanction can be neither contained nor threatened by any specific norm: it can be immanent and latent in the mechanisms, in the organic apparatus of the legal order taken as a whole, it can be a force operating indirectly, a practical guarantee that does not give rise to any subjective right, and thus to any norm from which this law emerges, a constraint that is inborn in, and necessary to, social power. Put otherwise, one's saying that the sanction is a feature of law implies saying, whether intentionally or not, that the law comprises elements other than legal norms, and that these are bound up with, or even hung up on, other elements from which their force derives.[23]

Sanctions are distinct from, and prior to, norms; they have a holistic influence over a given order. This ties into the balance of arms approach given in the previous chapter and discussed more fully below. We now come to understand why Romano describes law as an 'order' rather than a 'system'. "The latter, which suggests a high degree of abstract integration, is one of the main causes of inaccuracy in its definition".[24] Rather than being a neat and rational package, legal orders are complex machines where any given component needs to be analysed within the context of the order as a whole.

1.3 Modifying Romano

This subsection argues that, to understand the state in the context of Dualminster, we must understand it as a landscape of competing institutions. The patterns of interaction that we may observe between these institutions is a political constitution whereby

---

[22] ibid.
[23] ibid 8.
[24] Loughlin, *Political Jurisprudence* (n 18) 116.

different institutions dominate and coordinate with each other through the balance of arms. To understand intercurrence, we need to develop Romano's idea of institutional relevance and supplement it with other ideas from this thesis, especially the balance of arms. What we are left with is a 'political constitution'. That is, not something that strictly resembles a legal order, but something that requires Romano's juristic approach, as well as other approaches, to appreciate fully. This political institution may be distilled into a set of norms (the five associated with Dualminster), however these norms are only an end-product and must be appreciated within the context of the overall system.

1.3.1 The Political Constitution and Disharmony

Given his context, Romano's aim was to understand how the state could relate to other legal orders. In the late-nineteenth and early-twentieth centuries, Italy was experiencing social unrest and a weakened state that was being supplanted by localised institutions, particularly trade unions. Romano's pluralism was designed as a solution to this context. He believed that the state needed to recognise the legitimacy of trade unions and other movements and make a system that was responsive to them. Vinx observes that "the real aim of Romano's discussion is to call into question the view that all proper law emanates from the sovereign state."[25] Therefore, *The Legal Order* focuses on how the state, when viewed as a single institution, relates to other institutions internationally and sub-nationally.

To appreciate the constitutional experiences of Sri Lanka and Guyana, we must first appreciate the state as itself containing multiple legal orders. This is not entirely hostile to Romano's approach. Rather, it is a development of his approach for new contexts. While Romano's context demanded that he analyse the state as a single institution, his theory accounted for how the state can also be viewed as a conglomeration of various legal orders (institutions). Romano's 'relevance' test was designed to describe how different legal orders might be intertwined. The branches of government discussed in relation to Dualminster (parliament, cabinet, public services, and the executive president) are related to each other through presupposition.

[25] Vinx (n 5) 25.

‘Presupposition’ is one of a variety of ways in which Romano envisages one legal order might be relevant to another. It is one of the two ways in which a legal order might be dependent on another’s existence, alongside ‘subordiantion’.[26] Unlike subordination, presupposition does not make one legal order totally subject to the other’s commands. Instead, presupposition is a relationship that may sometimes involve subordination to another institution’s commands, but will also involve autonomy. Romano uses the example of international law. Under international law, the superior order (the international legal order) in some way depends on the existence of the inferior order (the member states).[27] It is recognised that states have their own distinct internal workings, and largely leaves these untouched as separate from the substance of international law. However, the international legal order also ‘brackets off’ certain aspects of domestic law as relevant to upholding international agreements

> insofar as international law confers rights or duties on states, these appear as unities; but one can get to this unity also from international law by using brackets to bracket off some parts of domestic law that are relevant to international law. This does not impact on these parts, and yet it feels the need to address them, precisely because they are presupposed as elements of that unity that the personality of each state is.[28]

Therefore, international law is a legal order, but the members of this institution (the states) are also themselves distinct legal orders. Furthermore, the two orders exist in recognition of each other, not in logical conflict. Finally, the two orders are not totally compartmentalised. There is some porous flow between the international legal order and the ‘bracketed’ components of the state constitutions.

In addition to this, Romano wanted to build a picture of how various legal orders could live harmoniously with each other. Romano’s “is a universe structured by the central role of the state as the coordinating institution of institutions”.[29] Vinx draws this conclusion based on Romano’s rejection of organised criminal groups as legitimate legal orders. While this does show a certain underlying normativity to *The Legal Order,* it is possibly too strong a statement that Romano wanted the state as the coordinating

[26] Romano (n 4) ss 36–7.
[27] ibid 37b.
[28] ibid.
[29] Vinx (n 5) 27.

institution. A better reading may be that Romano dismissed legal orders if they were wholly incompatible with the state. He would not necessarily, however, have called for the state to coordinate relations between external institutions. Romano's claim is perhaps that total incompatibility with the state is a litmus test for illegitimacy, rather than the state necessarily coordinating relations between institutions. However, Romano's approach to institutionalism does suggest that he saw harmony as a value as well. Although norms may be given life by a complex relationship with sanctions and other authorities and hierarchies, nonetheless it is good for institutions to stick to the legal framework and not be motivated to undermine each other. This is implicit in Romano's desire for the state to recognise trade unions and harmonise its laws with them rather than try to crush them. Therefore, although the state does not necessarily have to be the great coordinator in *The Legal Order,* Romano's work does contain certain normative premises. One of them is that institutions should harmonise with each other and exist together rather than try to aggrandize themselves at each other's expense.

The idea of pluralism as harmony is rejected by this thesis for the purposes of describing Sri Lanka and Guyana. Instead, the multiple legal orders that comprise the state presuppose each other's existence but are also in competition with each other. The historical development of institutions set out in this thesis is a story of intra-state competition for power. Institutions aggrandized themselves at each other's expense while stopping short of demolishing their competitors. As seen in Chapter I, the executive presidency was facilitated by distrust of the Westminster model after post-independence instabilities, however the driving cause was the desire to strengthen the head of government against other institutions. This was achieved by reimagining the relationship between the head of government and other state institutions. Parliament lost its removal powers, the public service became more politicised, and cabinet became more subordinate.[30] Readjustments to the executive's relationship with parliament followed a similar pattern, but this time it was the executive on the back foot.[31] This is not just a historical trend, it also captures how specific rules are interpreted in a snapshot, as seen in chapters III, IV, and V.

[30] See chapters II and III.
[31] See Chapter II.

There was therefore a competition for power, but this competition, in itself, was also a presupposition of competitor institutions' existence. Presupposition also captures the mixture of autonomy and domination in these relationships. Although the branches have threats that they can hold over each other (the balance of arms), this domination is not complete and they also possess pockets of autonomy. Therefore, Romano's test of 'presupposition' holds, but the various institutions that comprise the state are not a harmonious whole. Rather, the legal order of the state is the product of competition between its branches of government.

1.3.2 Legal Orders and their Sociological Character

A final aspect of this chapter's approach to constitutionalism, and one which somewhat modifies the balance of arms approach as well as modifying Romano's understanding of legal orders, is the significance of different orders' sociological character. While Romano, like other institutionalists after him, wanted to remove the fuzzy, sociological side of politics from institutions, Dualminster demonstrates deep connections between an institution's conduct and its sociological character.

As Salvatore remarks, *The Legal Order* was an attempt "to provide, and argue for, a *legal ontology of the social*".[32] Romano's conception of law has rightly been described as more of an analytical approach, the "juristic point of view", by Croce and Goldoni.[33] It is an attempt to hermetically seal the 'law' from politics and other social forces. Romano had good reason for doing this. He believed that if pluralism was to work effectively and fairly, relations between various legal orders would necessarily be conducted in a juristic fashion. He repeatedly stated that institutional relations could not be a matter of mere dominance. Given their equal status as legal orders, institutions needed to conduct relations through the relevance approach described above instead. Furthermore, Romano wanted a conception of institutions that was actually useful for lawyers. He was therefore motivated to separate institutions as far as possible from the sociological contexts that they might arise out of. This is linked to the idea of 'concrete-order thinking', whereby institutional actors have their functions and powers determined for them by the institution, sealed off from other social forces.

---

[32] Andrea Salvatore, 'A Counter-Mine That Explodes Silently: Romano and Schmitt on the Unity of the Legal Order' (2018) 11 Ethics and Global Politics 50, 50.
[33] Croce and Goldoni (n 2) ch 2.

The two case studies in this thesis demonstrate that separating institutions from their sociological status is simply not possible, at least in these cases. Instead, we should maintain Romano's juristic point of view, but also combine it with other approaches so as we might understand these legal orders in their fullness. Put simply, the extent to which an institution ties itself into a social and cultural whole impacts its actual power and conduct. This was seen in Chapter III and the discussion of how executive presidencies became 'communal presidencies'. By developing the presidency as a symbol and driver of communal exclusion, politicians have been able to institutionally strengthen the office by giving it an added sociological status, beyond merely the sanctions-orientated balance of arms. This took place from 1980 onwards in Guyana. In Sri Lanka, on the other hand, the presidency was always buttressed with sociological symbols, however it was not until Mahinda Rajapaksa that the office as a tool for communal domination was developed to its final form. While Rajapaksa did also alter the balance of arms with the Eighteenth Amendment (for example by replacing the Constitutional Council with the Parliamentary Council), the change in the office of president went well beyond this.

Therefore, we cannot remove the study of institutions from their sociological character. This may take the form of a historical and cultural narrative and the institution's current concrete status localised within the ethereal whole. This has a real effect on how well institutions can compete against each other and command public support. Throughout the description of Dualminster below, the communal president and the historical stories that surround the office have a tangible influence on the political constitution. This is not just a break from Romano, it also tempers the effect of the balance of arms. Intercurrence is not simply norms contextualised by sanctions. Beyond mere threat, institutions have their roles broadened and constrained by their sociological legitimisation within a given context.

1.4 The Political Constitution as Intercurrence

This new application of *The Legal Order* fits neatly with intercurrence. As described in the previous chapter, intercurrence is the approach to historical institutionalism first identified by Orren and Skowroneck in 1994, writing in the context of American Political

Development.[34] The authors argue that theorists have been too narrow in their approach to institutional studies and that there was an issue inherent in the idea that distinct institutional orders develop their own internal logics over time. This issue is that institutions are naturally disposed to try and order those *outside* of the institution (including other institutions) and therefore "different institutional rules and norms will abut and grate as a normal state of affairs".[35] Intercurrence is therefore the study of how a landscape of institutions, each related but also operating according to its own internal logics and interests, operates.

> In place of the concept of a "political system" – an integrated whole in which institutions work together, more or less well, to meet demands from their environment – we posit a political universe organized and activated by intercurrence – engagements throughout the polity of the different norms embedded in institutions, the terms of control contested, more or less intensely, in the ongoing push and pull among them.[36]

To make use of *The Legal Order* for the Dualminster case studies, and to present the political constitution in institutional terms, we need to rely on intercurrence. The state is not a unitary whole when we are addressing the relationships between the various branches of government, each with their own institutional logics and interests. Instead, the state comprises multiple competing institutions that are often found vying for additional powers. The political constitution, therefore, is the use and interpretation of rules to meet these ends and the patterns of practice that emerge as a result.

By viewing the state as multiple competing institutions, we bring the balance of arms into sharp relief and we can develop Romano's account of the norms-sanctions relationship. As described above, Romano rightly identified a complex relationship between sanctions and norms, and also correctly posits that sanctions are prior to norms and influence their operation. This thesis adds to this account by specifying the overarching sanctions, the balance of arms, that sit latent in the background of all institutional interactions. The balance of arms may stultify certain institutional functions if that institution knows these functions will draw the wrath of a competitor. The balance

---

[34] Orren and Skowronek (n 38) 111; Orren and Skowronek (n 6).
[35] Orren and Skowronek (n 38) 111–2.
[36] ibid 112.

of arms can even allow an institution to capture responsibilities that are meant to be held by another under the written norms (the written constitution). An example of the first, discussed below, is parliament as a platform for opposition grievances. Generally, when the president's party commands a majority in the legislature, parliament cannot perform its function of scrutinising the executive. An example of institutions relying on the balance of arms to capture responsibilities is the communal president as government. Although public services are notionally independent, the president's appointment and dismissal powers are so wide reaching and unconstrained that these sanctions effectively allow presidents to command complete control of public services. These cases are discussed further in the second section of this chapter. The story of the political constitution is the re-interpretation of written norms in light of latent sanctions that dominate institutional relations and functions from the background. For this thesis, therefore, the political constitution *is* intercurrence, just as law *is* institution.

The question arises, if Romano believed that all institutions are legal orders and vice versa, is the political constitution, representing intercurrence between institutions, actually a legal order? The answer is that it is, and this can be explained by levels of institutional abstraction and research questions. Put simply, the more meta-level the political action in the research question, the more meta-level the 'institution' being addressed. For example, in the British context, some studies address Whitehall as a set of distinct departments (institutions), whereas others address Whitehall as a single unit. Neither characterisation is incorrect. Compare, for example, Bulmer and Burch's article on the Whitehall response to 'Europeanization' to Flinders' article on 'Governance in Whitehall'.[37] Both rely on a historical institutionalist approach, however they see 'Whitehall' in different conceptual terms. This is because of the nature of the research questions. One looks at Whitehall's interaction with an external institution, the European Union, while the other looks at the internal functions of Whitehall. Depending on which actions we are observing, Whitehall behaves more or less like a single institution. When it interacts with externals, the interests and actions of all its component departments are more likely to pull together and work in unison. When these departments deal with each other, for example when they compete for higher

[37] Simon Bulmer and Martin Burch, 'Organizing for Europe: Whitehall, The British State and European Union' (1998) 76 Public Administration 601; Matthew Flinders, 'Governance in Whitehall' (2002) 80 Public Administration 51.

budgets or responsibility for new projects, their interests will diverge and they will appear to be distinct institutions.

Therefore, depending on the nature of the research question, particularly its level of abstraction, different groups will and will not represent institutions. The more meta the research question, they more otherwise divergent institutions' interests will align and they will appear as a single organisation. Therefore, when we discuss the 'political constitution', we are really discussing the legal order of a given state. However, to unpick what this order is and why it is, we need to pay attention to the legal orders (the institutions) that are its component parts.

1.5 Dualminster and the Political Constitutionalism of JAG Griffith

This thesis' approach to the political constitution – the political constitution as intercurrence – demonstrates how more traditional understandings of the political constitution can be updated and revised to meet the needs of underexplored case studies in constitutional theory. Other approaches to the political constitution have been used to address jurisdictions where the written constitution and constitutional practice developed in tandem. The constitution could therefore be addressed simply as 'what happens', without paying too much attention to the power dynamics at play and *why* things happen. Theorists have been hesitant to apply these approaches to nascent or illiberal democracies. Sri Lanka and Guyana, on the other hand, force us to confront situations where the norms of the written constitution are heavily influenced by the balance of arms and competing institutional interests. By viewing the written constitution and the political constitution as two separate systems, and the political constitution as government as it happens in practice, we can shed light on why political constitutions take the form that they do. This approach therefore benefits both the case studies in this thesis and could also be used to provide new insights into other case studies, too.

In describing how the political constitution as intercurrence can be used to enhance other political constitutionalist theories, this subsection focuses on the work of JAG Griffith. This is because Griffith's highly empiricist description of constitutionalism, where power relations dominate practice, sits closest to intercurrence when compared to other writers.

Whereas Griffith's account of the political constitution was simply intended as a description of the British constitution as it works in practice, more recent political constitutionalists have developed a strong normative case for the political constitution as a vehicle for republican values. For example, in *Political Constitutionalism,* Richard Bellamy begins his case for the political constitution with two claims

> we reasonably disagree about the substantive outcomes that a society committed to the democratic ideals of equality of concern and respect should achieve. The second is that the democratic process is more legitimate and effective than the judicial process at resolving these disagreements.[38]

From this premise, Bellamy presents a case for why, in developed democracies, politics should not be constrained by legal supremacy. Similarly, in *Our Republican Constitution,* Tomkins proposes a reading of the British constitution that is designed to promote non-domination, popular sovereignty, equality, open government and civic virtue.[39] Significantly, both of these normative cases for political constitutionalism are designed for specific contexts. Bellamy is writing for the

> twenty-two countries around the world where democratic practices have been firmly established for at least fifty years, and in some cases much longer.[40]

Therefore, proponents of the political constitution as a vehicle for certain societal goods self-acknowledge that has little to say to nascent or illiberal democracies. Moreover, the political constitution in these studies is not simply "no more and no less than what happens",[41] it is a particular model of constitutionalism specific certain norms and procedures. Distinguishing himself from Griffith, discussed in the next paragraph, Tomkins writes

> My view, *contra* Griffith, is that the government is accountable to Parliament not only because, as matter of fact this is true, but also because the constitution insists upon it.[42]

---

[38] Richard Bellamy, *Political Constitutionalism: A Republican Defence of the Constitutionality of Democracy* (Cambridge University Press 2007).
[39] Adam Tomkins, *Our Republican Constitution* (Hart 2005).
[40] Bellamy (n 38) 2.
[41] JAG Griffith, 'The Political Constitution' (1979) 42 The Modern Law Review 1, 19.
[42] Tomkins (n 39) 38–9.

