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A Game of Mirrors: Constitutionalism and Exceptionalism in a Context of Nationalist Hegemony

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Introduction

This chapter seeks to explore the relationship in Sri Lanka between political and social power on the one hand and constitutionalism on the other. Although, it will concentrate on the 1972 Constitution, it argues that the record of postcolonial constitution-building in the island has been persistently captured by the logic of Sinhala nationalist hegemony as witnessed in the First Republican Constitution 1972 (and latterly in the Second Republican Constitution of 1978 and in recent constitutional reforms such as the Eighteenth Amendment). The chapter argues that Sri Lanka remains a classic example of the constraints on constitutionalism as an instrument of liberal peace-building, due to the primacy of hegemonic socio-political forces in the relation between politics and legal norms. Using a Gramscian approach, it also states that the potency of the hegemony that has underpinned Sinhala nationalism in Sri Lanka must be understood as a consequence of the gradual discursive and ideological diffusion of Sinhala nationalism to wider social strata in the Sinhala populace, thereby cementing a governmental nexus of people, state and territory of populist intensity. In the post-independence period, it is this hegemony which has acted as a pivotal dynamic in the construction of constitutional and state reform evident in the 1972 Constitution.

Constitutionalism, the 'People' and Power

Evidently for many liberals and liberal legal scholars, constitutionalism provides a key architecture for the provision of citizenship, the pursuit of effective rule of law, the enshrinement of key rights, the provision of checks and balances upon excessive governmental power, and for the pursuit of a cosmopolitan and plural society that recognises the claims and rights of both majority and

minority groups.[1] Constitutionalism has therefore always been a key means through which liberal order has sought to expand its hold over regions of the globe including colonial and postcolonial contexts. In the current post-Cold War context, it has become a key part of the armoury deployed in conflict-affected regions of the globe in order to produce the kind of liberal infrastructure that can bring into effect a cosmopolitan civic order required by universalising liberalism.[2] Alongside the recurrent failures of constitutional peace-building in Sri Lanka, such processes have been witnessed with varying results in a myriad of contexts including East Timor, Afghanistan, Iraq and Nepal. These examples demonstrate the powerful linkage that has existed between the recent post-Cold War intensification of global intervention and the resurgence of constitution-building in conflict-affected spaces.

In these constitution-building processes, what is significant is that international and local actors are seeking to effect the correct arrangement of the nexus between identity, state, territory and people. In this, the concept of the 'people' is key as it ideally forms at least theoretically the basis of constituent power and sovereignty. Aside from some more probing recent studies of this question of the identity of the 'people' as constituent power,[3] mainstream perspectives in political and legal theory have tended to opt for circularity or, at best a dialectical relation, in so far as constitution-building is frequently understood to constitute the people at the same time as the people form the foundation for the constitution. For social contract theorists, the 'people' are

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[1] D. Archibugi, '*Cosmopolitan Democracy and its Critics: A Review*' (2004) *European Journal of International Relations*, 10(3): 437–473.
[2] This strand of universalising liberalism has been differentiated by some liberals from a *modus vivendi* model that does not impose a singular model of life: e.g., see J. Gray (2000) *The Two Faces of Liberalism* (London: Polity Press).
[3] M. Loughlin & N. Walker (Eds.) (2007) *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* (Oxford: OUP).

constituted through a fictive or theoretical founding moment that establishes the duties and obligations between the populus and the sovereign.

Another perspective which has wide currency including mainstream as well as more critical approaches, is to avoid the mythemes of much social contract theory by locating the constituent power of the people and/or the democratic impulse as emergent from a landmark historical event including particularly the French and American Revolutions. [4] Some post-structuralist approaches, particularly both Laclau and Mouffe, and Hardt and Negri, stress these founding moments and that in the aftermath, such events have set in motion the potential for a protean, expansive inclusive order that is self-founding and immanent to the social field from which it emerges, and which therefore never achieves closure due to its 'modern plasticity': in other words, that it has been open to struggles by new minority groups seeking citizenship and democratic inclusion.[5]

Evidently, what is key to discussion of the nexus between constituent power and the people on the one hand and constitutionalism on the other is the precise relation between the political and the legal order, bearing as it does not only on questions of access to citizenship, social justice, equality and rights, but the source and legitimacy of the constitution. As a result, recent studies given over to an explicit focus on this relationship have asserted that constitutional form must in some sense be dependent on the capacity to reflect 'political identity.' Moreover, that this relation makes constitutional authority 'provisional' and "subject to the political exception which is an expression of the constituent power of the people to make and therefore also to break the constituted authority of

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[4] M. Hardt & A. Negri (2000) *Empire* (Boston: Harvard UP): pp.163-4; H. Arendt (1963) *On Revolution* (New York: Viking Press); M. Loughlin and N. Walker, '*Introduction*' in Loughlin & Walker (2008): p.3; E. Laclau & C. Mouffe (1985) *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (London: Verso): pp.154-156.
[5] Hardt & Negri (2000): pp.160-7; Laclau & Mouffe (1985).

