

EDITOR'S INTRODUCTION

In 2015, the Second Republican Constitution of Sri Lanka marks the 37th year of its promulgation in 1978, making it the longest serving constitution in post-independence Sri Lanka. It instantiated executive presidentialism as its centrepiece – the institution itself having been introduced prior to its enactment by way of an amendment to the previous 1972 Constitution – which has had a deep and abiding influence on Sri Lanka's legal and political culture. At the time of its enactment, it represented a radical departure from the models of executive collegiality that had hitherto characterised the constitutional forms of Ceylon / Sri Lanka since the introduction of universal electoral democracy in 1931, and it has since come to dominate both institutional relations within Sri Lanka's system of government, as well as the landscape of electoral politics more broadly. Ever since its introduction, there has been vigorous debate about the adverse consequences of executive presidentialism from the perspectives of democracy and pluralism.

During the period of its operation, the constitution has been amended eighteen times, but the predominant motivation underlying the large majority of these amendments has been to strengthen the presidency at the cost of democracy and checks and balances. Two exceptions to this have been the Thirteenth Amendment, which introduced a framework of provincial devolution but which has not been implemented to the full extent of its potential; and the Seventeenth Amendment which sought to de-politicise key state services, but which was neutralised by the Eighteenth Amendment.

With the enactment of the Eighteenth Amendment to the Constitution in 2010, which by abolishing term limits and the restraints on presidential power established by the Seventeenth Amendment, strengthened and further entrenched the institution even beyond what was contemplated in 1978, Sri Lanka entered a phase of hyper-presidentialism. The changes wrought by the Eighteenth Amendment were only the formal veneer of a more insidious style and approach to government adopted by the

regime of President Mahinda Rajapaksa, which was based on a package of ethnic chauvinism, populist authoritarianism, and clientelist corruption not seen before.

Until the dramatic political events in the latter part of 2014 saw the wholly unexpected rejection of the Rajapaksa regime in the presidential election of 8th January 2015, it appeared not only that presidentialism would be with us for the foreseeable future, but also that the entire nature of the Sri Lankan state would be changed beyond recognition under the influence of Rajapaksa presidentialism. With the election of President Maithripala Sirisena and a new government formed under Prime Minister Ranil Wickremesinghe, there is now a 100-day reforms programme underway which contemplates the abolition or at least a substantial reduction in the powers of the executive presidency. The new institutional configuration of the Sri Lankan state in general and the shape of its executive in particular are yet to emerge, but it is to be hoped that the new framework would restore a more even balance between the three branches of government, and thereby promote the principles of constitutional government for which the people of Sri Lanka clearly voted in January 2015.

This edited collection was originally intended to be published in 2013, on the 35th anniversary of the constitution. For a multiplicity of reasons including that our original funding partner, the Friedrich Naumann Stiftung für die Freiheit (FNF), was effectively expelled from the country by the Rajapaksa regime, that objective could not be met. Nonetheless, as we proceeded with the project while seeking funds elsewhere, the scheme of the collection as well as the contributions continued to be based on the political realities that obtained prior to January 2015. After the presidential election and especially the commencement of the reforms programme, however, a decision had to be made whether to undertake a major reorientation of the rationale of the book (together with the attendant revisions to individual contributions), or whether it would be more useful to publish the essays while the reform process was actually underway. We have decided upon the latter course as being the more useful contribution to the constitutional reform debate in Sri Lanka. We feel strongly that the essays in this collection provide fresh analytical insights in

understanding the presidential institution from multidisciplinary perspectives, suggest alternative institutional forms and principled rationales for its reform, provide comparative and theoretical elucidation towards informing the possibilities and pitfalls of reform, and finally, stand at least partial testimony to the excesses of presidentialism that we have recently witnessed in Sri Lanka. Seen in this light, the discussion in many chapters is prescient and at least some of the reform rationales canvassed by authors are currently at the heart of constitutional reform.

The chapters are grouped together under five themes. The first section deals with the institutional characteristics of the 1978 presidential constitution, with Chapter 1 by Radhika Coomaraswamy providing an overview of the institutional changes introduced by it in the light of what went before. Chapters 2 and 3 by Reeza Hameed and Nihal Jayawickrama explore the situation of Parliament and the courts in the context of the executive presidency. In Chapter 4, Sachintha Dias analyses the case law of the Supreme Court in the way it has defined the nature and powers of the presidency through constitutional interpretation. In Chapter 5, Niran Anketell discusses the issue of legal immunity from suit of the president, the comprehensive nature of which has been one of the most criticised aspects of the 1978 Constitution. The last three chapters in this section explore different dimensions of one of the most vexed problems that has plagued Sri Lanka for most of the currency of the present constitution: the extra-institutional political violence, perpetrated by insurrectionaries, secessionists, and the state in equal measure. In Chapter 6, Deepika Udagama analyses the constitutional and statutory regime for the exercise of emergency powers and the role of the executive presidency in a state of emergency. In Chapter 7, Laksiri Fernando looks at the problems we have had with the protection, promotion and enforcement of human rights under the 1978 Constitution. And in Chapter 8, Ambika Satkunanathan provides an account of the issue of securitisation and militarisation that became a central feature of Sri Lankan presidentialism after the war ended in 2009.