If we are to account for Dualminster, both as a system with distinct norms from other constitutions and as a system that includes some undesirable traits for liberal scholars, we need to develop an approach to the political constitution that is more descriptive and less content-specific than those discussed here.

Griffith produced an account of the political constitution that is descriptive and power-orientated. It therefore sits closest to the political constitution as intercurrence.[43] Although, at a personal level, Griffith was steadfast in his opposition to judicial interference in the political process,[44] he was clear that his analysis of the British constitution was purely empirical and not derived from normative principles. Laws are "merely statements of a power relationship and nothing more".[45] Griffith's description of institutional tensions also sits adjacent to the balance of arms. As Loughlin notes,

> The most important distinguishing feature of Griffith's method is that it was historical and institutional. Public law is above all the law of institutions and this law cannot be understood without studying the way institutions work.[46]

Griffith identified a "tautness" that runs through the British constitution, whereby institutional relations are not marked so much by balance, but instead competing interests.[47] Conflict is an inescapable and undeniable facet of political life.[48] Acknowledging this is the first step in understanding the balance of arms and its significance in generating constitutional norms. The balance of arms nonetheless creates some consistency in institutional interactions and constitutional norms emerge as a result.

Naturally, scholars are sceptical that there can ever be a truly non-normative account of anything, and some have argued that Griffith's support for the political constitution

---

[43] For a fuller comparison of Griffith's descriptive account with Bellamy and Tomkins, see Graham Gee and Gregoire CN Webber, 'What Is a Political Constitution' (2010) 30 Oxford Journal of Legal Studies 273. For an account of how Griffith is situated within the wider British public law tradition, see Martin Loughlin, *Public Law and Political Theory* (Clarendon Press 1992) 197–201.

[44] In the face of potential tyranny, Griffith asserted that only "political control, politically exercised, can supply the remedy" Griffith, 'The Political Constitution' (n 41) 16.

[45] ibid 19.

[46] Martin Loughlin, 'John Griffith: An Appreciation' [2010] Public Law 643, 648.

[47] JAG Griffith, 'Foreword' in Martin Loughlin, M David Gelfand and Ken Young (eds), *Half A Century of Municipal Decline, 1935-1985* (Allen and Unwin 1985) xi.

[48] Graham Gee, 'The Political Constitutionalism of JAG Griffith' (2008) 28 Legal Studies 20, 23–4.

bled into his analysis in various ways. For example, Poole argues that Griffith's approach is designed to

> Persuade us or cajole us or rile us both into revisiting inherited constitutional assumptions and (more importantly) into a relentless questioning of those in authority.[49]

Similarly, Rizvi describes Griffith's approach as a kind of 'normative positivism' that "insists upon the conceptual separation of law and morality for the good consequences that such separation is thought to produce".[50] Despite this, there is no doubt that even if Griffith's approach was motivated (at some level) by specific outcomes, nonetheless it is one of the most empirical accounts of public law available to scholars. It is therefore the most appropriate starting point for assimilating the Dualminster experiences into existing constitutional theory.

Griffith's account of the political constitution was based on the British experience, where there is no single document called the 'Constitution' and the law as it happens in practice developed over time and in tandem with statute. Take, for example, Griffith's view on central government increasingly encroaching on local government. He believed that when this was facilitated by statute, it was still 'constitutional' in a strict sense, however it could, nonetheless, be "counter to the spirit and letter of the existing constitution".[51] Therefore, constitutional discourse must "be a form of political discourse, and part of that discourse is the claim that proposed reforms cut across widely accepted practices of governing".[52] In effect, the political constitution as it exists in any moment may be defended if it is threatened by new innovations. On the other hand, the constitution continues to exist and develop as a seamless whole where the 'is' is all that matters in an account of the constitution rather than the 'ought'. In describing the constitution, there is no distinction between what the written law is and what political practice ought to be. This is especially feasible because the UK lacks a

[49] Thomas Poole, 'Tilting at Windmills? Truth and Illusion in "The Political Constitution"' (2007) 70 The Modern Law Review 250, 276.
[50] Majid Rizvi, 'J.A.G. Griffith's Normative Positivism' (PhD, University of Edinburgh 2015) 4.
[51] Griffith, 'Foreword' (n 47) xii.
[52] ibid.

rigid codified constitution that may otherwise have failed to develop with (or constrain) political practice.

Dualminster, on the other hand, has both written constitutions and political constitutional norms that sometimes stand in conflict with each other. In uncovering why this happens, we uncover power dynamics that both reinforce and develop some of Griffith's key arguments. Put simply, in referring to the 'political constitution', Griffith was referring to the 'constitution'.[53] Dualminster forces us to distinguish between the written constitution and the political constitution. In doing so, we learn about power dynamics and the creation of norms.

This thesis uses the 'political constitution' and the 'written constitution' as two distinct concepts, something that is necessary in the case studies presented but can be blurred in other contexts where the two have developed in tandem. As described in this section, the 'political constitution' is intercurrence. It is the norms that emerge out of competing institutions' interactions with each other. The 'written constitution', on the other hand, refers to the 'Constitution' documents in both case studies. The written constitution is important to the political constitution, first and foremost, because it establishes institutions and the balance of arms that exists between them. Beyond this, the written constitution and the political constitution start to diverge. While the written constitution contains many norms and tries to establish parity between them, in practice all written norms other than the balance of arms are shaped, moved, and discarded as required by the balance of arms and, also, the sociological character of given institutions. This is therefore a development and real-world experience of Romano's account, whereby sanctions are predominant to norms. The norms, or 'features', of the Dualminster political constitution represent the re-shaping and discarding of norms in the written constitutions by the balance of arms and institutions' sociological character.

By viewing the political constitution as intercurrence, we can account for cases where the written constitution and the political constitution may exist in tension with each other – and where the written constitution does, itself, lay the foundations for this tension. As seen in the next section, Dualminster exhibits a disconnect between

[53] Gee and Webber (n 43) 277.

certain features of the written constitution and the political constitution. For example, the written constitutions in both case studies contemplate cohabitation between the president and parliament. However, the political constitution has developed a norm whereby the president must command confidence in parliament. Under the written constitution the public service is meant to be operationally independent from politics, however the political constitution gives the communal president deep, direct control over all levels of government. Parliament, under the written constitution, is designed to provide scrutiny of government, but under the political constitution it functions as a platform for opposition grievances instead.

By appreciating the political constitution as a product of concrete institutional design choices, we also avoid the fallacy of simply describing Dualminster norms as 'unconstitutional' or the written constitution as 'unenforced'. Instead, the political constitution is a natural product of the distinct balance of arms (which are themselves set out in the written constitution), other written constitutional norms, and sociological institutional characteristics found in Dualminster. While the written constitution describes itself as supreme, it establishes an institutional landscape that inevitably re-shapes and discards certain norms within that constitution. This is because the rest of the written constitution is interpreted through the lens of the balance of arms established therein, not just a simple reading of what the written constitution requires. Instead of dismissing Dualminster norms as simply against the law or outside the purview of constitutional theorists, intercurrence and political constitutionalism reject a "sharp distinction" between law and politics.[54] Intercurrence posits that sanctions are prior to norms, therefore the balance of arms in a written constitution will determine how the rest of the document is interpreted in practice. By focusing on case studies where written norms and the political constitution have developed in tandem, this power dynamic has easily been overlooked. The case studies in this thesis bring the importance of the balance of arms into focus, because they are living experiences of how practical sanctions can re-shape and discard written norms.

The political constitution as intercurrence shows that the tasks of describing the existence of norms and the task of accounting for why they exist are inextricably linked. Norms are observed by the way in which institutions consistently interact over time.

[54] ibid 278–9.

Because all institutions represent their own legal order, the role of the academic lawyer is to unpick the institutional forces that generate specific norms. The balance of arms and its effect on interpretations of the written constitution fits with Romano's desire to represent institutions through concrete-order thinking. This alone can guide academic lawyers from simply observing norms into the realms of sanction-norm relationships. More than this, though, the political constitution as intercurrence (unlike Romano) also requires us to acknowledge the sociological character of institutions as part of their legal order. The communal presidencies have distinct sociological characters in Dualminster. Their historical, political beginnings continue to influence the way in which they behave today. The conflict between the Dualminster's written constitutions and its political constitution can only be explained coherently by journeying up steam and looking into the various institutional forces at work.

2. Dualminster

This section sets out the common features in the Dualminster family of political constitutions. As mentioned already, the term 'Dualminster' is used to capture the communal president's dual role as the head of state and government in systems that retain WMCFs. This section identifies five common features in the political constitutions of Sri Lanka since 1978 and Guyana since 1980. The combination of the balance of arms, along with the sociological character of the communal president, linked to a specific period after decolonisation, has created five distinct constitutional norms. These are (1) the communal president as government; (2) close nexus between cabinet and the legislature; (3) parliament as a platform for performative politics; (4) the president must command confidence in parliament; (5) the Commonwealth as a point of constitutional reference. In (1), (3), and (4), the balance of arms has shaped the practical use of written constitutional norms.

2.1 The Communal President as Government

Under the Dualminster system, the communal president reigns supreme across the executive. Both the cabinet and the public service are political arms of the president. In Guyana, this was originally an overt part of the 1980 Constitution. As mentioned in Chapter III, Burnham declared party paramountcy during a special 1973 PNC

congress and again in the 1974 Declaration of Sophia.[55] In 1974, the PNC secretariat was combined with a new, broad-remit government department and became known as the People's National Congress and the Ministry of National Development. Burnham used this apparatus to promote the PNC electorally with public resources, to mix PNC party officials and officials in the public service at all levels, and also to give public infrastructure a distinct PNC character.[56] The 1980 Constitution states that

> The executive authority of Guyana shall be vested in the President and, subject to the provisions of this Constitution, may be exercised by him either directly or through officers subordinate to him.[57]

Executive power therefore always flows from the president and can be wielded directly by the president where necessary. The combination of the 1980 Constitution and party paramountcy, its political context, gave Burnham "something close to absolute power".[58] Burnham's quip to public servants, trade unions, and workers that "if I fire you, you remain fired" was not an empty threat.[59] Although Guyana has since made efforts to disentangle public services from the president personally, new presidents continue to politicise notionally independent parts of the executive. Opposition parties on both sides of the political divide have regularly criticised the replacement of permanent secretaries after a change in government and permanent secretaries have also been accused of participating in party affairs.[60]

Sri Lanka's public service had become increasingly politicised since its first republican constitution in 1972. After 1978, politicisation continued and power became more

---

[55] Ivelaw L Griffith, 'The Military and the Politics of Change in Guyana' (1991) 33 Journal of Interamerican Studies and World Affairs 141, 145.
[56] ibid.
[57] Constitution of Guyana 1980, Art. 99.
[58] Emile Mervin, 'Party Paramountcy and the 1980 Constitution Combined to Give Burnham Something Close to Absolute Power' *Stabroek News* (10 March 2007) <https://www.stabroeknews.com/2007/03/10/news/guyana/party-paramountcy-and-the-1980-constitution-combined-to-give-burnham-something-close-to-absolute-power/> accessed 17 November 2023.
[59] *Guyana: Fraudulent Revolution* (Practical Action Publishing and Latin America Business Bureau 1984) 54 <https://practicalactionpublishing.com/book/971/guyana-fraudulent-revolution> accessed 28 November 2022. 56.
[60] 'Politicising the Public Service' *Kaieteur News* (21 May 2015) <https://www.kaieteurnewsonline.com/2015/05/21/politicising-the-public-service/> accessed 17 November 2023; INEWS, 'PPP Condemns Removal of Permanent Secretaries' (*INews Guyana*, 31 May 2015) <https://www.inewsguyana.com/ppp-condemns-removal-of-permanent-secretaries/> accessed 17 November 2023.

condensed in the head of government. As seen in chapters II and III, a combination of changes in the 1972 Constitution resulted in enhanced cabinet control over the legislature and the public service. Appointment and dismissal powers over public officers was key in this. The 1978 Constitution, which created the executive president, continued the trend of politicised public services. As mentioned in Chapter III, Jayewardene saw the executive presidency as an institutional embodiment of monarchical traditions. We saw in Chapter II that, like Guyana, Sri Lanka has attempted to re-establish non-partisan public services, however there has been a battle over public service appointments since the Seventeenth Amendment to the Constitution. The Constitutional Council has had its composition and powers changed periodically since its creation. It is not necessary to repeat the description of public service politicisation here, but, needless to say, it is an often-observed feature of Sri Lanka's political constitution. Loosening the presidential grip on the executive is always a major component of democratisation campaigns.

As would be expected in the change from Westminster model cabinet government to something more presidential, Dualminster systems also enhance head of government control over cabinet. An example of an explicit reference to this change in the constitutions may be seen in a comparison between Sri Lanka's 1972 (republican parliamentary) and 1978 (semi-presidential) constitutions:

> Of the Ministers, one who shall be the head of the Cabinet, shall be styled the "Prime Minister"; of the other Ministers one shall be styled the "Minister of Justice" and another shall be styled the "Minister of Finance".[61]

This provision in the 1972 Constitution is clearly designed to accentuate a collegial relationship between the prime minister and other cabinet ministers, particularly the 'great offices of state'. This stands in contrast with the 1978 Constitution, which states that the president is the "the Head of State, the Head of the Executive and of the Government, and the Commander-in Chief of the Armed Forces".[62] The constitution further provides that "the President shall be a member of the Cabinet of Ministers, and shall be the Head of the Cabinet of Ministers".[63] As discussed in chapters I and III,

[61] Constitution of Sri Lanka 1972, Art. 46(2).
[62] Constitution of Sri Lanka 1978 (as originally passed), Art. 30(1).
[63] ibid Art. 43(2).

these were not simply changes to the language of the constitution. The executive presidents were more secure and more dominant in their role as head of government than they could have been as prime minister, and in Sri Lanka this was an explicit reason given by Jayewardene for making the change.

As with other Dualminster features, the communal president as government can be observed from practice, but can also be explained by the balance of arms. Although the president is acknowledged as the head of government and cabinet in these constitutions, it is the sanctions at the president's disposal that make the officeholder so dominant throughout cabinet and government. The president is free to appoint and dismiss public servants, including top commissioners, with limited oversight mechanisms. As described in Chapter III, this was particularly apparent in Burnham's Guyana. The police service was racialised and politicised as well as other nominally independent branches of government. Even now, with constitutional reforms designed to target this trend, the judiciary and commissions struggle to protect civil servants from politicisation by the president. Article 225 of the constitution governs removal of certain constitutional officeholders, including police commissioners. Even for officeholders' whose removal is governed by Article 225, the president previously retained the power to remove them without anyone else's approval in the 'public interest'. After these provisions were reformed in a drive to decrease politicisation, the matter is more nuanced than before. Removal entails manner and form restrictions, such as the appointment of an independent commission of inquiry. Also, if this commission finds that the individual should be removed from office, then the president has no choice but to oblige.

These provisions were tested somewhat when, in June 2021, President Irfaan Ali suspended members of the police service commission. Many believed that this was the president's response to the commissioners refusing to promote one of the president's favoured officers when that officer was under investigation.[64] The president acted without first appointing a commission of inquiry, arguing that this was impossible because the judicial service commission had not been appointed. However, the judicial

[64] Paul Slowe, 'Letter in Response to AG Nandalall's Attempt to Justify the Unconstitutional Action of President Ali' (*Guyana Graphic*, 15 April 2023) <https://www.guyanagraphic.com/opinion/letter-in-response-to-ag-nandalalls-attempt-to-justify-the-unconstitutional-action-of-president-ali/> accessed 20 November 2023.

service commission was only unappointed because of the president's own inaction. The High Court held that this suspension was unlawful because the president could have appointed the judicial service commission if he wanted, and therefore a commission of inquiry.[65] Therefore, although the president does have power to dismiss such officeholders, nonetheless this share of the balance of arms has been constrained somewhat by manner and form. Suspensions also require distinct procedures and not merely the president's own discretion. However, just as this case shows that there are new strengths in Guyana's public service since the constitution was reformed, it also shows that attempted politicisation of public services is part of its constitutional practice. Similar trends can be seen in Sri Lanka's Constitutional/Parliamentary Council that has been altered in every round of constitutional reforms since the Seventeenth Amendment. Reforms designed to strengthen the presidency always make the commission an advisory body rather than one where the president is forced to act on advice, as discussed in Chapter II.