the state." [6] This oblique reference to the people as 'political exception' comes in the wake of Carl Schmitt who sought to encompass the political as an ultimately decisive element within the construction of juridical order through his exploration of the "state of exception."[7]

Although Schmitt and Agamben end up doing very different things with the same concepts, what both are exploring is the unveiling of the political when the norms of legal order are suspended through for instance constitutional innovation, reform, revolution or emergency rule in situations of crisis, siege and war. For Schmitt in such situations where the link between legal norms and facticity collapses, the political demonstrates its primacy through the decisionist intervention of the sovereign who must suspend the law in order to engage and resolve the crisis that the sovereign and therefore the people are confronted by. [8] In Agamben's work, the Schmittian paradigm is put to new work in the context of a critique of the Holocaust, encampment and more recently the global war on terror.[9] For Agamben, we increasingly live in a situation where the state of exception (which he defines as a 'zone of anomie' completely devoid of law) is the rule and executive power intervenes in increasingly unfettered, authoritarian ways to engage directly with the threat of anomic life.[10] So whereas for Schmitt there still remained a juridical order which the sovereign straddled on the interstices between the inside and outside, for Agamben there is rather a violent rupture in the dialectic between politics and law which allows for both the possibility of radical revolution and yet the

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[6] Loughlin & Walker (2007): p.2.

[7] C. Schmitt (1985) *Political Theology: Four Chapters on the Concept of Sovereignty* (Trans. G. Schwab) (Cambridge, MA: MIT Press); G. Agamben (1998) *Homo Sacer; Sovereign Power and Bare Life* (Trans. D. Heller-Roazen) (Stanford: Stanford UP); G. Agamben (2005) *State of Exception* (Trans. K. Attell) (Chicago: University of Chicago Press).

[8] Schmitt (1985): p.5.

[9] Agamben (1998); Agamben (2005).

[10] Agamben (2005).

consistent tendency for executive power to colonise and capture the lacuna apparent in this zone of indeterminacy.[11]

Yet, despite the focus on the 'political' in these post-Schmittian approaches, the 'political' remains highly reductive in both Schmitt and Agamben.[12] For Schmitt, the 'political' is ultimately reduced to a monolithic and essentialist statism hinging on the friend/enemy binary that actually neglects an understanding of the politically constructed nature of the 'people' and the way that it emerges out of a complex set of social and political articulations and tensions.[13] It is undeniable that Schmitt neither ignores nation, people or grouping in his understanding of the political, nor does he reduce the friend/enemy distinction to the shell of the state, as he explicitly states that the state and sovereignty presupposes a political and pre-political sphere including the civil dimensions of political antagonism.[14]

However, it remains unclear for very good reason to a number of commentators precisely where the political and the power of sovereignty is located. This is because the (pre-)political and its construction (and thereby its openness to deconstruction) is clouded by a tendency for treating the 'people' and the sovereign as a fatalistically

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[11] Agamben (2005): pp.55-59.

[12] J. Huysmans, '*The Jargon of Exception – On Schmitt, Agamben and the Absence of Political Society*' (2008) **International Political Sociology** 2: pp.165–183; A.W. Neal, '*Cutting Off the King's Head: Foucault's Society Must Be Defended and the Problem of Sovereignty*' (2004) **Alternatives: Global, Local, Political**, 29(4); pp.374-375.

[13] This is where Chantal Mouffe is perhaps too 'friendly' to Schmitt, whereas her work with and without Laclau really fills out the lack of nuance and scarcity in the Schmittian paradigm of politics with a more theoretically rigorous sensitivity to the construction of social and political orders. See C. Mouffe (2005) **On the Political** (Abingdon: Routledge 2005); see also Laclau & Mouffe (1985).

[14] C. Schmitt (1996) **The Concept of the Political** (Trans. G. Schwab) (Chicago: University of Chicago Press): pp.28-44; U.K. Preuss, '*Political Order and Democracy: Carl Schmitt and his Influence*' in C. Mouffe (Ed.) (1999) **The Challenge of Carl Schmitt** (London: Verso): pp.156-157.

linear, statically given and monolithic entity that would step forward to be 'decisive' and thereby to be an 'authentic' sovereign at moments of crisis.[15] This is a clear example of a view that ultimately sees the incarnation or fulfilment of a pre-given people in the state form, a model that denies the fluid, ceaseless, consistent and perpetual construction of both the socio-political ('people') and of the state form in the constructions of political mobilisation. Consequently the argument being made here is that hegemony as political and social power is emergent from and reproductive of a social field made up of a multiplicity of social demands and force relations,[16] which are ceaselessly being formed and reformed, albeit often in discursively and ideologically melded modes of reinforcement and exclusion, and that it is this hegemonic operation that is decisive as a constraint and dynamic in the reproduction of constitutional orders.