The second theme represents two of the basic rationales advanced in favour of presidentialism, *viz.*, that it would protect the interests of minorities and that it would promote economic development.

In Chapter 9, therefore, Luwie Ganeshathasan examines the President's role in the framework of devolution under the Thirteenth Amendment. In Chapters 10 and 11, Kumaravadivel Guruparan and A.M. Faaiz discuss the impact of presidentialism on, respectively, the Tamils and the Muslims, and the extent to which the form or system of government is relevant to the protection of minority interests in Sri Lanka's plural polity. In Chapter 12, Rajesh Venugopal interrogates the rationale that a strong executive is needed for economic development.

In any constitutional system, the manner in which power is exercised within, and indeed beyond, legal institutions is deeply influenced by cultural and historical factors that resonate with both power-wielders as well as the society which votes for them. As François Guizot said in *Essais sur l'histoire de France* (1836), "Depuis la fin du treizième siècle jusqu'à nos jours, toutes choses ont tendu, en France, vers le triomphe de la monarchie pure, en Angleterre, vers celui du gouvernement parlementaire ... [C'est] le parlement qui a présidé aux destinées de la Grande-Bretagne comme la royauté à celle de la France." [Since the end of the thirteenth century until today, everything has tended, in France, towards the triumph of pure monarchy, and in England, towards that of parliamentary government ... [It is] Parliament that has presided over the fate of Great Britain, as Royalty has over that of France.] In Sri Lanka, anthropologists and historians in particular have produced some fascinating insights into the way the modern presidential institution was conceived, and then how various presidents have seen their role in occupying office and exercising its powers, and in particular how ideas about the ancient Sinhala-Buddhist monarchy have influenced these choices. These themes are explored in Chapter 13, by Asanga Welikala, where the sources of the ancient Sinhala-Buddhist kingship are explored. In Chapters 14, 15, and 17, Roshan de Silva Wijeyeratne, Ananda Abeysekera, and Michael Roberts discuss the nature of presidencies of Presidents Jayewardene, Premadasa, and Rajapaksa, respectively. In Chapter 16, Kalana Senaratne provides an account of *Jathika Chinthanaya*, an intellectual school of nationalist thought that has been extremely influential in sustaining the social discourse in support of the monarchical presidency.

Comparative experiences are an important source of ideas for constitutional reform and in the chapters grouped together under the third section, the essays consider a range of applicable options. In Chapter 18, Suri Ratnapala sets out a theoretical framework based on the separation of powers along which the choice of the form of government might be determined if liberal democratic norms are to be realised. In Chapters 19 and 20, Mark Hager and Nikhil Narayan discuss the American experience, while in Chapter 21, Kamaya Jayatissa explores the French experience. In Chapter 22, Rehan Abeyratne undertakes a comparative analysis of the Indian and Sri Lankan experience of experimenting with forms of executive power.

In the final set of chapters, the essays turn to questions of alternatives and theoretical perspectives. In Chapter 23, Michael Roberts reflects on the deeper questions of ethnic pluralism that have denied Sri Lanka a stable constitutional settlement since the 1970s. In Chapter 24, Paikiasothy Saravanamuttu discusses the relationship between nation-building and the institutional form of the state. In Chapter 25, Harshan Kumarasingham reminds us of the development of the conventions relating to the exercise of executive power in the early independence years. In Chapter 26, Chandra de Silva returns to a theme developed over twenty-five years ago, when the concept of the ‘overmighty executive’ was first introduced by him into the Sri Lankan political lexicon. In Chapters 27 and 28, respectively, Jayampathy Wickramaratne argues the case for the abolition of the executive presidency from the perspective of the Left, while Rohan Edrisinha traces the liberal critique of presidentialism from the outset.

Last but not least, a word on the picture that features on the dust jacket cover and as the frontispiece of the book by Chandraguptha Thenuwara. Entitled ‘*Bala Vannama*’, this original drawing done specifically for this book (and presented by the artist at the Edinburgh Festival in 2014), resoundingly captures the rampantly uncontrolled and politically immoral nature into which the institution of the executive presidency had evolved since of late. It is a telling reminder of the recent past, and an encouragement as we undertake the current constitutional reforms, about what we should avoid in the future.

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