Chapter II also discussed how the executive strength of the communal president is not just a product of background sanctions, but also its role as a symbol and driver of statism and (relatedly) communalism. The presidents' authority derives partly from narratives of communal victory and state power. This is seen most vividly in post-war Sri Lanka, where the executive president (Rajapaksa) and presidency (the office) were seen as key components in bringing the war to a close. In Guyana, the communal presidency is the ultimate prize for two ethnic communities that routinely turn executive power against one another when they win elections.

In conclusion, the president's sway over the executive is not simply a product of norms that specifically allow for this type of politicisation. Quite the opposite, the written constitutions appear to require impartiality in public services. Norms around the role and character of the public service have been transformed by the president's share of the balance of arms and the office's symbolism. Appointment and dismissal powers are upstream from norms around public service impartiality. The communal president as government is a product of a specific balance of arms between the president and

[65] 'Court Rules President Ali Violated Guyana's Constitution' *Loop News* (24 March 2023) <https://caribbean.loopnews.com/content/court-rules-president-ali-violated-guyanas-constitution> accessed 9 April 2024.

the rest of the executive as well as the office's sociological character within communally divided polities.

2.2 Close Nexus Between Cabinet and the Legislature

Dualminster is further characterised by a close nexus between cabinet and the legislature. This is part of the historical progression from a Westminster model constitution to one with an executive president. As seen in Chapter II, in both countries ministers must also be MPs. Therefore, unlike other semi-presidential and presidential systems where cabinet ministers are normally drawn from outside the legislature or resign their seat in the legislature after appointment, in Dualminster there is a close nexus between the two branches through their personnel.[66] Unlike some of the other Dualminster features, this is not so much a product of the balance of arms as it is a product of historical development. However, it does have an important effect on Dualminster government. From parliament's perspective, it should allow for closer scrutiny of the executive because ministers are always at hand. However, as discussed in Chapter II and in the next subsection, parliamentary scrutiny is difficult under the Dualminster system. Rather, then, the close nexus between parliament and ministers adds to trends of limited parliamentary oversight. Furthermore, the combination of collective cabinet responsibility, that holds ministers in line with the president, along with limited numbers of MPs, serves to strengthen the president's hand in the legislature. Ministerial appointments can be used to guarantee the president votes in parliament and limited backbench scrutiny. For exactly this reason, democratisation reforms in Sri Lanka seek to limit the numbers of cabinet and non-cabinet ministers, and the amendments passed by counter-reforms re-inflate ministerial numbers.

2.3 Parliament as a Platform for Performative Politics

Dualminster has only limited parliamentary oversight. However, a recognised opposition can use parliament to air grievances and critiques of the government. This is a product of the Westminster-derived norm that there must be a recognised opposition and the legacy of adversarial politics. The application of this norm and its

[66] See, for example, France, where membership of the government is "incompatible with the holding of any Parliamentary office" (Constitution of France 1958, Art. 23)

historical legacy are shaped by the balance of arms between parliament and government, particularly dissolution and prorogation powers and anti-defection laws.

Although Dualminster constitutions provide that parliament should oversee and scrutinise government action and legislation, these norms lack significant application. Sri Lanka's 1978 Constitution provides that

> There shall be a Cabinet of Ministers charged with the direction and control of the Government of the Republic, which shall be collectively responsible and answerable to Parliament.[67]

As described in Chapter II, Guyana has preserved similar rules in its written constitution. Naturally, both constitutions also have comparable norms around scrutinising and amending legislation. However, despite these written norms, in practice Dualminster has only limited parliamentary oversight. In a comparative study of parliaments in Sri Lanka, Bangladesh, and India, Rahman found that

> parliamentary committees in Bangladesh, India and Sri Lanka do not perform at par with their counterparts in the Western world in controlling the government and holding it to account. They lag far behind other parliamentary democracies in Western Europe and Commonwealth countries in term of institutional arrangements and practical implications in securing government accountability. However, committees' role in securing government accountability in these three countries cannot be overlooked.[68]

Specifically in Sri Lanka, Rahman found that anti-defection rules and dissolution powers (discussed in this chapter as the balance of arms) seriously disadvantaged committees relative to the executive.[69] Interviewees "were unanimous in their opinion that at least the provision of the president's power to dissolve parliament after one year of parliament's life at his/her will or convenience must be abolished in order to keep the parliament alive".[70]

---

[67] Constitution of Sri Lanka 1978 (as amended up to the Twentieth Amendment), Art. 43(1).
[68] Taiabur Rahman, *Parliamentary Control and Government Accountability in South Asia: A Comparative Analysis of Bangladesh, India and Sri Lanka* (Routledge 2007) 200.
[69] ibid 197.
[70] ibid 172.

Similarly in Guyana, commentators have been concerned that deals involving the country's recently discovered oil wealth will not be properly scrutinised by parliament. During the passage of the Petroleum Activities Act 17 of 2023, the opposition tabled an amendment that would have allowed special parliamentary oversight of deals negotiated directly between the government and a provider (without a competitive tender). The amendment was rejected by the government and the Act does not explicitly provide for any parliamentary oversight.[71] In 2022, the government had similarly been criticised for failing to summon meetings of the parliamentary sectoral committee on natural resources.[72] The Oslo-based Extractive Industries Transparency Initiative also suspended the Guyanese natural resources watchdog for a period for failing to submit an annual report.[73] These are not new trends, rather, natural resources have shed light on an already struggling parliamentary oversight system.[74]

Although Dualminster struggles to provide effective parliamentary oversight, nonetheless parliament works well as a forum for opposition grievances and performative politics. There is no doubt that Dualminster parliaments are animated institutions where political ideas clash and debate takes place. The norm that there must be a recognised opposition leader and the Westminster legacy of adversarial party politics continue to influence these institutions. For example, although power sharing has frequently been proposed as an alternative for Guyana, various political elites have remained attached to adversarial parliamentarism at crucial moments. Perhaps most famously, both the government and the opposition rejected proposals for power sharing after the 1997 elections, when the country was on the brink of civil war. Desmond Hoyte, leader of the opposition PNC, described formal and permanent power sharing as a "nebulous concept" and argued that there would always need to

---

[71] 'Govt. Refuses to Have Parliamentary Scrutiny for Oil Blocks Awarded through Direct Negotiations' *Kaieteur News* (13 August 2023) <https://www.kaieteurnewsonline.com/2023/08/13/govt-refuses-to-have-parliamentary-scrutiny-for-oil-blocks-awarded-through-direct-negotiations/> accessed 20 November 2023.

[72] Denis Chabrol, 'Govt Avoiding Parliamentary Scrutiny of Natural Resources Sector' *Demerara Waves* (25 November 2022) <https://demerarawaves.com/2022/11/25/govt-avoiding-parliamentary-scrutiny-of-natural-resources-sector/> accessed 21 November 2023.

[73] Denis Chabrol, 'Global Extractive Industries Transparency Watchdog Lifts Guyana's Suspension' *Demerara Waves* (4 July 2023) <https://demerarawaves.com/2023/07/04/global-extractive-industries-transparency-watchdog-lifts-guyanas-suspension/> accessed 21 November 2023.

[74] 'Oil Development Will Challenge Guyana's Institutions' [2018] Oxford Analytica <https://doi.org/10.1108/OXAN-DB233622> accessed 21 November 2023.

be a formal opposition to hold the government in check.[75] Twenty years earlier, when Cheddi Jagan proposed a 'national front government', Burnham retorted that

> if the Bolsheviks had shared power with the Mensheviks, the history of the majoritarian or pluralitarian Soviet Union would have been very different.[76]

Indeed, after the post-1997 constitutional reforms, one of the main changes was to re-establish the independence of the leader of the opposition, discussed in chapters II and III. This recognised opposition in an adversarial parliament creates a dynamic hub for political discourse. During budget debates, for example, there is no doubt that parliament plays an important role in Guyanese political life. After the 2021 budget created significant tension in the chamber, the *Guyana Times* criticised the conduct of some MPs, but also acknowledged that

> As part of the tradition inherited from the English House of Commons, Parliamentary debates are a major plank in the edifice of democratic, representative governance. With the political system driven by the logic of agglomerating majorities, the competing parties invariably adopt positions in opposition to each other, so as to distinguish themselves. As such, it is expected that during debates in Parliament, statements can become pointed […] As is implied by its name, the "Opposition" is supposed to identify flaws or weaknesses in the Government's proposals, and propose alternative measures if they so desire.[77]

Therefore, Guyana's energetic debates reflect the political character of parliament as an institution (part of the Westminster legacy) and also specific norms around a recognised opposition.

Parliament as a platform for opposition grievances is a norm in the political constitution. It has been produced by the interaction between the balance of arms at

[75] Selwyn Ryan, 'Power Sharing in the Caribbean: The Search for Equity and Security' (2002) 8 Caribbean Dialogue 1, 19.
[76] ibid 18. For power sharing, see more generally David Hinds, *Ethno-Politics and Power Sharing in Guyana: History and Discourse* (New Academia Publishing 2011).
[77] 'Parliamentary Debates' *Guyana Times* (28 February 2021) <https://guyanatimesgy.com/parliamentary-debates/> accessed 21 November 2023.

play, written norms in Dualminster constitutions, and the sociological background of parliament as an institution. As described in the case of Sri Lanka above, the three key sanctions at the president's disposal are the power to dissolve and prorogue parliament and, as party leader, to recall MPs who defy the whip. Just as Rahman describes these as the background to a lack of parliamentary scrutiny in Sri Lanka, so too are they important features in Guyana's constitution. Chapter IV demonstrated how effectively presidents in Sri Lanka and Guyana can use prorogation and dissolution to prevent hostilities in parliament from interfering with their government. Not only this, but anti-defection laws normally guarantee the president a majority in parliament. As discussed in Chapter II, in Guyana the president has at least a plurality of the vote. In a two-party dominant system, this normally translates into a majority. In Sri Lanka the presidential and parliamentary elections tend to be held so close together, and the presidential ones first, that the party that wins the presidency normally achieves a majority in parliament.[78] Therefore, the president's party tends to command a majority in parliament and this majority is locked in by anti-defection laws whereby undisciplined MPs may be recalled and replaced without a by-election. The sanctions at the president's disposal are so disproportionate to those at parliament's disposal (or those of individual MPs) that it is unusual for government party MPs to scrutinise the executive in any way. In parliaments that still run on Westminster model, majoritarian standing orders, this makes parliamentary scrutiny very difficult.

On the other hand, just as the balance of arms can skew written norms in the president's favour, so too does the balance of arms facilitate parliament as a platform for opposition views and grievances. The president might use sanctions and threats to block parliament from gathering information on the executive and producing hostile committee reports, but parliament still gives a space of dissenting voices, even if these can only be heard in debate. As discussed in the first section, one of the blind spots in Santi Romano's work is that it overlooks the historical, sociological character of institutions. Parliaments in Dualminster have a historical legacy of rigorous debate and adversarial politics. Also, anti-defection laws work against the executive for opposition MPs, who may be recalled if they do not follow the opposition line. Compromise and co-option are therefore difficult and parliament allows the opposition to make their

[78] Peter Reid and Gayanthi Ranatunga, 'Parliamentarism in Sri Lanka: Lessons from Bangladesh' (forthcoming) Indian Law Review.

voice heard. Parliament is an effective platform, even if opposition cannot use the *tools* of parliament to scrutinise the executive fully. Combined further with ministers' close nexus with the legislature, whereby government representatives are close at hand and must defend themselves on the floor of parliament, this is a significant Dualminster safeguard.

2.4 The Communal President Must Command Confidence in Parliament

Although the written norms of Dualminster constitutions envisage cohabitation as an option for government, under the political constitution this is impossible. An assessment of Dualminster's history shows us that cohabitation periods are fraught and ultimately unsustainable. Again, this abandonment of the written constitution's norms can only be explained by the balance of arms and the sociological character of Dualminster institutions. Westminster legacies in parliament, where the government should have a majority in the face of adversarial politics, and also the distinct character of the communal presidency, which was designed for centralised control, prevent stable cohabitation. The balance of arms, whereby the president may prorogue and dissolve parliament and (in Guyana) parliament may remove the president facilitates this Dualminster feature.

As seen in Chapter IV, no Dualminster government has survived cohabitation. Every time there was cohabitation, this eventually resulted in the demise of the parliament and, sometimes, the president. The longest run at cohabitation in Sri Lanka was the Kumaratunga/Wickremesinghe government. Even during this period, the administration was beset by instabilities and both sides spent time plotting how to oust the other from power. During the Sirisena/Wickremesinghe constitutional crisis (where the president and parliament entered into government as allies after campaigning on the same ticket and then split during the parliament's term), constitutional provisions around confidence, prorogation, and dissolution again proved instrumental.

The importance of WMCFs and adversarial politics was also seen during Guyana's two constitutional crises (both times when the president lost the confidence of parliament). Chapter IV demonstrated that the combination of a Westminster-style parliament (where a majority is needed to stabilise adversarial politics) and the communal president (which carries its historical legacy of centralisation) requires the

communal president to have a majority in parliament. Furthermore, also discussed in Chapter IV, cohabitation periods were not unbreakable. Prorogation and dissolution, the president's power (or lack thereof) to appoint a prime minister, and Guyana's no-confidence vote meant that, when the two branches could not work together, eventually one or both were replaced with fresh elections.

2.5 The Commonwealth as a Point of Constitutional Reference

Throughout Dualminster, certain written norms are interpreted with reference to comparative Commonwealth experiences. This final Dualminster feature does not derive from the balance of arms. Rather, it comes from the written constitution and from the sociological character of Dualminster institutions. Just as it is well known that certain constitutional norms come from the Westminster model, so too these norms tend to be interpreted through comparison with other Commonwealth jurisdictions. An example of this can be seen Chapter IV, when the CCJ interpreted no-confidence procedures in Guyana's constitution by referring to the British House of Commons. Another example can be found in a 2012 motion of no-confidence against then-minister of home affairs, Clement Rohee. These events raised the issue of joint ministerial responsibility. Comparing Guyana to the UK and India, one commentator remarked that "those proceedings attract the maxim – *ex nihilo, nihil fit* – out of nothing, cometh nothing".[79] Also during the Rohee affair, Ramjattan argued that

> Conventions are but what is called the lubricant to ensure that there is better governance for the Westminster machinery and this is a Westminster democracy because of its origins, notwithstanding there is a written Constitution.[80]

Similar comparisons are often made in Sri Lanka, too. Some of the Commonwealth reference points for the 2018 constitutional crisis have already been mentioned in Chapter IV and elsewhere.[81]

---

[79] Hydar Ally, 'No-Confidence Motion against Rohee Was Constitutionally Impermissible' *Stabroek News* (16 November 2012) <https://www.stabroeknews.com/2012/11/16/opinion/letters/no-confidence-motion-against-rohee-was-constitutionally-impermissible/> accessed 21 November 2023.

[80] Official Report, 10th Parliament, 31st sitting (Thursday, 22nd November, 2012), p. 56.

[81] Asanga Welikala, 'The Dismissal of Prime Ministers in the Asian Commonwealth: Comparing Democratic Deconsolidation in Malaysia and Sri Lanka' (2020) 91 Political Quarterly 786.

This Dualminster norm is not a point of celebration, but rather institutional reality. Also, it may be becoming more regional than Commonwealth over time. As discussed in Chapter I, Sri Lanka and Guyana became increasingly uncomfortable with the Westminster model after independence. The communal presidency was seen as part of decolonisation and reclaiming the tools of government. Both countries' relationship with Westminster-style government remains complex. It is therefore probably out of rationalism and practicality that Commonwealth comparisons remain important for understanding certain constitutional norms. These comparisons are an honest acknowledgement of shared constitutional styles and they help politicians and jurists to strengthen and legitimise their interpretation of norms against other interpretations. This also aligns with chapters III and IV, where it was seen that Commonwealth comparisons became more frequent in Guyana and Sri Lanka during constitutional crises and times of political instability.