Although Agamben is attentive to the deficiencies in the Schmittian paradigm, his biopolitical reading is again reductive in its understanding of the political, stripping it down to executive power's increasing tendency to 'absorb' legislative power and increasingly to act in an unmediated, paradoxically depoliticising and direct way upon "bare life."[17] What both these accounts therefore leave out, despite their claimed focus on the political, is precisely a fuller understanding of both the political and the social, a failing that has been noted by other critics.[18] It is notable how in the works of both Schmitt and Agamben there is very little engagement with the sphere of political discourse, and of what would in old-fashioned parlance would have been called the 'ideological.'[19] This is

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[15] Preuss (1999): pp.167-168; see also H. Suganami, '*Understanding Sovereignty through Kelsen/Schmitt*' (2007) **Review of International Studies** 33: pp.517-518.

[16] Laclau & Mouffe (1985); Neal (2004): p.375.

[17] Agamben (2005): p.18

[18] Huysmans (2008); Neal (2004): pp. 374-375.

[19] It is notable that discussion of nationalism or nationalist ideology is mainly notable by its absence in both *Homo Sacer* and *State of Exception*. It should be noted that Agamben's exclusion in this regard

essential because not only are constitutions, as I am arguing, shaped by political (and therefore social) hegemony, but states of exception frequently emerge out of crises that are nurtured in the womb of hegemonic conceptions of the polity and society.

Agamben also fails to sufficiently address the salient issue of how powers over and through life, namely biopolitics and governmentality, are deeply bound up with the socio-political, the ideological, and with discourses of identity, including nation, ethnicity and race. [20] This lack is somewhat surprising given Agamben's evident recognition of the hierarchic orders of citizenship lying at the very heart of *Homo Sacer*.[21] Whilst there is certainly discussion of hierarchies of racial discourses in Nazi ideology, Agamben's focus ends up reducing this to the technological frameworks of eugenics and biology.[22] As a consequence, a wider understanding of how and why discourses of racial, ethnic or nationalist identity become hegemonic is neglected. This requires a fuller appreciation of the interface between these biological discourses and forms of nationalist, racial and ethnic discourse, as it is precisely in this interface that hierarchies of encompassment, inclusion and exclusion are structured.

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is an attempt to reconfigure community without reference to identity as a source of exclusionary citizenship tied to state orders: see A. Thurschwell, '*Spectres of Nietszsche: Potential Futures for the Concept of the Political in Agamben and Derrida*' (2002-3) **Cardozo Law Review** 1193. The problem is that deliberate neglect of the way these sources of social and political power continue to operate is also a refusal to engage with and confront on-going forms of inclusion and exclusion in their fuller ideological and discursive dimensions.

[20] M. Foucault (2003 [1976]) **Society Must Be Defended** (Trans. D. Macey) (London: Penguin); M. Duffield, '*Racism, Migration and Development: The Foundations of Planetary Order*' (2006) **Progress in Development Studies** 6(1): pp.68-79; R. Esposito (2008) **Bios: Biopolitics and Philosophy** (Minneapolis: University of Minnesota Press): pp.25-27.

[21] Agamben (1998).

[22] Ibid: pp.84-88.

For this reason I aim to show, utilising the Sri Lankan case study, how the biopolitical and governmental has developed in Sri Lanka since the nineteenth century, arguing that this occurred through the hybrid interweaving of the apparatuses and frameworks of rule introduced by colonial rule with the discourses of Sinhala nationalism, which from the latter half of the nineteenth and into the twentieth century, pursued forms of political and social mobilisation that were entirely bound up with a desire to act on life and conduct in a disciplinary, governmental and biopolitical fashion. The chapter then goes on to trace the gradual hegemonisation of majoritarian Sinhala nationalism and the way that it has impacted upon post-independence constitutional reform.

Colonial and Nationalist Governmentality

As has been noted by a number of scholars, the colonial presence in Sri Lanka (and elsewhere in South Asia) underwent a major transformation in the early to mid-nineteenth century as British colonial rule shifted from a logic of mercantilist extraction to one of more intensive permeation of the social landscape to effect a more through-going impact upon the conduct and practices of the population.[23] This has produced, in the wake of Foucault's focus on the European context, the coinage of the term 'colonial governmentality' to describe the way that the colonial intervention has produced knowledge of and engagement with colonised spaces and populations in the various and sometimes overlapping spheres of economics, demography, welfare, health, sanitation, education and sexuality.[24] In short, it describes any form

[23] D. Scott (1999) *Refashioning Futures: Criticism After Postcoloniality* (Princeton: Princeton UP): pp.23-52; S. Kaviraj, '*On State, Society and Discourse in India*' in J. Manor (Ed.) (1991) *Rethinking Third World Politics* (London: Longman).
[24] For e.g., see Scott (1999); D. Rampton (2010) *Deeper Hegemony: The Populist Politics of Sinhala Nationalist Discontent and the JanathaVimukthi Peramuna in Sri Lanka* (Unpublished University of London PhD Thesis): pp.49-83; G. Prakash, '*Civil Society,*

of intervention into society operative through diverse apparatuses of knowledge and practice that has as its target populations, with the aim of producing specific effects upon conduct.[25] Within this the biopolitical forms a subset of governmental power over populations that seeks to act upon the life process itself.[26] In Sri Lanka this shift has frequently been attributed to the Colebrooke-Cameron reforms of 1833 which had two major overall effects.[27] The first lay in drawing together the loosely administered ethnically–based dominions which the British had finally claimed unified sovereignty over in 1815 when the Kandyan Convention recognised colonial suzerainty. This was effected through the British consolidation of the island into a territorially integrated, unitary state with a particularly centralised governance structure in order to counter revolt and resistance.[28] In this way, colonial rule produced the shell of the nation-state which would later be captured and hegemonised by a potent Sinhala nationalist majoritarianism.

The second effect lay specifically in the governmental and biopolitical sphere outlined above, in which the introduction of changes to the judiciary, to education, to the media, to political representation and to the economy sought to inculcate and transform society in order to produce precise changes in the conduct of communities in

Community and the Nation in Colonial India' (2002) ***Etnografica*** 6(1): pp.27–39.

[25] M. Dean (1999) ***Governmentality: Power and Rule in Modern Society*** (London: Sage): p.10; M. Foucault, '*Governmentality*' in J.D. Faubion (Ed.) (1994) ***Foucault: The Essential Works Volume Three: Power*** (London: Allen Lane, Penguin): pp.201-222; M. Foucault, '*Omnes et Singulatim: Toward a Critique of Political Reason'* in Faubion (1994): pp.298-325; M. Foucault, '*The Birth of Biopolitics*' in P. Rabinow (Ed.) (1994) ***Foucault: The Essential Works Volume One: Ethics*** (London: Allen Lane, Penguin): pp.73-80.

[26] Foucault ,'*The Birth of Biopolitics*' in Rabinow (1994): p.73.

[27] Scott (1999): pp.40-52.

[28] S. Sirivardana, '*Innovative Practice amidst Positive Potential for Paradigm Shift: The Case of Sri Lanka'* in S. Sirivardana & P. Wignaraja (Eds.) (2003) ***Pro-Poor Growth and Governance in South Asia*** (New Delhi: Sage): pp.229-231.

Sri Lanka.[29] From 1833 the colonial state thus began the gradual and uneven task of introducing the apparatuses of this governmental logic through the social fabric of Ceylon. At the elite and centre-level this included encouraging elite education into the professions and administration and the nomination of Ceylonese representatives to the Legislative Council, whilst at the local level where progress was highly uneven, the colonial state sought for example to encourage the establishment of schools, local courts, the use of western (as opposed to ayurvedic) health services and the institution of Western marriage practices through the Marriage Ordinance of 1861.[30] The ultimate aim of these changes were to inculcate a liberal utilitarian and disciplinary logic in order to produce a society based on market exchange and an overarching 'Ceylonese' secular-civic identity stripping away the vestiges of traditional elite, caste and ethnic difference.

However, there were contradictions inherent in the colonial state's intervention in order to produce these changes in the *longue durée*. For example, despite seeking in the Colebrooke-Cameron reforms to overturn the logic of casteism, feudal elitism and ethnic identification, the colonial state pursued the nomination of local elites to the Legislative Council on the basis of ethnicised elite community representation.[31] The colonial authorities also engaged in census-taking as a classic form of governmental enumeration of ethnic and religious identities, a calculus that served to harden and reinforce ethnic differences.[32] The colonial intervention also contributed to these ethnic divisions in the economic sphere by partially segmenting production between the

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[29] Scott (1999): pp.23-52.
[30] Rampton (2010): pp.49-83.
[31] E. Nissan & R.L. Stirrat, '*The Generation of Communal Identities*' in J. Spencer (Ed.) (1990) **Sri Lanka: History and the Roots of Conflict** (London: Routledge): pp.19-44.
[32] Ibid. See also B. Anderson (1983[1991]) **Imagined Communities: Reflections on the Origins and Spread of Nationalism** (London: Verso): pp.163-185.

'traditional' agrarian smallholder sector which, as I shall explore below, came to be increasingly associated with the Sinhala peasant and a 'modern' colonially-instituted 'estate' sector manned predominantly by Indian plantation labourers. This ethnicising logic would also be reinforced through colonially instituted constitutional changes in the shape of the Manning reforms of the early twentieth century, which again asserted a communal or ethnicised representation which was to be later (unsuccessfully) countered by the Donoughmore reforms of 1931 seeking to undo the influence of ethnic representation. It is clear then that colonial governmentality had a number of layers that at once sought the production of liberal cosmopolitan subjects at one level whilst at another nonetheless recorded, codified and therefore reinforced ethnic difference.