More than this, though, the regional component to constitutionalism across South Asia and the Caribbean also re-enforces the Commonwealth as a point of constitutional reference. Countries pay particular attention to comparative experiences from other Commonwealth nations within their own region. This is becoming more formalised in Guyana, where the CCJ increasingly deals with these issues. Therefore, the final Dualminster norm, the Commonwealth as a point of constitutional reference, may become increasingly regional over time, but it will remain pertinent.

Conclusion

This chapter has brought the findings in this thesis into the realm of constitutional theory. The cases selected for this study, underexplored in the existing literature, force us to make innovations in constitutional theory in order to account for their unique trajectories. The case studies require us to bridge the gap between institutional and legal studies and realise that these two separate fields do, in fact, address the same phenomenon. By reimagining the political constitution as intercurrence, we gain new insights into how norms are generated by institutional forces and how one cannot be explained without the other. The balance of arms and institutions' sociological character determine interactions between institutions, which create distinctive constitutional norms. Each institution is at once its own legal order and also a

component of the state. The political constitution is therefore the products of distinct legal orders coming into contact with each other.

To identify and discuss the political constitution, we cannot be confined merely to a description of its norms. To understand each norm in its entirety, we also need to examine the balance of arms and sociological character of institutions that generate them. This backdrop of sanctions and institutional identities re-shapes and discards the norms of the written constitution to create a legal unity. The written constitution is at once both its creator and destroyer. By creating institutions and setting out a specific balance of arms, everything else in the written constitution is then filtered through this political reality. Other norms, with equal importance to the balance of arms on paper, are morphed by power relations. The sanction is predominant to the norm. The political constitution as intercurrence sheds light on the balance of arms because the apparent disconnect between Dualminster's written constitution and its political constitution.

The thread that ties institutions together, whereby they are distinct legal orders in some analyses and institutional conglomerates in other analyses, is interests. The more aligned institutions' interests are against an external threat, the more they will behave as a single legal order. Therefore, to analyse the state, we need to address its largest component parts and how they compete for more power within the state as a whole. The political constitution in Dualminster systems is not characterised by harmony but, rather, disharmony and competing institutions.

By approaching the experiences of Sri Lanka and Guyana in this way, we no longer have to cast constitutional experiences into the void of being 'extra-legal' or 'imperfect'. Instead, we can see that the political constitution is a direct consequence of specific constitutional design choices and institutions' sociological contexts. Indeed, there are five features that distinguish this as a specific family of constitutions. Each of these norms has an important lesson for how the balance of arms between institutions affects a legal order.

Conclusion

This thesis has addressed four research questions. Firstly, how and why did Sri Lanka and Guyana, representing British post-colonies in two continents, which started their constitutional existence as independent states as Westminster model parliamentary systems, convert to some form of presidentialism? Secondly, how do these hybrid constitutions operate in practice? Thirdly, is it possible to theorise a discrete model of government based on the marriage of presidentialism and Westminster model constitutional features in the similar but distinctive conditions of these case studies? And finally, what does their analysis, individually and comparatively, tell us about constitutional democracy and historical institutionalism? This conclusion reflects on this thesis' findings in relation to these research questions and then describes further avenues for future research.

1. Reasons and Methods of Adopting Dualminster

Sri Lanka and Guyana both adopted a new form of constitutionalism, which combines WMCFs with an executive president, in response to patterns in government that had emerged after independence and universal franchise. In Sri Lanka, JR Jayewardene saw an executive presidency as instrumental in addressing Sri Lanka's economic decline and, to a lesser extent, reaching an agreement to the national question with the Tamils. For Forbes Burnham, on the other hand, the executive presidency was another step in his own, personal consolidation of power. Proportional representation had been introduced before independence to guarantee him the premiership, however Guyana's ethnic voting patterns burdened Burnham with coalition government. Rigged elections were the main tactic in entrenching the PNC's rule. However, the presidency also elevated Burnham within the government and made him less dependent on support from the legislature, too. Even if the PNC had to govern by coalition again, Burnham could not be removed by a vote of no-confidence.

For Jayewardene, only an executive president, with a fixed term, would be able to make unpopular changes to the Sri Lankan economy that he considered essential to long-term prosperity. Since universal franchise, but especially since independence, Sri Lankan politicians had engaged in political bidding at election time, and the welfarist

benefits that they installed were impossible for future governments to reduce. Attempts to reduce the rice subsidy, for example, had left governments fighting for their survival. While Ceylon had begun independence with one of the best economies in Asia, it had squandered its advantages and fallen behind many of its neighbours. During Sirimavo Bandaranaike's time as prime minister, increasing state control of the economy had led to black markets even for staple foods. In addition, Sinhalese chauvinism had hindered prime ministers from reaching a sustainable agreement with Tamil groups and communal violence was on the rise. Although Jayewardene could not deliver the executive presidency until he won power in 1977, he had argued for this institutional change since the 1960s and had even proposed it when the rival SLFP was in power. Jayewardene believed that a head of government who was less accountable to other institutions (especially parliament) would reduce the political incentives for harmful, short-sighted policies.

Forbes Burnham saw the executive presidency as one institutional component of a socialist party-state. Shortly after the introduction of universal franchise, and on the lead-up to independence, British Guiana descended into communal divisions between Indo- and Afro-Guyanese. These divisions were provoked by Britain and America as part of a Cold War struggle against communism, however they also had roots in the colonial era and both Forbes Burnham and Cheddi Jagan were willing to capitalise on ethnic voter bases. Although Burnham was willing to settle for coalition government with the UF at independence, he increasingly co-opted and destabilised his coalition partners as way to consolidate power. Especially as its popularity started to decline, the PNC rigged elections to deliver ever-increasing legislative majorities. The 1980 Constitution, and especially the executive presidency, was the final institutional step in this pattern of de-democratisation and personalism. As well as the new, unchecked powers of the presidency, Burnham would not be hostage to no-confidence motions even if free elections were to be held again.

The opposing ideologies of Burnham and Jayewardene (one Marxist, the other relatively liberal) have left lasting imprints on the constitutions of Guyana and Sri Lanka. To a certain extent, Guyana explicitly constitutionalises the actual political practice of executive and legislative appointments in contemporaneous communist states. The combination of the executive presidency and the alphabetical list system

means that the electorate effectively votes for a president and then the president appoints his selection of candidates to the legislature. The leader of the opposition also appoints his selection of candidates to the legislature. During the era of election rigging, the opposition's share of MPs obviously became smaller and smaller. The public therefore can only be sure of the identity of the party leaders in advance, not the precise candidates from the alphabetical list who will be selected after a number of seats have already been allocated to the party leaders. When there were still regional council appointees to the National Assembly during Burnham's era, these appointments were also dictated by Burnham in practice.

Jayewardene, on the other hand, was influenced by de Gaulle's French Fifth Republic. There are therefore separate elections for parliament and the presidency under the 1978 Constitution, and parliament is elected on a PR basis. Direct presidential elections were designed to give the president a clear mandate and PR was hoped to prevent drastic electoral swings and facilitate minority cooperation. Under the 1978 Constitution, the public service was centralised and the head of government was elevated within cabinet. On the other hand, as in de Gaulle's constitution, judicial independence was purported to be maintained or even strengthened on paper. Jayewardene also introduced the French referendum mechanism. In the history of the 1978 Constitution, this has only been used once, and this was to prolong the life of the parliament where Jayewardene had a super-majority.

Rather than replacing the constitutions as they were at independence, executive presidencies and related constitutional changes were *incorporated into* the institutional landscapes of post-colonial Sri Lanka and Guyana. While the executive presidency does represent a significant institutional change in these countries, it has co-existed with anterior WMCFs. Chapter II identified seven WMCFs and tracked how these have been preserved and altered since the move to executive presidentialism. These WMCFs are (1) strong-form dissolution and prorogation procedures; (2) individual and collective ministerial responsibility; (3) independent public services; (4) a recognised leader of the opposition; (5) ministers necessarily being members of the legislature; (6) a Westminster model speaker; and (7) Westminster model public finance procedures. On paper at least, these provisions have proved durable, but with some

alterations since independence. Those amended the most tended to concern the independence of public services.

2. Dualminster in Practice

Chapters III and IV explored how WMCFs and the new executives operate in practice. The executive presidencies have, in fact, become communal presidencies. The change from prime minister to executive president was part of an ongoing process of executive centralisation in both countries. This was linked to patterns of communal dominance. The communal presidencies have become symbols and drivers of this exclusionary constitutionalism. Regarding WMCFs, these provisions have, in their application, been shaped by the presence of the communal president but have also shaped the communal presidency, too. WMCFs and communal presidencies have existed *in relation* to each other.

In Guyana, Burnham created the executive presidency as part of a project to create a party-state within an ethnically divided polity. Guyanese, especially Indo-Guyanese, were controlled by the state through a combination of patronage and coercion. The economy was increasingly brought under state control and lucrative appointments were reserved for Burnham's supporters. Indo-Guyanese found it particularly difficult to gain public service employment and advancement and the public service became an explicitly political vehicle under party paramountcy. The police and armed forces were dominated by Afro-Guyanese and both state and paramilitary armed organisations were used as PNC enforcers. Within this context, the executive presidency symbolised the personalisation of power in Burnham, beyond even the pre-existing centralisation of power in the PNC. Direct and unaccountable control over the public service and armed forces also held actual utility for Burnham, beyond merely symbolism. Subsequent Guyanese presidents, despite the return to free and fair elections, have continued patterns of communal rule through this high-powered office.

In Sri Lanka, JR Jayewardene also continued a pattern of executive centralisation in constituting the executive presidency, however the communal component derived from unstoppable political overtures of which constitutional change caught the echoes. As described in Chapter III, post-independence Ceylonese politics developed a path-dependent pattern of communalism. While Jayewardene may have believed that the

presidency would give him the freedom to reach an agreement on the national question, or that proportional representation would produce more cooperative minority MPs, or that direct presidential elections would force candidates to temper communalist rhetoric, none of these predictions proved accurate. Even Jayewardene himself used the imagery of the Asokan monarch to 'Sri Lankanise' the executive presidency while also appealing to Sinhalese nationalism. Ultimately, the office and the constitution were, to some degree, affected by wider historical events and cannot be wholly analytically separated from Sri Lankan communalism. The politician that was most successful in making a 'communal' office out of the presidency was Mahinda Rajapaksa. The Rajapaksa presidency, particularly, shows how intertwined communalism and executive centralism are. The president's enhanced executive powers were used to bring a bloody conclusion to the civil war, but also corrupt and intimidate the country more generally and thereby entrench Rajapaksa's rule.

Ministerial responsibility is understood in Dualminster both as a WMCF and also as something that has been shaped by the executive presidency. Ministers in Guyana must be accountable to the National Assembly and collective responsibility gives them both the protection of their cabinet colleagues and discipline in dealing with the legislature. However, this does not mean that the parliament can remove a minister through a vote of no-confidence. Because of the president's status as a co-equal component of parliament, along with the National Assembly, the National Assembly must respect the status and rights of ministers and has no power over their appointment and removal. In relation to their status as MPs, ministers also have this, separate, source of rights in the legislature. The Rohee removal debate, however, does show that there was an *expectation* that a no-confidence motion in a minister would be more impactful in Guyana than in a system closer to American presidentialism. The procedure was still interpreted with reference to other Commonwealth constitutions.

In Sri Lanka, WMCFs on ministerial responsibility shape the judiciary's understanding of the role and procedures of cabinet. The judiciary has found that these provisions determine cabinet members' powers in signing agreements with other bodies. Also, the judiciary has voiced opinions on the requirements of honesty and integrity within

cabinet by using these WMCFs as a gateway into what may otherwise be beyond the limits of judicial deference.

The cabinet-parliament nexus is also both influenced by and, in turn, influences the communal presidencies. Generally, this WMCF works to the president's advantage and the legislature's disadvantage compared to a strict separation of powers. In small, unicameral legislatures, the governing party can limit dissent within their own ranks by swamping the legislature with ministerial appointments. Not only this, but the legislatures continue to rely on Westminster-style checks and balances such as performative debate rather than technical scrutiny. The president's distance from the legislature therefore renders these procedures ineffective. Committees also struggle in their scrutiny role and, in Sri Lanka, the ministerial consultative committees have become forums for lobbying the executive. On the other hand, even if the president can escape scrutiny, other ministers are routinely subject to performative adversarial debate. This is a significant check within the Dualminster system.

Speakers in Sri Lanka and Guyana are still held to Westminster-style standards of impartiality, however these standards are often difficult to uphold in practice. Although Guyanese and Sri Lankan MPs continue to invoke requirements of impartiality, speakers have had to tread a difficult line between their ongoing party affiliations and the rights of opposition and minority MPs. In Sri Lanka, Jayasuriya became a key figure in the 2018 constitutional crisis and worked to defend the rights of parliament against the executive president. The Sri Lankan speaker also has unique roles in certifying legislation as the final stage in enactment and sitting as chair of the Constitutional Council.

Both Sri Lanka and Guyana have preserved a recognised leader of the opposition. Since independence, and despite PR, politics has remained essentially adversarial. In Guyana, there is a full shadow cabinet, while in Sri Lanka there is only a single opposition leader. Guyana's mode of selecting the leader of the opposition suggests that there may be some duty to other opposition parties, whereas Sri Lanka's leader of the opposition simply represents the largest non-government party. Sri Lanka's leader of the opposition has also been given a new role in relation to the Constitutional Council and Guyana's leader of the opposition has had their role in official appointments strengthened on paper, however this has had little impact in practice.

Where the leadership of the opposition has changed during a term of the National Assembly, Guyana has found ways to get the new party leader a seat in the National Assembly and replace the ousted leader.

Public finance procedures, and the lack of a backstop where the legislature votes down an appropriation bill, were a component of Guyana's constitutional crisis during Ramotar's presidency. The president ignored the legislature's spending cuts and this eventually led to attempts at a no-confidence motion. In Sri Lanka, inflexible public finance procedure also became an issue during the Covid pandemic.

Prorogation and dissolution powers over the legislatures are key weapons in the Dualminster president's arsenal. In both Sir Lanka and Guyana, these powers have been used to try and bend the legislature to the president's will and destabilise legislative opposition during constitutional crises. President Sirisena used prorogation to buy him and Mahinda Rajapaksa time to engineer crossovers in support of the new purported cabinet. Where this failed, he also tried to use dissolution, however this was blocked by the court. Under the pre-Nineteenth Amendment constitution, this would not have been so. Ramotar, on the other hand, simply used prorogation to avoid a no-confidence vote and delay the inevitable elections until a more opportune moment. Unlike executive presidents in other systems, these lingering WMCFs give Dualminster presidents unique mechanisms to unbalance and mould MPs' and the legislature's behaviour.

3. Dualminster as a Family of Constitutions

As discussed in Chapter VI, Sri Lanka and Guyana share five common features in their political constitutions. These are (1) the communal president as government; (2) close nexus between cabinet and the legislature; (3) parliament as a platform for performative politics; (4) the president must command confidence in parliament; (5) the Commonwealth as a point of constitutional reference.

The communal president as government means that the communal president's writ runs directly through the entire executive. Executive power flows from the president and, therefore, cabinet and public services are easily bent to the president's political will. There are no effective intra-executive checks on presidential power.

The requirement that ministers must also be MPs creates a close cabinet-parliament nexus. In practice, this means that presidential discipline of parliamentarians is enhanced, because they are rewarded with ministerial appointments but also bound by collective responsibility. Conversely, ministers are also subject to enhanced political scrutiny in the legislature.

In the Dualminster system, parliament is more a platform for performative politics than it is for technical scrutiny of legislation or the executive. In this regard, it continues to operate under many of the suppositions and checks and balances associated with other Westminster-style parliaments. Debate is intense, rugged, and adversarial, however calm technical scrutiny is often lacking.

Cohabitation has proved unworkable in both Sri Lanka and Guyana. Wherever it has been attempted, politics has been fraught and ultimately early elections have been called. The constitutions have been developed around the expectation that the president will have a majority in parliament and that cabinet can be bent to the president's will. Where this is not the case, political compromise has not been forthcoming and the president's powers of dissolution and prorogation have been used to try and engineer political change or, more commonly, delay elections to a more opportune moment without parliamentary pressure.