As a result, these changes impacted directly, albeit unevenly, upon conduct and the life process itself, and there is little doubt that they contributed to what Kapferer has termed the 'transmutation' of pre-existing identities into their more rigidified disciplinary, governmental and biopolitical form.[33] Prior to this shift, the social logic of Sri Lanka was, as elsewhere in South and South-East Asia, operative through a 'fuzzy' logic, characterisitic of what has been termed 'galactic polities,' in which the concept of identities, political rule, borders and statehood was highly syncretic, inclusive, fluid, relational and context-bound. [34] In this, the island

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[33] B. Kapferer (1999 [1988]) *Legends of People, Myths of State* (Washington, DC: Smithsonian Institution Press): p.ix.

[34] R. Gombrich & G. Obeyesekere (1988) *Buddhism Transformed: Religious Change in Sri Lanka* (Princeton: Princeton UP): pp.208–209; Nissan & Stirrat (1990): pp.19-44; Kaviraj (1991); S. Kaviraj, '*The Imaginary Institution of India*' in P. Chatterjee & G. Pandey (Eds.) (1992) *Subaltern Studies VII* (New Delhi: OUP); S.J. Tambiah (1976) *World Conqueror, World Renouncer: A Study of Buddhism and Polity in Thailand against a Historical Background* (Cambidge: CUP); T. Winichakul (1994) *Siam Mapped: A History of the Geo-Body of a Nation* (Honolulu: University of Hawaii Press); R. De Silva Wijeyeratne, '*Buddhism, the Asokan Persona, and the Galactic Polity:*

witnessed a constantly shifting plurality of kingdoms in which a community's allegiance to monarchical order was operative on the basis of caste service and tribute and not on a rigid and increasingly homogenised alignment between community, language, ethnicity and statehood; changes that ultimately stemmed from the introduction of governmental power.

Yet what should be noted is that colonial power alone did not (and could not) produce these changes. This was due to the weakness, unevenness, externality and illegitimacy of colonial power itself.[35] Indeed, colonial governmental changes met with a series of resistances that came in the form of intermittent revolts; an uneven, sporadic and amorphous contestation of many of the aforementioned governmental changes which included an initial refusal to submit to schooling, the marriage ordinances and the use of courts as intended by the colonial authorities, and an on-going yet ultimately declining survival of the non-denumerable, fuzzy logic that remained at odds with this novel order.[36] Paradoxically, the more coherent resistance to colonial power and yet the more socially penetrative trajectory of disciplinary, governmental and biopolitical power would only really coalesce through the Sinhala nationalist Buddhist Revival of the late nineteenth century, a movement typified by the writings, practices

Rethinking Sri Lanka's Constitutional Present' (2007) **Social Analysis** 51(1): pp. 156–178.

[35] D. Rampton, '*'Deeper Hegemony': The Politics of Sinhala Nationalist Authenticity and the Failures of Power-sharing in Sri Lanka*' (2011) **Commonwealth & Comparative Politics** 49:2: pp.257-258; J. Spencer (1990) *A Sinhala Village in a Time of Trouble: Politics and Change in Rural Sri Lanka* (Oxford: OUP): p.228. More recent discussions of the unevenness of governmentality have asserted its lack of applicability to landscapes of the Global South. Such perspectives tend to neglect the role of local agency in carrying forward governmental logics. See J.M. Joseph, '*The Limits of Governmentality: Social Theory and the International*' (2010) **European Journal of International Relations,** online publication: http://ejt.sagepub.com/content/early/2010/04/15/1354066109346886.abstract (last accessed 4th June 2012)

[36] Rampton (2010): pp.49-83; Rampton (2011): pp.257-258.

and institutions established by the Buddhist Theosophical Society and its leaders, including Anagarika Dharmapala in particular. These movements contested colonial power through political mobilisation around the reinvigoration of Theravada Buddhism as a reformed modernist religion, linking up in the late nineteenth and early twentieth centuries with the anti-colonial potency of the labour movement.[37]

This was a secularised Buddhism which nonetheless took on and contested the state's abrogation of what was seen as a traditional nexus between the state and the patronage of Buddhism in the island.[38] It was through organs like the Buddhist Theosophical Society that institutions like Buddhist schooling, Sunday schools, the Buddhist flag and Buddhist media began to take on the governmental, biopolitical and disciplinary logic first introduced through the colonial state and through the activities of Christian missionaries. [39] The Buddhist reformer Dharmapala typifies the trend with his stress on an active missionary Buddhism, purified of its folk spiritual elements, as a

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[37] K. Jayawardena (2004 [1972]) *The Rise of the Labour Movement in Ceylon* (Colombo: Sanjiva Books).