The Commonwealth continues to be a point of constitutional reference in the Dualminster system. Political, government, and judicial actors acknowledge both the hybridity of their constitutional arrangements and the lingering influence of WMCFs. Particularly in interpreting WMCFs, but also in operating the constitution more broadly, constitutional agents routinely refer to other Commonwealth experiences for guidance. This also has a regional component, where South Asian comparisons (particularly India) are more common in Sri Lanka, and other Caribbean experiences are more commonly referred to in Guyana.

4. Dualminster in Historical Institutionalist and Legal Theory

This thesis has developed the theory of *the political constitution as intercurrence*. In this theory, each institution represents its own legal order. As legal orders, they have their own norms, logics, and identities. Although their interactions with each other are

ostensibly governed by the written constitution, when institutions interact, the interpretation of the written constitution is influenced strongly by background sanctions (the balance of arms) and sociological forces. The balance of arms and sociological forces cause written norms to be re-interpreted, broken, and ignored. The political constitution is an example of intercurrence – multiple institutions with different temporalities and logics co-existing in a common landscape. This is the theoretical approach to political constitutionalism that best explains Sri Lanka and Guyana.

Chapter V described how the communal presidencies were 'institutional irritants' in Sri Lanka and Guyana. Both countries have changed their constitutions significantly since independence. However, these changes were not critical junctures. Instead, they were patterns of gradual institutional change, where institutions were changed through mechanisms of layering, conversion, and displacement. The communal presidencies were a key component in these patterns of gradual institutional change. As institutions, they displaced the former institutions of head of government and state in favour of a new, combined office. This displacement 'irritated' the institutional landscape and triggered further instances of gradual institutional change. Initially, the communal presidency outflanked pre-existing institutions and pre-existing rules took on new meanings to work in the presidents' favour. This is still, broadly speaking, the case today. However, institutions have also made attempts to bounce back and develop new defences against the communal president. This has been done partly by layering new rules and duties onto pre-existing institutions, for example the speaker and leader of the opposition's roles on the Constitutional Council in Sri Lanka and the re-introduction of no-confidence votes in Guyana.

While the idea of institutional irritants is a new theoretical contribution by this thesis, it builds on theories of gradual institutional change and intercurrence. Intercurrence is the proposition that institutions do not exist as isolated monoliths. Instead, institutions exist relative to each other in a common landscape. Separate institutions, with different temporalities and logics, may need to interact with each other. The communal presidencies are the institutional culmination of pre-existing patterns of communalism and executive centralisation in Sri Lanka and Guyana. However, in being the institutional embodiment of this process, they have also served to perpetuate it. By creating a new logic and new balance of arms within the institutional landscapes of Sri

Lanka and Guyana, the communal presidencies have triggered changes to the legislatures, cabinets, and public services.

The balance of arms refers to the background sanctions that, along with sociological forces, help to shape institutional behaviour in Dualminster. Background sanctions and sociological forces have an enhanced effect in Sri Lanka and Guyana because agency is higher than cases of path dependence. Instead of being locked into patterns of constitutional behaviour by mechanisms such as increasing returns, institutional agents in Sri Lanka and Guyana have higher degrees of autonomy. Their actions are influenced by sociological forces such as the communal character of the presidency and the traditions of parliament, however they are also subject to the negative constraints of other institutions. Institutional agents have autonomy insofar as they do not impinge on the interests of other institutions and agents. Where they do, sanctions will be used to punish them. This 'balance of arms' is best understood as background sanctions because they permeate the system without being explicitly tied to any single command. An example is the president's power of prorogation and dissolution. Where parliament goes too far in frustrating the president's interests, the president has discretion on whether to prorogue or dissolve parliament. The sanction is a general threat that hangs over all institutional behaviour. It is not explicitly tied to any single written proposition or command. On the other hand, the legislatures lost some of their strongest threats against the head of government. The executive presidents are not subject to parliamentary confidence (however this has now changed in Guyana) and they are not subjective to performative political scrutiny in parliament.

Chapter VI showed how the work of Santi Romano on law as institution presents the best bridge from historical institutionalism to legal theory. Romano's work is updated by this thesis to reflect the constitutional experiences of Sri Lanka and Guyana, which are examples of the political constitution as intercurrence. While adopting most of Romano's theory, this thesis modifies it in some important ways. Firstly, Dualminster shows that the political constitution may be characterised by disharmony and tension. The state is not a monolith. Secondly, this thesis appreciates the importance of institutions' sociological character in defining how they interact with each other, representing a break with Romano's concrete-order thinking. This approach has much to offer British political constitutionalist literature. JAG Griffith's work on the British

constitution was developed in a context where the written law and practice of the constitution were developed in tandem. In Dualminster, the written constitution plays an important but distinctive role. The written constitution sets up a concrete balance of arms between institutions. Having done this, those institutions interpret the rest of the written constitution in light of that balance of arms. While other literature dismisses this practice as ‘unconstitutional’ or ascribes it to ‘low institutional capacity’, among other things, this thesis theorises how institutional practice is developed into an identifiable political constitution.

5. Avenues for Future Research

It remains to be investigated whether other countries have also developed Dualminster constitutions, or something similar. As mentioned in the introduction, two possible case studies could be Ghana and Uganda. Botswana, on the other hand, began independence with a parliamentary system with an executive president. It would be interesting to see whether there are similar written constitutions in these contexts and how they operate depending on historical factors and with or without the presence of communalism.

Another avenue for future research is whether there are examples of institutional irritants in other contexts, too. One of the rationales behind this thesis is that these two under-explored case studies might have important lessons for theorists. It would suggest value in this approach if institutional irritants are not confined only to Sri Lanka and Guyana.

Additionally, it may be that the intermediate levels of plasticity (chronic plasticity and enhanced plasticity) are not confined only to these case studies. It could even be that the political constitution as intercurrence is useful for understanding other contexts, too. Future research could return to case studies that have been dismissed as having ‘sham constitutions’ or insufficient institutional capacity and examine whether this institutionalist approach to constitutionalism helps to explain institutional behaviour.

Regarding Sri Lanka and Guyana in particular, this thesis has focused on the executive and legislative branches of state. Future research could try to situate the judiciary within the political constitution described in this thesis. The judiciary also

functions with its own logics and the legal training and often metropolitan backgrounds of its ‘agents’ probably makes for an interesting addition to the narrative of the political constitution as intercurrence.

Bibliography

‘2020 General and Regional Elections in Guyana Final Report’ (The Carter Center 2020)

Aasland T, ‘Electoral Reforms - National Integration, Mobilization, New Blood - in Document No. 5 on the Move-to-the-Left Strategy in Uganda’ (1975) 10 Cooperation and Conflict 113

Abbott A, ‘Of Time and Space: The Contemporary Relevance of the Chicago School’ (1997) 75 Social Forces 1149

Abeyagoonasekera A, ‘Sri Lanka’s Political-Economic Crisis; Corruption, Abuse of Power and Economic Crime’ (2023) 30 Journal of Financial Crime 1432

Abraham S, ‘A New Politics: Multi-Racial Electoral Coalitions in Trinidad/Tobago and Guyana’ (PhD, The University of Wisconsin 1999)

Acemoglu D and Robinson JA, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty* (Profile Books 2012)

‘AFC Protests Caricom “Indifference” on Prorogation’ *Stabroek News* (21 January 2015) <https://www.stabroeknews.com/2015/01/21/news/guyana/afc-protests-caricom-indifference-prorogation/> accessed 21 September 2022

Ally H, ‘No-Confidence Motion against Rohee Was Constitutionally Impermissible’ *Stabroek News* (16 November 2012) <https://www.stabroeknews.com/2012/11/16/opinion/letters/no-confidence-motion-against-rohee-was-constitutionally-impermissible/> accessed 21 November 2023

Armitage F, ‘The Speaker, Parliamentary Ceremonies and Power’ (2010) 16 Journal of Legislative Studies 325

‘Arrest of Jordan Despicable – AFC’ *Stabroek News* (3 December 2021) <https://www.stabroeknews.com/2021/12/03/news/guyana/arrest-of-jordan-despicable-afc/> accessed 9 March 2024

‘Assemblée Nationale President Richard Ferrand Loses Seat in Legislative Election’ *Le Monde.fr* (19 June 2022) <https://www.lemonde.fr/en/politics/article/2022/06/19/assemblee-nationale-president-richard-ferrand-loses-seat-in-legislative-election_5987367_5.html> accessed 21 April 2023

Athukorala P-C and Jayasuriya S, ‘Economic Policy Shifts in Sri Lanka: The Post-Conflict Development Challenge’ (2013) 12 Asian Economic Papers 1

Balachandran PK, ‘Rajapaksa Forms Shadow Cabinet to Attack Government Ahead of Local Body Polls’ *The New Indian Express* (8 July 2016) <https://www.newindianexpress.com/world/2016/Jul/08/rajapaksa-forms-shadow-cabinet-to-attack-government-ahead-of-local-body-polls-878619.html> accessed 9 March 2024

Barberis M, ‘Santi Romano, Neoinstitutionalism and Legal Pluralism’ (2013) 21 Digest: National Italian American Bar Association Law Journal 27

Bastians D and Gettleman J, ‘Fists. A Flying Garbage Can. And Maybe, at Last, Negotiations in Sri Lanka.’ *The New York Times* (15 November 2018) <https://www.nytimes.com/2018/11/15/world/asia/sri-lanka-parliament-brawl.html> accessed 14 September 2022

——, ‘The Siege: Inside 52 Days of Constitutional Crisis in Sri Lanka’ in Asanga Welikala (ed), *Constitutional Reform and Crisis in Sri Lanka* (Centre for Policy Alternatives 2019)

Bateman W, *Public Finance and Parliamentary Constitutionalism* (Cambridge University Press 2020)

Baumgardner P, ‘On Critical Junctures, Intercurrence, and Dynamic Political Orders Remedies Symposium’ (2017) 9 ConLawNOW 65

Baytoram R, ‘Ramkarran Meets Impartiality, Experience and Continuity Requirements and Should Continue as Speaker’ *Stabroek News* (6 January 2012) <https://www.stabroeknews.com/2012/01/06/opinion/letters/ramkarran-meets-

impartiality-experience-and-continuity-requirements-and-should-continue-as-speaker/> accessed 9 March 2024

Belich J, ‘Exploding Wests: Boom and Bust in Nineteenth-Century Settler Societies’ in Jared Diamond and James A Robinson (eds), *Natural Experiments of History* (Harvard University Press 2012)

Bellamy R, *Political Constitutionalism: A Republican Defence of the Constitutionality of Democracy* (Cambridge University Press 2007)

Bergougnous G, *Presiding Officers of National Parliamentary Assemblies: A World Comparative Study* (Inter-Parliamentary Union 1997)

Braudel F, *On History* (University of Chicago Press 1980)

Bulkan A, ‘Democracy in Disguise: Assessing the Reforms to the Fundamental Rights Provisions in Guyana’ (2004) 32 Georgia Journal of International and Comparative Law 613

——, ‘Constitutional Architecture and the Production of Authoritarianism’ in Arif Bulkan and Alissa Trotz (eds), *Unmasking the State: Politics, Society, and Economy in Guyana 1992-2015* (Ian Randle Publishers 2019)

Bulmer S and Burch M, ‘Organizing for Europe: Whitehall, The British State and European Union’ (1998) 76 Public Administration 601

Bulmer WE, *Westminster and the World: Commonwealth and Comparative Insights for Constitutional Reform* (Bristol University Press 2020)

Burnham LSF, *Declaration of Sophia* (Guyana Printers Ltd 1974)

Cairns JW, ‘Watson, Walton, and the History of “Legal Transplants”’ (2013) 41 The Georgia Journal of International and Comparative Law 637

Capoccia G, ‘Critical Junctures’ in Orfeo Fioretos, Tulia G Falleti and Adam Sheingate (eds), *The Oxford Handbook of Historical Institutionalism*, vol 1 (Oxford University Press 2016)

Capoccia G and Kelemen RD, ‘The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism’ (2007) 59 World Politics 341

‘Caribbean Community Mission to Guyana’ (CARICOM 1998)

‘Caribbean Parliaments Should Create, Export Precedents’ *Demerara Waves* (29 October 2013) <https://demerarawaves.com/2013/10/28/caribbean-parliaments-should-create-export-precedents/> accessed 9 March 2024

Carter M, ‘Forward’ in CA Nascimento and RA Burrowes (eds), *A Destiny to Mould: Selected Discourses by the Prime Minister of Guyana* (Longman Caribbean Ltd 1970)

Chabrol D, ‘AFC Leader Rubbishes PNCR’s Efforts to Remove Harmon as Opposition Leader’ *Demerara Waves* (8 January 2022) <https://demerarawaves.com/2022/01/08/afc-leader-rubbishes-pncrs-efforts-to-remove-harmon-as-opposition-leader/> accessed 9 March 2024

——, ‘Opposition Parliamentarian Asks High Court to Scrap Clifton Hicken’s Appointment as Police Commissioner’ *Demerara Waves* (21 May 2022) <https://demerarawaves.com/2022/05/20/opposition-parliamentarian-asks-high-court-to-scrap-clifton-hickens-appointment-as-police-commissioner/> accessed 9 March 2024

——, ‘Govt Avoiding Parliamentary Scrutiny of Natural Resources Sector’ *Demerara Waves* (25 November 2022) <https://demerarawaves.com/2022/11/25/govt-avoiding-parliamentary-scrutiny-of-natural-resources-sector/> accessed 21 November 2023

——, ‘Global Extractive Industries Transparency Watchdog Lifts Guyana’s Suspension’ *Demerara Waves* (4 July 2023) <https://demerarawaves.com/2023/07/04/global-extractive-industries-transparency-watchdog-lifts-guyanas-suspension/> accessed 21 November 2023

——, ‘Substantive Chief Justice, Chancellor to Await Work of Judicial Service Commission’ *Demerara Waves* (9 September 2023) <https://demerarawaves.com/2023/09/09/substantive-chief-justice-chancellor-to-await-work-of-judicial-service-commission/> accessed 9 March 2024

Cheibub JA, *Presidentialism, Parliamentarism, and Democracy* (Cambridge University Press 2006)

——, Elkins Z and Ginsburg T, 'Beyond Presidentialism and Parliamentarism' (2014) 44 British Journal of Political Science 515

——, 'Beyond Presidentialism and Parliamentarism' (2014) 44 British Journal of Political Science 515

'Chief Justice Rules Rohee Has a Right to Speak in the National Assembly' *Guyana Chronicle* (12 January 2013) <https://guyanachronicle.com/2013/01/12/chief-justice-rules-rohee-has-a-right-to-speak-in-the-national-assembly-as-gag-order-against-minister-rohee-dismissed-by-high-court/> accessed 9 March 2024

Chiu C-W, *The Speaker of the House of Representatives Since 1896* (Columbia University Press, 1928)

Choudhry S, 'Migration as a New Metaphor in Comparative Constitutional Law' in Sujit Choudhry (ed), *The Migration of Constitutional Ideas* (Cambridge University Press 2007)

Collier D, 'Understanding Process Tracing' (2011) 44 Political Science and Politics 823

——, 'Critical Juncture Framework and the Five-Step Template' in David Collier and Gerardo L Munck (eds), *Critical Junctures and Historical Legacies: Insights and Methods for Comparative Social Science* (Rowman and Littlefield 2022)

—— and Munck GL, 'Introduction to Symposium on Critical Junctures and Historical Legacies – Building Blocks and Methodological Challenges: A Framework for Studying Critical Junctures' (2017) 15 Qualitative and Multi-Method Research Section of the American Political Science Association 2

—— (eds), *Critical Junctures and Historical Legacies: Insights and Methods for Comparative Social Science* (Rowman and Littlefield 2022)

Collier RB and Collier D, *Shaping the Political Arena: Critical Junctures, the Labor Movement, and Regime Dynamics in Latin America* (University of Notre Dame Press 2015)

Collins BAN, ‘The Civil Service of British Guiana in the General Strike of 1963’ (1964) 10 Caribbean Quarterly 3

‘Comparative Research Paper on Parliamentary Administration’ (Inter-Parliamentary Union 2020) <https://www.ipu.org/file/9714/download> accessed 21 April 2023

‘Confidence Motions and Parliament’ (*Institute for Government*, 1 March 2018) <https://www.instituteforgovernment.org.uk/article/explainer/confidence-motions-and-parliament> accessed 9 March 2024

Coomaraswamy R, ‘The 1972 Republican Constitution in the Postcolonial Constitutional Evolution of Sri Lanka’ in Asanga Welikala (ed), *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Centre for Policy Alternatives 2012)

‘Court Rules President Ali Violated Guyana’s Constitution’ *Loop News* (24 March 2023) <https://caribbean.loopnews.com/content/court-rules-president-ali-violated-guyanas-constitution> accessed 9 April 2024

Croce M (ed), *Law, Necessity, and the Crisis of the State: The Early Writings of Santi Romano* (Routledge 2023)

—— and Goldoni M, *The Legacy of Pluralism: The Continental Jurisprudence of Santi Romano, Carl Schmitt, and Costantino Mortati* (Stanford University Press 2020)

Dale W, *The Modern Commonwealth* (Butterworth and Co Ltd 1983)

Daniels GO, ‘A Great Injustice to Cheddi Jagan: The Kennedy Administration and British Guiana: 1961–1963’ (PhD, The University of Mississippi 2000)

Danns GK, *Domination and Power in Guyana: A Study of the Police in a Third World Context* (Transaction Books 1982)

——, ‘Decolonization and Militarization in the Caribbean: The Case of Guyana’ in Paget Henry and Carl Stone (eds), *The Newer Caribbean: Decolonization, Democracy, and Development* (Institute for the Study of Human Issues 1983)

Dattatreya C, 'The Proposal for a Constitutional Council' in Dinusha Panditaratne and Pradeep Ratnam (eds), *The Draft Constitution of Sri Lanka: Critical Aspects* (Law and Society Trust 1998)

David K, 'Revisiting the "Single-Issue Common-Candidate" Strategy: Successes and Failures' in Asanga Welikala (ed), *Constitutional Reform and Crisis in Sri Lanka* (Centre for Policy Alternatives 2019)

Davies M, 'Needs Assessment of the Guyana National Assembly: Report of the Commonwealth Senior Parliamentary Staff Advisor to the Guyana National Assembly' (2005)

de Alwis R, 'Federalism or Devolution of Power? Sri Lanka's Perspectives' (2020) 7 Asia and the Pacific Policy Studies 124

de Merieux M, 'The Codification of Constitutional Conventions in the Commonwealth Caribbean Constitutions' (1982) 31 The International and Comparative Law Quarterly 263

De Silva CR, *Sri Lanka: A History* (Advent Books 1987)

de Silva KM, *A History of Sri Lanka* (Vijitha Yapa 2005)

——, 'Sri Lanka: The Bandaranaikes in the Island's Politics and Public Life: Reflections on the Centenary of S. W. R. D. Bandaranaike's Birth' [1999] Round Table 241

—— and Wriggins H, *J.R. Jayawardene of Sri Lanka: A Political Biography*, vol II: 1956-1989 (Leo Cooper 1994)

de Silva P, 'Life and Times of Former Speaker Mohamed Haniffa Mohamed Who Passed Away on April 26 at the Age of 95' *Sunday Observer* (1 May 2016) <https://archives.sundayobserver.lk/2016/05/01/fea14.asp> accessed 9 March 2024

de Smith SA, 'Westminster's Export Models: The Legal Framework of Responsible Government' (1961) 1 Journal of Commonwealth Political Studies 2

DeVotta N, 'Ethnolinguistic Nationalism and Ethnic Conflict in Sri Lanka' in Michael E Brown and Sumit Ganguly (eds), *Fighting Words: Language Policy and Ethnic Relations in Asia* (MIT Press 2003)

——, *Blowback: Linguistic Nationalism, Institutional Decay, and Ethnic Conflict in Sri Lanka* (Stanford University Press 2004)

——, 'Sri Lanka: From Turmoil to Dynasty' (2011) 22 Journal of Democracy 130

Dierwechter Y, *Urban Sustainability through Smart Growth* (Springer International Publishing 2017)

Duverger M, 'A New Political System Model: Semi-Presidential Government' (1997) 31 European Journal of Political Research 125

Earle J, 'Matter of Full Disclosure of Exxon Contract Is a Live Consideration before Cabinet' *Stabroek News* (15 November 2017) <https://www.stabroeknews.com/2017/11/15/opinion/letters/matter-of-full-disclosure-of-exxon-contract-is-a-live-consideration-before-cabinet/> accessed 9 March 2024

Edie CJ, 'Democracy in The Gambia: Past, Present and Prospects for the Future' (2000) 25 Africa Development 161

'Election Follow-up Mission to Guyana 2023 Final Report' (European Union 2023)

Elgie R, 'Presidentialism, Parliamentarism and Semi-Presidentialism: Bringing Parties Back In' (2011) 46 Government and Opposition 392

'European Union Election Observation Mission to Guyana 2020 Final Report' (European Union 2020)

'Fact Sheet: The President of the National Assembly - National Assembly' <https://www2.assemblee-nationale.fr/decouvrir-l-assemblee/folder/organisation-et-fonctionnement-de-l-assemblee/le-president-de-l-assemblee-nationale> accessed 21 April 2023

Fernando B, *Gyges' Ring - The 1978 Constitution of Sri Lanka* (Karen Lau and Jessica Punyareka Fernando eds, Asian Human Rights Commission 2011)

Fernando R, *The Fifty-Two Day Saga: Political Crisis in Sri Lanka* (Vijitha Yapa 2019)

Flinders M, 'Governance in Whitehall' (2002) 80 Public Administration 51

Fonseka B, Ganeshathasan L and Welikala A, 'Sri Lanka: Pandemic-Catalyzed Democratic Backsliding' in Victor V Ramraj (ed), *Covid-19 in Asia: Law and Policy Contexts* (Oxford University Press 2021)

Fontanelli F, 'Santi Romano and *L'ordinamento Giuridico*: The Relevance of a Forgotten Masterpiece for Contemporary International, Transnational and Global Legal Relations' (2011) 2 Transnational Legal Theory 67

France H, 'Continuity or Change?: Structural Adjustment Decision-Making in Guyana (1988–1997) the Hoyte and Jagan Years' (2005) 54 Social and Economic Studies 83

Frankenberg G, 'Constitutional Transfer: The IKEA Theory Revisited' (2010) 8 International Journal of Constitutional Law 563

Gaddis JL, *The Landscape of History: How Historians Map the Past* (Oxford University Press 2004)

'Gambia: Democratic Reform without Human Rights' (*Amnesty International*, 2 December 1997) <https://www.amnesty.org/en/documents/afr27/004/1997/en/> accessed 27 February 2023

Gee G, 'The Political Constitutionalism of JAG Griffith' (2008) 28 Legal Studies 20

Gee G and Webber GCN, 'What Is a Political Constitution' (2010) 30 Oxford Journal of Legal Studies 273

'General Works on the Speakership' (*US House of Representatives: History, Art and Archives*) <https://history.house.gov/Records-and-Research/Speakers-Resources/Selected-Bibliography/> accessed 21 April 2023

Gerring J, *Case Study Research: Principles and Practice* (2nd edn, Cambridge University Press 2016)

Gerschewski J, 'Explanations of Institutional Change: Reflecting on a "Missing Diagonal"' (2021) 115 The American Political Science Review 218

Gill H, 'There Are Inconsistencies in the Speaker's Rulings on Sub Judice and Other Matters' *Stabroek News* (30 July 2018) <https://www.stabroeknews.com/2018/07/30/opinion/letters/there-are-inconsistencies-in-the-speakers-rulings-on-sub-judice-and-other-matters/> accessed 9 March 2024

Glanert S, 'Method?' in Pier Guiseppe Monateri (ed), *Methods of Comparative Law* (Edward Elgar 2012)

'Government Shutdowns: Once "Incomprehensible, Inconceivable, Unthinkable," Now the Norm' (*Federal News Network*, 14 January 2019) <https://federalnewsnetwork.com/government-shutdown/2019/01/government-shutdowns-once-incomprehensible-inconceivable-unthinkable-now-the-norm/> accessed 21 April 2023

'Govt. Refuses to Have Parliamentary Scrutiny for Oil Blocks Awarded through Direct Negotiations' *Kaieteur News* (13 August 2023) <https://www.kaieteurnewsonline.com/2023/08/13/govt-refuses-to-have-parliamentary-scrutiny-for-oil-blocks-awarded-through-direct-negotiations/> accessed 20 November 2023

Griffith IL, 'The Military and the Politics of Change in Guyana' (1991) 33 Journal of Interamerican Studies and World Affairs 141

Griffith JAG, 'The Political Constitution' (1979) 42 The Modern Law Review 1

——, 'Foreword' in Martin Loughlin, M David Gelfand and Ken Young (eds), *Half A Century of Municipal Decline, 1935-1985* (Allen and Unwin 1985)

Grube DC and Killick A, 'Groupthink, Polythink and the Challenges of Decision-Making in Cabinet Government' (2023) 76 Parliamentary Affairs 211

Gunawardana R, 'Roots of the Conflict and the Peace Process' in Mahinda Deegalle (ed), *Buddhism, Conflict and Violence in Modern Sri Lanka* (Routledge 2006)

Guruparan K, '18 May 2009 as a Constitutional Moment: Development and Devolution in the Post War Constitutional Discourse in Sri Lanka' (2010) 11 Junior Bar Law Review 41

——, 'Flawed Expectations: The Executive Presidency, Resolving the National Question, and Tamils' in Asanga Welikala (ed), *Reforming Sri Lankan Presidentialism – Provenance, Problems and Prospects* (Centre for Policy Alternatives 2015)

'Guyana Deals with Aftermath of Deadly Protests' *BBC News* (27 September 2012) <https://www.bbc.com/news/world-latin-america-19747052> accessed 13 February 2024

Guyana: Fraudulent Revolution (Practical Action Publishing and Latin America Business Bureau 1984) <https://practicalactionpublishing.com/book/971/guyana-fraudulent-revolution> accessed 28 November 2022

'Guyana: The St Lucia Statement' (*CARICOM*, 2 July 1998) <https://caricom.org/guyana-the-st-lucia-statement/> accessed 15 March 2024

Hacker JS, 'Policy Drift: The Hidden Politics of US Welfare State Retrenchment' in Wolfgang Streeck and Kathleen Thelen (eds), *Beyond Continuity: Institutional Change in Advanced Political Economies* (Oxford University Press 2005)

Hacker JS and Pierson P, *Winner-Take-All Politics: How Washington Made the Rich Richer-and Turned Its Back on the Middle Class* (Simon and Schuster 2010)

Hacker JS, Pierson P and Thelen K, 'Drift and Conversion: Hidden Faces of Institutional Change' in James Mahoney and Kathleen Thelen (eds), *Advances in Comparative-Historical Analysis* (Cambridge University Press 2015)

Hall PA, 'Politics as a Process Structured in Space and Time' in Orfeo Fioretos, Tulia G Falleti and Adam Sheingate (eds), *The Oxford Handbook of Historical Institutionalism*, vol 1 (Oxford University Press 2016)

—— and Taylor RCR, 'Political Science and the Three New Institutionalisms' (1996) 44 Political Studies 936

Harding A, ‘The “Westminster Model” Constitution Overseas: Transplantation, Adaptation and Development in Commonwealth States’ (2004) 4 Oxford University Commonwealth Law Journal 143

‘Harmon Resisting Calls for Him to Go’ *Village Voice News* (7 January 2022) <https://villagevoicenews.com/2022/01/07/harmon-resisting-calls-for-him-to-go/> accessed 9 March 2024

Harriss J, ‘Problems Facing Mrs. Bandaranaike: Sri Lanka and the 1977 Election’ (1977) 67 The Round Table 168

Hartmann C, ‘ECOWAS and the Restoration of Democracy in the Gambia’ (2017) 52 Africa Spectrum 85

Hashim AS, *When Counterinsurgency Wins: Sri Lanka’s Defeat of the Tamil Tigers* (University of Pennsylvania Press 2013)

Haynes J, ‘The Constitutional Law of Guyana: Challenges and Prospects’ in Richard Albert, Derek O’Brien and Se-shauna Wheatle (eds), Jason Haynes, *The Oxford Handbook of Caribbean Constitutions* (Oxford University Press 2020)

Herring RJ, ‘Economic Liberalisation Policies in Sri Lanka: International Pressures, Constraints and Supports’ (1987) 22 Economic and Political Weekly 325

Hinds AC, ‘The Speaker of the House of Representatives’ (1909) 3 The American Political Science Review 155

Hinds D, ‘Ethnicity and the Elusive Quest for Power Sharing in Guyana’ (2010) 9 Ethnopolitics 333

——, *Ethno-Politics and Power Sharing in Guyana: History and Discourse* (New Academia Publishing 2011)

Hintzen PC, *The Cost of Regime Survival: Racial Mobilization, Elite Domination and Control of the State in Guyana and Trinidad* (Cambridge University Press 1989)

—— and Premdas RR, ‘Guyana: Coercion and Control in Political Change’ (1982) 24 Journal of Interamerican Studies and World Affairs 337

Hirschl R, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Oxford University Press 2014)

Hoecke M van and Bell J, 'Legal Research and the Distinctiveness of Comparative Law', in Hoecke M van (ed) *Methodologies of Legal Research: What Kind of Method for What Kind of Discipline?* (Hart 2011)

Hope KR, 'Electoral Politics and Political Development in Post-Independence Guyana' (1985) 4 Electoral Studies 57

Hughes A, 'From Green Uprising to National Reconciliation: The People's Progressive Party in the Gambia 1959-1973' (1975) 9 Canadian Journal of African Studies / Revue Canadienne Des Études Africaines 61

——, '"Democratisation" under the Military in The Gambia: 1994–2000' (2000) 38 Commonwealth and Comparative Politics 35

Hydar A, 'No-Confidence Motion against Rohee Was Constitutionally Impermissible' *Stabroek News* (16 November 2012) <https://www.stabroeknews.com/2012/11/16/opinion/letters/no-confidence-motion-against-rohee-was-constitutionally-impermissible/> accessed 9 March 2024

Hyndman P, 'Human Rights, the Rule of Law and the Situation in Sri Lanka' (1985) 8 University of New South Wales Law Journal 337

Implications of a Prorogued Parliament - Opposition Leader (Directed by Malika Natasha Ramsey-McPherson, 2014) <https://www.youtube.com/watch?v=CAgdXxBU3mY> accessed 21 September 2022

INEWS, 'PPP Condemns Removal of Permanent Secretaries' (*INews Guyana*, 31 May 2015) <https://www.inewsguyana.com/ppp-condemns-removal-of-permanent-secretaries/> accessed 17 November 2023

——, 'Eyewitness: Settling Conflicts…in the Courts' *INews Guyana* (26 August 2022) <https://www.inewsguyana.com/eyewitness-settling-conflictsin-the-courts/> accessed 9 March 2024

James R and Lutchman HA, *Law and the Political Environment in Guyana* (Institute of Development Studies 1984)

Jayakody A, 'The Process of Constitutional Reform, January to May 2015' in Asanga Welikala (ed), *The Nineteenth Amendment to the Constitution: Content and Context* (Centre for Policy Alternatives 2016)

Jayasinghe P, Reid P and Welikala A, *Parliament: Law, History and Practice* (Centre for Policy Alternatives 2019)

Jayewardene JR, *Men and Memories: Autobiographical Reflections and Recollections* (Vikas Publishing House 1992)

——, *Relieved Memories* (JR Jayewardene Centre 1996)

Jeffrey H, 'PPP/C Position on Speaker Pure Propaganda' *Stabroek News* (28 December 2011) <https://www.stabroeknews.com/2011/12/28/features/pppc-position-on-speaker-pure-propaganda/> accessed 9 March 2024

——, 'Opposition Made Huge Blunder' *Stabroek News* (18 January 2012) <https://www.stabroeknews.com/2012/01/18/features/opposition-made-huge-blunder-2/> accessed 9 March 2024

——, 'Constitutional Reform: The Speakership' *Stabroek News* (9 September 2020) <https://www.stabroeknews.com/2020/09/09/features/future-notes/constitutional-reform-the-speakership/> accessed 9 March 2024

Jeffrey HB, *Political and Ethnic Dominance in Guyana* (Gateway 2015)

Jennings I, *Approaches to Self-Government* (Cambridge University Press 1956)

Jennings WI, 'Limitations on a "Sovereign" Parliament' (1964) 22 Cambridge Law Journal 177

Johnson R, 'We Cannot Continue Delaying Shared Governance' *Stabroek News* (27 November 2018) <https://www.stabroeknews.com/2018/11/27/opinion/letters/we-cannot-continue-delaying-shared-governance/> accessed 9 March 2024

‘Joint Opposition’s Shadow Cabinet; A Malignancy Beyond Cure’ *Colombo Telegraph* (19 July 2016) <https://www.colombotelegraph.com/index.php/joint-oppositions-shadow-cabinet-a-malignancy-beyond-cure/> accessed 9 March 2024