[38] Under the logic of 'galactic' politics this nexus between Buddhism and state-patronage had not required the alignment of religious, linguistic and ethnic identity with either the Monarch or his subjects. Historical research is replete with examples of minority communities given formal recognition within Sinhala Buddhist domains and of examples where the Kandyan Kingdom was ruled by Hindu monarchs. cf., in this volume M. Roberts, 'Sinhalaness and its Reproduction, 1232-1818'.

[39] Prior to the Panadura Debates between members of the Buddhist *sangha* and Christian missionaries, Buddhist monks were accommodative and interactive with these missionaries in a manner that was completely characteristic of a pre-modern 'fuzzy' and eirenic religious logic. The Panadura Debates land-marked the point at which Buddhism itself took on a more proselytising and missionary zeal: see Gombrich & Obeyesekere (1988): pp. 218–219; K. Malalgoda (1976) *Buddhism in Sinhalese Society, 1750-1900* (Berkeley: University of California Press). For an understanding of the difference between an eirenic pre-modern religious and a more aggressive modern ideologised disposition, see A. Nandy, '*The Politics of Secularism and the Recovery of Religious Tolerance*' in V. Das (Ed.) (1992) *Mirrors of Violence* (New Delhi: OUP).

philosophy (and not a religion) and the Buddhist as a self-disciplined layperson seeking to engage with and transform the world through social and political engagement: a departure from the traditional emphasis in balance on the *sangha* and not the laity in Buddhist religious observance.[40] Indeed, Dharmapala's *gihi vinaya* code prescribed a set of rigid rules for everyday living which covered everything from the eating of food, to deportment in public, to the use of the toilet; a veritable manual for the exercise of disciplinary and biopolitical power.[41]

Yet, alongside these disciplinary and biopolitical traits emerged a governmental framework which positioned Sri Lanka as a territorial nation-state in the making given over to the protection of both the Buddhist religion and the Sinhala Buddhist people. This nationalist governmental vision was filled with a hierarchic potency that divided the world within the island between the authenticity of the Sinhala Buddhist people with the 'peasant' as its exemplary moral core on the one hand,[42] and the inauthentic and corrupting influences of both the coloniser, colonial elites and the island's minority groups on the other.[43]

This 'sons of the soil' discourse therefore established a key frontier of 'authenticity' between the autochthonous on the one hand and the foreign, marginal and threatening on the other. This frontier has remained in place within Sinhala nationalism from the nineteenth century until the

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[40] Gombrich & Obeyesekere (1988): pp. 222-224.

[41] Ibid: pp. 212-215.

[42] An element of nationalist discourse which itself appropriated and reproduced the segmentation produced by the colonial economy of a landscape differentiated between 'traditional' smallholder rural and colonial 'plantation' sectors, clearly demonstrating the very hybrid genealogy of these discursive formations despite both claims to particularist autochthony on the part of nationalists and universalism on the part of liberals.

[43] M. Moore, '*The Ideological History of the Sri Lankan Peasantry*' (1989) *Modern Asian Studies* 23: pp.179-207. See also Dharmapala cited in Gombrich & Obeyesekere (1988): p.213.

present, although the precise contours of hierarchic inclusion and exclusion on this axis are ever subject to fluctuations in the elements posited inside and outside 'authentic' nationalist space, which has, in relation to the latter, included variously British colonial power, Muslim and Tamil minority groups, Christians, India, NGOs, anglicised elites, and most recently Western donor states including particularly Norway (as a mediator of the 2002-6 peace process). It should be noted in this regard that this frontier between the inside and outside of the nation remains a key element in fuelling a nationalist desire for the recovery of an autarkic sovereignty, a desire that is frequently articulated as the reinvigoration of the lost glory of Buddhist kingdoms of the ancient past through the reunification of the island as a Sinhala Buddhist state and society.

So what one had by the early twentieth century was a nationalist movement which whilst confronting and challenging colonialism at one level, nonetheless, at another level, was increasingly colonised by governmental, biopolitical and disciplinary apparatuses, practices and rationality.[44] Yet this order was not merely derivative. It was clearly a hybrid born of the fusion of colonial apparatuses and the mirror of an international order of states, with a set of transformed discourses focused on Sinhala identity. [45] Yet the extent to which this governmental understanding became hegemonic and hence at once both socially diffuse and constitutive of the 'social' requires further exploration, as it is still very difficult to gauge the permeation of these discourses at wider social levels at either the end of the nineteenth

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[44] Rampton (2011): pp.245-273; Rampton (2010).For similar accounts of these dynamics in the Indian context, see P. Chatterjee (1986) *Nationalist Thought and the Colonial World: A Derivative Discourse* (London: Zed Books); Prakash (2002): pp.27–39.

[45] S. Nadarajah & D. Rampton, '*Liberal Peace and Biopolitical War in Sri Lanka*', paper presented at the Department of Politics and International Studies, School of Oriental and African Studies, 14th March 2012.

century or even at independence in 1948.[46] This requires both an understanding of the character of pre-independence political mobilisation in Sri Lanka and the factors that account for the ascendancy of nationalist mobilisation in the 1950s and, most significantly, of the long-lasting effects this has left in its wake: namely a potent and yet fluid and fluctuating nationalist hegemony.

The Mirror of Hegemonic Nationalist Order: Beyond Elite-Focused Accounts

Unlike India, Sri Lanka never witnessed a powerful anti-colonial movement. The stirrings of Sinhala nationalism witnessed in the late nineteenth and early twentieth centuries were stalled by two key factors. Firstly, the colonial state reacted fiercely to suppress the Sinhala nationalist leadership in the wake of the anti-Muslim riots of 1915. This resulted in the exile (in India) of more radical leaders such as Anagarika Dharmapala. As such, pre-independence politics was instead dominated by elites intent on a reformist politics and willing to collaborate with colonial rule and a colonial state given over to measures of reform, including the provision of universal suffrage and executive committee governance from 1931. As a result Sri Lanka never experienced the populist anti-colonial upheaval on the sub-continental mainland which witnessed a nationalist coalition of regional, ethnic, religious and class discontents spearheaded by a leadership of Left, secular and localised elites engaging in the populist mobilisation of subaltern classes against colonial power.[47] Although this process did not prevent

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[46] It should be noted that the labour leader A.E. Goonesinha was engaged in populist Sinhala nationalist mobilisation during the 1920s and 1930s but with limited scope across geographical and class space. See M. Roberts (1994) *Exploring Confrontation: Sri Lanka, Politics, Culture and History* (Chur: Harwood Academic Publishers).

[47] S. Bose (1994) *States, Nations, Sovereignty: Sri Lanka, India and the Tamil Eelam Movement* (London: Sage): p.45; Rampton (2010): pp.87-90; A. Shastri, '*Constitution-Making as a Political Resource: Crisis of Legitimacy in Sri Lanka*' in S.K. Mitra & D. Rothermund

partition, nor did independence erase the propensity for sporadic ethnic violence and nor did it overcome what was ultimately a 'passive revolution' as far as class inclusion was concerned, [48] the founding moment of Indian nationhood nonetheless produced the re-imagination of Indian identity and an early consensus as to the plural contours of the state which would be enshrined in the establishment of a federal constitution. It is this consensus and the federal framework that has since contributed to the more successful integration of once confrontational Dravidian movements in states such as Tamil Nadu, which indicates the contextual character of the drive for Tamil secession in Sri Lanka that has been predominantly relational to hegemonic Sinhala majoritarian nationalism.[49] The unitarist and centralising thrust of the state and nation-building programme of Sinhala nationalism has been the core dynamic in what has been, for the most part, the 'reactive' counter-conduct of Tamil nationalism seeking to defend the concept of Tamil 'homelands' through firstly federal and later secessionist demands.[50] That the minority nationalism driving this counter-conduct has at various points assumed its own (counter-)hegemonic compulsion in no way vitiates the ongoing force of Sinhala nationalism since independence but may indeed have compounded the potency of the cycles of nationalist conduct and counter-conduct.

So, in the Sri Lankan context, independence came without this broader and wider reimagining and mobilisation of identity. [51] Instead post-independence

(Eds.) (1997) *Legitimacy and Conflict in South Asia* (New Delhi: Manohar): pp.177-178.

[48] Chatterjee (1986).

[49] S. Krishna (1999) *Postcolonial Insecurities: India, Sri Lanka, and the Question of Nationhood* (Minneapolis: University of Minnesota Press): pp.59-102.

[50] A.J. Wilson (2000) *Sri Lankan Tamil Nationalism: Its Origins and Development in the 19th and 20th Centuries* (London: C. Hurst and Co.).

[51] A. Welikala, '*The Devolution Project in Sri Lanka: Towards Two Nations in One State*' in R. Edrisinha & A. Welikala (Eds.) (2008)

Ceylon inherited the colonial contours of the centralised state form, the Soulbury Constitution that was the legacy of British rule, and a set of identities which constituted a not unusual but sometimes uneasy hybrid of elite liberalism and forms of 'communal' ethnic identity often propagated by these same elites as the semiotic register required whenever populist mobilisation was the order of the day. [52] Not only that, but elite politics, state-led development efforts, and more populist political mobilisation began almost immediately to operate through the logic of the Sinhala nationalist imaginary. Firstly, this was evident in one of the earliest major pieces of post-independence legislation, the Citizenship Act of 1948, which effectively disenfranchised and denaturalised the Indian Tamil plantation proletariat.[53] Although this was no doubt an action designed to disembowel the Left of its estate labour constituency base, this fails to exhaust the significance of an act which was also operative through fears of Indian expansionism and a desire on the part of Sinhala elites to preserve the Sinhala upcountry peasantry as both a nationalist moral mission and as a future electoral constituency as has been noted by recent scholarship.[54]

Secondly, this nationalist discursive dissemination was reproduced through a state-led postcolonial development strategy which pursued irrigation projects geared towards the colonisation of predominantly Sinhala settlers in areas of Tamil and Muslim demographic concentration in the

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Essays on Federalism in Sri Lanka (Colombo: Centre for Policy Alternatives): p.68.