Jupp J, ‘Democratic Socialism in Sri Lanka’ (1977) 50 Pacific Affairs 625

Kadirgamar A, ‘State Power, State Patronage and Elections in Sri Lanka’ (2010) 45 Economic and Political Weekly 21

Kelegama S, ‘Development in Independent Sri Lanka: What Went Wrong?’ (2000) 35 Economic and Political Weekly 1477

Kissoon S, *A Democracy in Distress: Documenting Guyana’s Political Crisis 2018-2020* (Amazon 2021)

Kogut B, ‘Qualitative Comparative Analysis of Social Science Data’ in Glenn Morgan and others (eds), *The Oxford Handbook of Comparative Institutional Analysis* (Oxford University Press 2010)

Kora S and Darboe MN, ‘The Gambia’s Electoral Earthquake’ (2017) 28 Journal of Democracy 147

Kumarasingham H, *A Political Legacy of the British Empire: Power and the Parliamentary System in Post-Colonial India and Sri Lanka* (IB Tauris and Co 2013)

——, ‘Elite Patronage over Party Democracy – High Politics in Sri Lanka Following Independence’ (2014) 52 Commonwealth and Comparative Politics 166

——, ‘Unconventional Conventions: Power Partnerships in the Sri Lankan Executive’ in Asanga Welikala (ed), *Reforming Sri Lankan Presidentialism – Provenance, Problems and Prospects* (Centre for Policy Alternatives 2015)

—— (ed), *Constitution Making in Asia: Decolonisation and State-Building in the Aftermath of the British Empire* (Routledge 2016)

——, ‘Eastminster – Decolonisation and State-Building in British Asia’ in H Kumarasingham (ed), *Constitution-making in Asia: Decolonisation and State-Building in the Aftermath of the British Empire* (Palgrave Macmillan 2016)

——, ‘Viceregalism’ in H Kumarasingham (ed) *Viceregalism: The Crown as Head of State in Political Crises in the Postwar Commonwealth* (Palgrave Macmillan 2020)

—— (ed), *Viceregalism: The Crown as Head of State in Political Crises in the Postwar Commonwealth* (Palgrave Macmillan 2020)

Laban M, ‘More Westminster than Westminster? The Office of Speaker across the Commonwealth’ (2014) 20 The Journal of Legislative Studies 143

Laitin DD, ‘Language Conflict and Violence: The Straw That Strengthens the Camel’s Back’ (2000) 41 Archives Européennes de Sociologie/European Journal of Sociology 97

Lal D and Rajapatirana S, *Impediments to Trade Liberalization in Sri Lanka* (Gower Publishing Company 1989)

Lange M, *Lineages of Despotism and Development: British Colonialism and State Power* (University of Chicago Press 2009)

Laundy P, *The Office of Speaker* (Cassell 1964)

Laws S, ‘The Contest to “Take Control” of Brexit’ (Policy Exchange 2019) Research Note <https://policyexchange.org.uk/wp-content/uploads/2019/01/The-Contest-to-Take-Control-of-Brexit.pdf> accessed 4 May 2022

Legrand P, ‘The Impossibility of “Legal Transplants”’ (1997) 4 Maastricht Journal of European and Comparative Law 111

——, ‘Issues in the Translatability of Law’ in Sandra Bermann and Michael Wood (eds), *Nation, Language, and the Ethics of Translation* (Princeton University Press 2005)

Lijphart A, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (2nd edn, University of California Press 1975)

——, ‘Trichotomy or Dichotomy?’ (1997) 31 European Journal of Political Research 125

——, *Patterns of Democracy* (2nd edn, Yale University Press 2012)

Linz JJ, ‘The Perils of Presidentialism’ (1990) 1 Journal of Democracy 51

—— and Valenzuela A (eds), *The Failure of Presidential Democracy* (Johns Hopkins University Press 1994)

Loughlin M, *Public Law and Political Theory* (Clarendon Press 1992)

——, ‘John Griffith: An Appreciation’ [2010] Public Law 643

——, *Political Jurisprudence* (Oxford University Press 2017)

Louk DS and Gamage D, ‘Preventing Government Shutdowns: Designing Default Rules for Budgets’ (2015) 86 University of Colorado Law Review 181

Lutchman HA, *From Colonialism to Cooperative Republic: Aspects of Political Development in Guyana* (Institute of Caribbean Studies 1974)

Lyttelton O, *The Memoirs of Lord Chandos* (The Bodley Head 1962)

Madden AF, ‘“Not for Export”: The Westminster Model of Government and British Colonial Practice’ (1979) 8 Journal of Imperial and Commonwealth History 21

Madison J, ‘Federalist No.48’

Mahoney J, ‘Path Dependence in Historical Sociology’ (2000) 29 Theory and Society 507

——, *The Legacies of Liberalism: Path Dependence and Political Regimes in Central America* (Johns Hopkins University Press 2001)

—— and Thelen K, ‘A Theory of Gradual Institutional Change’ in James Mahoney and Kathleen Thelen (eds), *Explaining Institutional Change: Ambiguity, Agency, and Power* (Cambridge University Press 2009)

‘Mapping Sri Lanka’s Political Parties: Actors and Evolutions’ (Verite Research 2017) <https://www.veriteresearch.org/wp-content/uploads/2018/06/Mapping_Sri_Lanka_s_Political_Parties_Actors_and_Evolution.pdf> accessed 9 March 2024

McCowan A, 'British Guiana' in James Lemkin (ed), *Race and Power: Studies of Leadership in Five British Dependencies* (The Bow Group 1956)

Meinhardt H, 'Government and Opposition in Guyana' (1990) 23 Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America 434

Merrill T, *Guyana and Belize* (2nd edn, Library of Congress 1993)

Mervin E, 'Party Paramountcy and the 1980 Constitution Combined to Give Burnham Something Close to Absolute Power' *Stabroek News* (10 March 2007) <https://www.stabroeknews.com/2007/03/10/news/guyana/party-paramountcy-and-the-1980-constitution-combined-to-give-burnham-something-close-to-absolute-power/> accessed 17 November 2023

Mukarji A, 'The Sri Lankan Polity: A Case of Constitutional Autocracy' (2014) 18 World Affairs: The Journal of International Issues 100

Mumford A, 'The Fiscal State and Budget Institutions' in Ann Mumford, *Fiscal Sociology at the Centenary* (Springer 2019)

Munck GL, 'The Theoretical Foundations of Critical Juncture Research: Critique and Reconstruction' in David Collier and Gerardo L Munck (eds), *Critical Junctures and Historical Legacies: Insights and Methods for Comparative Social Science* (Rowman and Littlefield 2022)

Narain FA, 'Historical Information, Events, and Dates on the Parliament of Guyana from 1718-2006' (Parliament of Guyana 2007)

Narayanasuwami C, 'Public Administration and the Nineteenth Amendment: Prospects for the Future' in Asanga Welikala (ed) *The Nineteenth Amendment to the Constitution: Content and Context* (Centre for Policy Alternatives 2016)

Nascimento C and Burrowes R (eds), *A Destiny to Mould: Selected Discourses by the Prime Minister of Guyana* (Longman Caribbean Ltd 1970)

News S, 'Golding Exposes Electoral Fraud at OAS Meeting' *Stabroek News* (14 May 2020) <https://www.stabroeknews.com/2020/05/14/news/guyana/golding-exposes-electoral-fraud-at-oas-meeting/> accessed 27 February 2023

'"Norton Can't Make Decisions for Us"' *Guyana Chronicle* (17 February 2024) <https://guyanachronicle.com/2024/02/17/norton-cant-make-decisions-for-us/> accessed 9 March 2024

'Norton Finally Elected Leader of Opposition' *Kaieteur News* (14 April 2022) <https://www.kaieteurnewsonline.com/2022/04/14/norton-finally-elected-leader-of-opposition/> accessed 9 March 2024

'Norton Will Be the End of PNC/R' *Guyana Chronicle* (14 January 2024) <https://guyanachronicle.com/2024/01/14/norton-will-be-the-end-of-pnc-r/> accessed 9 March 2024

Obeyesekere G, 'The Origins and Institutionalisation of Political Violence' in James Manor (ed), *Sri Lanka in Change and Crisis* (Briddles 1984)

O'Brien D, *The Constitutional Systems of the Commonwealth Caribbean: A Contextual Analysis* (Hart 2014)

——, 'The Principle of Responsible Government in the Commonwealth Caribbean: Prorogation and Motions of No Confidence' (2022) 60 Commonwealth and Comparative Politics 27

'Of Constitutions, Cabinets and Coups' (*Groundviews*, 29 October 2018) <https://groundviews.org/2018/10/29/of-constitutions-cabinets-and-coups/> accessed 14 September 2022

'Oil Development Will Challenge Guyana's Institutions' [2018] Oxford Analytica <https://doi.org/10.1108/OXAN-DB233622> accessed 21 November 2023

'On the Speaker's Inaction: "Flimsy, Unforgivable Excuses"' (*Groundviews*, 4 November 2018) <https://groundviews.org/2018/11/05/on-the-speakers-inaction-flimsy-unforgivable-excuses/> accessed 14 September 2022

'Opposition MPs Reshuffled for More "Effective, Efficient" Representation – Norton' *Guyana Times* (12 January 2024) <https://guyanatimesgy.com/opposition-mps-reshuffled-for-more-effective-efficient-representation-norton/> accessed 9 March 2024

Orren K and Skowronek S, ‘Institutions and Intercurrence: Theory Building in the Fullness of Time’ (1996) 38 Nomos 111

——, *The Search for American Political Development* (Cambridge University Press 2004)

Palmer CA, *Cheddi Jagan and the Politics of Power: British Guiana’s Struggle for Independence* (University of North Carolina Press 2010)

Parkinson CO, ‘British Constitutional Thought and the Emergence of Bills of Rights in Britain’s Overseas Territories in Asia at Decolonisation’ in H Kumarasingham (ed), *Constitution-making in Asia: Decolonisation and State-Building in the Aftermath of the British Empire* (Routledge 2016)

‘Parliament to Be Dissolved on February 28th’ *Stabroek News* (25 February 2015) <https://www.stabroeknews.com/2015/02/25/news/guyana/parliament-dissolved-february-28th/> accessed 21 September 2022

‘Parliamentary Debates’ *Guyana Times* (28 February 2021) <https://guyanatimesgy.com/parliamentary-debates/> accessed 21 November 2023

‘Parliaments Must Adapt to Serve the People’s Needs -Trotman’ *Stabroek News* (29 October 2013) <https://www.stabroeknews.com/2013/10/29/news/guyana/parliaments-must-adapt-serve-peoples-needs-trotman/> accessed 9 March 2024

Passchier R and Stremler M, ‘Sitting at the Same Table: A Cross-Disciplinary “Constitutional-Institutionalist” Approach to the Study of Constitutions’ (2023) 19 International Journal of Law in Context 255

Patapan H, Wanna J and Weller P, *Westminster Legacies: Democracy and Responsible Government in Asia and the Pacific* (Illustrated edition, UNSW Press 2005)

‘Pelosi in Iraq to See How War Is Going’ *Reuters* (26 January 2007) <https://www.reuters.com/article/uk-iraq-pelosi-idUKCOL65830320070126> accessed 17 April 2023

Perera N, *A Critical Analysis of the New Constitution of the Sri Lanka Government* (Reprint, Dr NM Perera Memorial Trust 1991)

Persson T and Tabellini G, ‘Political Economics and Public Finance’ in Alan J Auerbach and Martin Feldstein (eds), *Handbook of Public Economics*, vol 3 (Elsevier 2002)

Pierson P, *Politics in Time* (Princeton University Press 2011)

‘Policy Basics: Introduction to the Federal Budget Process’ (*Center on Budget and Policy Priorities*, 7 March 2003) <https://www.cbpp.org/research/federal-budget/introduction-to-the-federal-budget-process> accessed 21 April 2023

‘Politicising the Public Service’ *Kaieteur News* (21 May 2015) <https://www.kaieteurnewsonline.com/2015/05/21/politicising-the-public-service/> accessed 17 November 2023

Poole T, ‘Tilting at Windmills? Truth and Illusion in “The Political Constitution”’ (2007) 70 The Modern Law Review 250

‘PPP/C Says MPs Being Muzzled by Gov’t in Budget Debate’ *Stabroek News* (19 August 2015) <https://www.stabroeknews.com/2015/08/19/news/guyana/pppc-says-mps-being-muzzled-by-govt-in-budget-debate/> accessed 9 March 2024

Premdas RR, ‘Elections and Political Campaigns in a Racially Bifurcated State: The Case of Guyana’ (1972) 14 Journal of Interamerican Studies and World Affairs 271

——, ‘The Rise of the First Mass-Based Multi-Racial Party in Guyana’ (1974) 20 Caribbean Quarterly 5

‘President Donald Ramotar Suspends Parliament’ *Guyana Chronicle* (10 November 2014) <https://guyanachronicle.com/2014/11/10/breaking-news-6/> accessed 21 September 2022

Quine O and Gill M, ‘Sri Lanka’s Disputed Prime Minister Mahinda Rajapaksa Resigns’ *The Telegraph* (15 December 2018) <https://www.telegraph.co.uk/news/2018/12/15/sri-lankas-disputed-prime-minister-mahinda-rajapaksa-resigns/> accessed 14 September 2022

Quinn K, ‘Colonial Legacies and Post-Colonial Conflicts in Guyana’ in Rosemarijn Hoefte, Matthew L Bishop and Peter Clegg (eds), *Post-Colonial Trajectories in the Caribbean: The Three Guianas* (Routledge 2016)

Raaflaub KA and others, *Origins of Democracy in Ancient Greece* (University of California Press 2007)

Rabe SG, *U.S. Intervention in British Guiana: A Cold War Story* (University of North Carolina Press 2005)

Rahman T, *Parliamentary Control and Government Accountability in South Asia: A Comparative Analysis of Bangladesh, India and Sri Lanka* (Routledge 2007)

Ramcharan L, ‘The Cold War in British Guiana, 1953-1966: A Case Study of Anglo-American Cooperation’ (PhD, University of Kent 2003)

Ramkarran HN, ‘Seeking a Democratic Path: Constitutional Reform in Guyana’ (2004) 32 Georgia Journal of International and Comparative Law 585

‘Ramotar to Call General Elections If Opposition Pushes No-Confidence Motion’ *Demerara Waves* (5 November 2014) <https://demerarawaves.com/2014/11/04/ramotar-to-call-general-elections-if-opposition-pushes-no-confidence-motion-local-govt-elections-possibly-next-year/> accessed 21 September 2022

Ramrattan L and Szenberg M, ‘Colonial Dependency, Coreperiphery, and Capitalism: A Case Study of the Guyana Economy’ (2010) 44 The Journal of Developing Areas 51

Ramsahoye JW, *A Mouldy Destiny: Visiting Guyana’s Forbes Burnham* (Minerva Press 1996)

‘Ranil Recognised as Opposition Leader: Speaker - Breaking News | Daily Mirror’ (27 November 2019) <https://www.dailymirror.lk/breaking-news/Ranil-recognised-as-Opposition-Leader-Speaker/108-178575> accessed 9 March 2024

Reid CS, ‘The Constitutional Development of Guyana’ (PhD, Syracuse University 1968)

Reid P, ‘Scottish Parliamentarism and the Presiding Officer’s Certificate’ [2024] Commonwealth and Comparative Politics 1

—— and Ranatunga G, ‘Parliamentarism in Sri Lanka: Lessons from Bangladesh’ [Forthcoming] Indian Law Review

—— and Welikala A, ‘Scottish Secession and the Political Constitution of the United Kingdom’ in Richard Johnson and Yuan Yi Zhu (eds), *Sceptical Perspectives on the Changing Constitution of the United Kingdom* (Bloomsbury 2023)

Reid SA, ‘Gambia: “Let’s Go Take Back Our Country”’ [2016] *The Atlantic* <https://pulitzercenter.org/stories/gambia-lets-go-take-back-our-country> accessed 27 February 2023

Rhodes RAW, Wanna J and Weller PM, *Comparing Westminster* (Oxford University Press 2009)

Ricks JI and Liu AH, ‘Process-Tracing Research Designs: A Practical Guide’ (2018) 51 Political Science and Politics 842

Rizvi M, ‘J.A.G. Griffith’s Normative Positivism’ (PhD, University of Edinburgh 2015)

Roberts M, ‘Mahinda Rajapaksa as Modern Mahavasala and Font of Clemency? The Roots of Populist Authoritarianism’ in Asanga Welikala (ed), *Reforming Sri Lankan Presidentialism: Provenance, Problems and Prospects* (Centre for Policy Alternatives 2015)

Robinson T, Bulkan A and Saunders A, *Fundamentals of Caribbean Constitutional Law* (Sweet and Maxwell 2015)

Romano S, *The Legal Order* (Mariano Croce ed, Routledge 2017)

Russell M and Serban R, ‘The Muddle of the “Westminster Model”: A Concept Stretched Beyond Repair’ [2020] Government and Opposition 1

Ryan S, ‘Power Sharing in the Caribbean: The Search for Equity and Security’ (2002) 8 Caribbean Dialogue 1

——, ‘The Crisis of Governability in Guyana’ (2003) 8 Caribbean Dialogue 1

Safi M and Perera A, ‘Sri Lanka’s Supreme Court Suspends President’s Decision to Dissolve Parliament’ *The Guardian* (13 November 2018) <https://www.theguardian.com/world/2018/nov/13/sri-lankas-supreme-court-suspends-presidents-decision-to-dissolve-parliament> accessed 14 September 2022

——, ‘Sri Lanka MPs Fight in Parliament as Power Struggle Deepens’ *The Guardian* (15 November 2018) <https://www.theguardian.com/world/2018/nov/15/shameful-day-sri-lanka-mps-fight-in-parliament-as-power-struggle-deepens> accessed 14 September 2022

Saine A, ‘The Gambia’s 2006 Presidential Election: Change or Continuity?’ (2008) 51 African Studies Review 59

——, ‘The Military’s Managed Transition to “Civilian Rule” in The Gambia’ (1998) 26 Journal of Political and Military Sociology 157

Salvatore A, ‘A Counter-Mine That Explodes Silently: Romano and Schmitt on the Unity of the Legal Order’ (2018) 11 Ethics and Global Politics 50

Samaraweera B, ‘Allegations of Partisan Parliamentary Procedure: I Did Nothing Wrong: Speaker’ *Latest in the News Sphere | The Morning* (9 July 2023) <https://themorning.lk//articles/RIJDMCWHHAHZ3C317eKj> accessed 9 March 2024

Sandulli A, ‘Santi Romano and the Perception of the Public Law Complexity’ (2009) 1 Italian Journal of Public Law 1

Satkunanathan A, ‘The Executive and the Shadow State in Sri Lanka’ in Asanga Welikala (ed), *Reforming Sri Lankan Presidentialism: Provenance, Problems and Prospects* (Centre for Policy Alternatives 2015)

Schleiter P and Fleming TG, ‘Parliamentary Prorogation in Comparative Context’ (2020) 91 The Political Quarterly 641

Schwelb E, ‘The Republican Constitution of Ghana’ (1960) 9 The American Journal of Comparative Law 634

Scott ME, ‘Public Sector Transformation in Guyana’ in Paul Sutton (ed), *Modernizing the State: Public Sector Reform in the Commonwealth Caribbean* (Ian Randle Publishers 2006)

Secondat C de, *The Spirit of Laws* (Batoche Books 2001)

Senaratne K, ‘The Executive and the Constitutional Reforms Process in Sri Lanka’ (2019) 108 The Round Table 625

Sheingate A, ‘Institutional Dynamics and American Political Development’ (2014) 17 Annual Review of Political Science 461

Shugart MS and Carey JM, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (Cambridge University Press 1992)

Siaroff A, ‘Comparative Presidencies: The Inadequacy of the Presidential, Semi-Presidential and Parliamentary Distinction’ (2003) 42 European Journal of Political Research 287

Singer MR, ‘Sri Lanka in 1991: Some Surprising Twists’ (1992) 32 Asian Survey 168

Skach C, ‘The “Newest” Separation of Powers: Semipresidentialism’ (2007) 5 International Journal of Constitutional Law 93

Slater D and Simmons E, ‘Informative Regress: Critical Antecedents in Comparative Politics’ (2010) 43 Comparative Political Studies 886

Slowe P, ‘Letter in Response to AG Nandalall’s Attempt to Justify the Unconstitutional Action of President Ali’ (*Guyana Graphic*, 15 April 2023) <https://www.guyanagraphic.com/opinion/letter-in-response-to-ag-nandalalls-attempt-to-justify-the-unconstitutional-action-of-president-ali/> accessed 20 November 2023

Smith R, ‘Historical Institutionalism and the Study of Law’ in Gregory A Caldeira, R Daniel Kelemen and Keith E Whittington (eds), *The Oxford Handbook of Law and Politics* (Oxford University Press 2008)

Spinner TJ, *A Political and Social History of Guyana. 1945–1983* (Westview Press 1984)

'Sri Lanka 2003: The Continuing Deadlock' (*orfonline.org*, 12 January 2004) <https://www.orfonline.org/research/sri-lanka-2003-the-continuing-deadlock> accessed 9 March 2024

'Sri Lanka: Online Safety Act Major Blow to Freedom of Expression.' (*Amnesty International*, 24 January 2024) <https://www.amnesty.org/en/latest/news/2024/01/sri-lanka-online-safety-act-major-blow-to-freedom-of-expression/> accessed 9 March 2024

'Sri Lanka: President Gotabaya Rajapaksa Flees the Country on Military Jet' *BBC News* (12 July 2022) <https://www.bbc.com/news/world-asia-62132271> accessed 1 May 2023

'Sri Lanka's PM Resigns in Effort to Ease Constitutional Crisis' *The Guardian* (15 December 2018) <https://www.theguardian.com/world/2018/dec/15/sri-lanka-pm-mahinda-rajapaska-resigns-in-effort-to-ease-constitutional-crisis> accessed 14 September 2022

'Sri Lanka's Ruling Party Nominates Deputy Leader as Presidential Candidate' *Reuters* (26 September 2019) <https://www.reuters.com/article/idUSKBN1WB1FJ/> accessed 9 March 2024

St Pierre M, *Anatomy of Resistance: Anti-Colonialism in Guyana, 1823-1966* (Macmillan 1999)

Stepan A and Skach C, 'Constitutional Frameworks and Democratic Consolidation: Parliamentarianism versus Presidentialism' (1993) 46 World Politics 1

Stewart F, 'Religion versus Ethnicity as a Source of Mobilisation: Are There Differences?' (DFID 2009) Working Paper 70

Stewart K, 'How a Speaker of the House Can Be Ousted with a "Motion to Vacate"' (*NBC News*, 10 January 2023) <https://www.nbcnews.com/politics/congress/speaker-of-the-house-ousted-motion-to-vacate-rcna64902> accessed 17 April 2023

Stinchcombe AL, *Constructing Social Theories* (Harcourt Brace 1968)

Streeck W and Thelen K, 'Introduction: Institutional Change in Advanced Political Economies' in Wolfgang Streeck and Kathleen Thelen (eds), *Beyond Continuity: Institutional Change in Advanced Political Economies* (Oxford University Press 2005)

Suddaby R, Foster WM and Mills AJ, 'Historical Institutionalism' in Marcelo Bucheli and Rohit Daniel Wadhwani (eds), *Organizations in Time: History, Theory, Methods* (First edition, Oxford University Press 2014)

Teubner G, 'Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergences' (1998) 61 Modern Law Review 11

Tewfik K, 'On the Legal Status of the Acting Speaker of the People's National Assembly?' (2021) 6 Journal of Legal and Political Studies

Thakur RS, 'Crime, Ethnicity, and the Political Impasse in Guyana' in Arif Bulkan (ed), *Unmasking the State: Politics, Society and Economy in Guyana 1992-2015* (Ian Randle Publishers 2019)

'The Curious Case of The Joint Opposition's Shadow Cabinet' *Roar Media* (8 July 2016) <https://roar.media/english/life/reports/curious-case-joint-oppositions-shadow-cabinet> accessed 9 March 2024

Thelen K, 'How Institutions Evolve: Insights Form Comparative Historical Analysis' in James Mahoney and Dietrich Rueschemeyer (eds), *Comparative Historical Analysis in the Social Sciences* (Cambridge University Press 2003)

—— and Conran J, 'Institutional Change' in Orfeo Fioretos, Tulia G Falleti and Adam Sheingate (eds), *The Oxford Handbook of Historical Institutionalism* (Oxford University Press 2016)

—— and Mahoney J, 'Comparative-Historical Analysis in Contemporary Political Science' in James Mahoney and Kathleen Thelen (eds), *Advances in Comparative-Historical Analysis* (Cambridge University Press 2015)

Thomas C, 'The Current Crisis in Guyana' (1982) 12 Ufahamu: A Journal of African Studies 107

Thomas M, ‘Norton’s Accession to Parliament Closer’ *Stabroek News* (2 April 2022) <https://www.stabroeknews.com/2022/04/02/news/guyana/nortons-accession-to-parliament-closer/> accessed 9 March 2024

Tomkins A, *Our Republican Constitution* (Hart 2005)

Tulis JK, *The Rhetorical Presidency* (Princeton University Press 2017)

Twomey A, *The Veiled Sceptre: Reserve Powers of Heads of State in Westminster Systems* (Cambridge University Press 2018)

‘UNP Decides to Nominate Sajith as Opposition Leader’ *Colombo Gazette* (5 December 2019) <https://colombogazette.com/2019/12/05/unp-decides-to-nominate-sajith-as-opposition-leader/> accessed 9 March 2024

Uyangoda J, ‘Making Sense of the October Conflict and Its Aftermath’ in Asanga Welikala (ed), *Constitutional Reform and Crisis in Sri Lanka* (Centre for Policy Alternatives 2019)

Uyangoda J and Keerthi A, ‘Sri Lanka Freedom Party: Continuity Through Ideological and Policy Shifts’ in Amita Shastri and Jayadeva Uyangoda (eds), *Political Parties in Sri Lanka: Change and Continuity* (Oxford University Press 2018)

Venugopal R, ‘Democracy, Development and the Executive Presidency in Sri Lanka’ (2015) 36 Third World Quarterly 670

Vinx L, ‘Santi Romano against the State?’ (2018) 11 Ethics and Global Politics 25

Wallace E, ‘British Guiana: Causes of the Present Discontents’ (1963) 19 International Journal 513

Warnapala W, ‘Seeking Sanction for Dictatorship: The Referendum in Sri Lanka’ (1983) 18 Economic and Political Weekly 17

——, *Parliament and Public Accountability in Sri Lanka* (Godage International Publishers 2004)

Watson A, *Legal Transplants: An Approach to Comparative Law* (Scottish Academic Press 1974)

Wehner J, ‘Legislative Arrangements for Financial Scrutiny: Explaining Cross-National Variation’ in Riccardo Pelizzo, David M Olson and Rick Stapenhurst (eds), *The Role of Parliaments in the Budget Process* (The International Bank for Reconstruction and Development/The World Bank 2005)

Welikala A, ‘Editor’s Introduction’ in Asanga Welikala (ed), *The Nineteenth Amendment to the Constitution: Content and Context* (Centre for Policy Alternatives 2016)

——, ‘Yahapalanaya as Republicanism’ in Asanga Welikala (ed), *The Nineteenth Amendment to the Constitution: Content and Context* (Centre for Policy Alternatives 2016)

——, ‘Paradise Lost? Preliminary Notes on a Constitutional Coup’ (*Groundviews*, 27 October 2018) <https://groundviews.org/2018/10/27/paradise-lost-preliminary-notes-on-a-constitutional-coup/> accessed 14 September 2022

——, ‘Editor’s Introduction’ in Asanga Welikala (ed), *Constitutional Reform and Crisis in Sri Lanka* (Centre for Policy Alternatives 2019)

——, ‘The Sri Lankan Culture of Constitutional Law and Politics: The Lessons of the Constitutional Reform Exercise 2014-19 and the Constitutional Crisis of 2018’ in Asanga Welikala (ed), *Constitutional Reform and Crisis in Sri Lanka* (Centre for Policy Alternatives 2019)

——, ‘Constitutional Reforms in Sri Lanka – More Drift?’ (2019) 108 Round Table 605

——, ‘The Dismissal of Prime Ministers in the Asian Commonwealth: Comparing Democratic Deconsolidation in Malaysia and Sri Lanka’ (2020) 91 Political Quarterly 786

——, ‘The Eastminster Viceroy and the Republican Monarch: The Sri Lankan Head of State and the 2018 Constitutional Crisis in Historical Context’ in H Kumarasingham (ed), *Viceregalism: The Crown as Head of State in Political Crises in the Postwar Commonwealth* (Palgrave Macmillan 2020)

——, 'The Coming Constitution of the Civilization-State' (*Groundviews*, 8 July 2020) <https://groundviews.org/2020/07/08/the-coming-constitution-of-the-civilization-state/> accessed 25 March 2022

'Who Is Charrandas Persaud?' (*News Room Guyana*, 22 December 2018) <https://newsroom.gy/2018/12/22/who-is-charrandas-persaud/> accessed 12 August 2022

Wickramaratne E, 'Parliamentary Oversight Committees' [2012] The Parliamentarian 46

Wickramasinghe N, 'Mahinda Rajapaksa: From Populism to Authoritarianism' in Alain Dieckhoff, Christophe Jaffrelot and Elise Massicard (eds), *Contemporary Populists in Power* (Springer 2022)

Wickremasinghe R, 'National Reconciliation and Parliament' [2012] The Parliamentarian 10

'Wickremesinghe's Arrogance Led to His Sacking, Says Sirisena as Political Crisis Deepens in Lanka' *The Times of India* (28 October 2018) <https://timesofindia.indiatimes.com/world/south-asia/wickremesinghes-arrogance-led-to-his-sacking-says-sirisena-as-political-crisis-deepens-in-lanka/articleshow/66405282.cms> accessed 26 September 2022

Wijesekera P, *Essays on Parliament* (Friedrich Naumann Foundation 2009)

Wijeyeratne RDS, 'Cosmology, Presidentialism and J.R. Jayewardene's Constitutional Imaginary' in Asanga Welikala (ed), *Reforming Sri Lankan Presidentialism: Provenance, Problems and Prospects* (Centre for Policy Alternatives 2015)

Willoughby KG, *Public Budgeting in Context: Structure, Law, Reform and Results* (John Wiley and Sons 2014)

Wilson AJ, *Politics in Sri Lanka, 1947-1979* (2nd edn, Macmillan 1979)

——, *The Gaullist System in Asia: The Constitution of Sri Lanka (1978)* (Macmillan 1980)

——, *The Break-Up of Sri Lanka: The Sinhalese-Tamil Conflict* (C Hurst and Co 1988)

Wiseman JA, 'Revolt in the Gambia: A Pointless Tragedy' (1981) 71 The Round Table 373

Woodward CA, *The Growth of a Party System in Ceylon* (Brown University Press 1969)

Cases and Legislation

Sri Lanka

Constitution of Ceylon 1947

Constitution of Sri Lanka 1972

Constitution of Sri Lanka 1978

Decisions of the Supreme Court on Parliamentary Bills (2014-2015) Vol. XII

Eighteenth Amendment to the Constitution

Gamini Dissanayake v. M.C.M. Kaleel and Others [1993] 2 Sri LR 135

In Re Twenty-First Amendment to the Constitution SC (SD) No. 31/2022

Nineteenth Amendment to the Constitution

'Online Safety Bill' SC (SD) No. 66/2023

Rajavarothiam Sampanthan and others v. Attorney General and others SC (FRA) No. 351/2018

SC Reference No. 2/2003

Seventeenth Amendment to the Constitution

Standing Orders of the Parliament of Sri Lanka

Sumanthiran vs. Speaker of Parliament and Attorney General SC (FRA) No. 37/2024

Tilwin Silva v. Ranil Wickremasinghe and Others [2007] 2 Sri LR 15

Twentieth Amendment to the Constitution

Twenty-First Amendment to the Constitution

Guyana

Constitution (Amendment) (No.3) Act 2000

Constitution of Guyana 1966

Constitution of Guyana 1980

'Public Service Commission Rules', (R 15/01/1999).

Ram, Jagdeo, and Persaud [2019] CCJ 10 (AJ)

Speaker's Ruling No. 4 of 2013 (16th April 2013)

Standing Orders of the National Assembly of Guyana

Other

Constitution of Algeria 2020

Constitution of Botswana 1966

Constitution of France 1958

Constitution of Mali 1992

Constitution of South Africa 1996

Constitution of The Gambia 1970

Constitution of The Gambia 1996

Constitution of the United States of America 1787

Draft Constitution of The Gambia 2020

R (on the application of Miller) v The Prime Minister [2019] UKSC 41