[52] It is the contention here that liberalism is never purely 'universal' but is always hybrid, contextual and relational despite its universalising thrust.

[53] V. Kanapathipillai (2009) *Citizenship and Statelessness in Sri Lanka: The Case of the Tamil Estate Workers* (London: Anthem Press): pp.41-70; P.P. Devaraj (2008) *Constitutional Electoral Reform Proposals and Indian Origin Tamils* (Colombo: Foundation for Community Transformation).

[54] Kanapathipillai (2009): pp.56, 69.

Dry Zone such as the Eastern Province.[55] Whilst some writers have denied that this development policy had an ethnonationalist logic and that it emerged out of the practical and material necessity of providing for the poor and landless,[56] both the statistical record of demographic alteration and the Sinhala nationalist discourses which framed this as a recovery of the lost glories of ancient hydraulic Sinhala Buddhist kingdoms and the reinvigoration of a hydraulic system with the Sinhala peasant at its centre,[57] indicate, at least at the level of demographic change, the interweaving of nationalist rhetoric with its generative nation-building effects.[58]

Thirdly, independence ushered in what writers have termed intra-group competition or 'ethnic outbidding' on the part of political elites seeking to capitalise on Sinhala nationalist platforms in electoral and wider political mobilisation.[59] This commenced in the 1956 election when both of Sri Lanka's dominant mainstream elite political parties, the United National Party (UNP) and Bandaranaike's Sri Lanka Freedom Party (SLFP) ultimately took up a campaign platform pursuing a 'Sinhala Only' official language policy. This also marks a landmark point for both the gradual Sinhalisation of state

[55] C. Manogaran, '*Colonization as Politics: Political Use of Space in Sri Lanka's Ethnic Conflict*' in C. Manogaran & B. Pfaffenberger (Eds.) (1994) **The Sri Lankan Tamils: Ethnicity and Identity** (Boulder, CO: Westview Press): pp. 84–125; P. Peebles, '*Colonization and Ethnic Conflict in the Dry Zone of Sri Lanka*' (1990) **Journal of Asian Studies** 49: pp.30-55.
[56] N. Hennayake (2006) **Culture, Politics and Development in Postcolonial Sri Lanka** (Idaho Falls, ID: Lexington Books): p.108.
[57] M. Moore (1985) **The State and Peasant Politics in Sri Lanka** (Cambridge: CUP): p.45.
[58] D. Rampton, *'Colonisation, Securitised Development and the Crisis of Civic Identity in Sri Lanka'* in A. Pararajasingham (Ed.) (2009) **Sri Lanka: 60 Years of Independence and Beyond** (Colombo: CJPD): pp.329–359; Rampton (2010): pp.90-94.
[59] K.D. Bush (2003) **The Intra-Group Dimensions of Ethnic Conflict in Sri Lanka: Learning to Read Between the Lines** (London: Palgrave Macmillan); N. DeVotta (2004) **Blowback: Linguistic Nationalism, Institutional Decay, and Ethnic Conflict in Sri Lanka** (Stanford, CA: Stanford UP).

apparatuses which impacted upon not only language policy, state-led development and the Upcountry Tamil citizenship question, but also educational vernacularisation (which removed access to the English link language, crucial for social mobility),[60] access to education for minorities,[61] the gradual but overwhelming Sinhala domination of personnel in key state apparatuses such as the Police and the military[62] and, something that is frequently missed, namely the infusion of Sinhala Buddhist iconography, symbols, rituals and practices into the ontological world of everyday political, state and social existence discerned in everything from politicians seeking the blessing of the *sangha*, to the Buddhist character of central-state development rituals,[63] to the pervasive presence of Buddha statues in ministries, state offices and across social space but significantly at boundary points where community space and territory are contested.

So from the 1950s elites reproduced political programmes, policies and practices which sought to mobilise the subaltern strata and wide social constituencies in the Sinhala Buddhist community through nationalist platforms as a route to securing power and legitimacy. This is a commonplace perspective shared by a number

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[60] H.L. Seneviratne (1999) *The Work of Kings: The New Buddhism in Sri Lanka* (Chicago: University of Chicago Press): pp.201-204; M. Fernando & S. Kadirgamar, '*Education in Sri Lanka: A Casualty of Nationalism*' *Himal South Asian*, January (2010): http://www.himalmag.com/component/content/article/27-a-casualty-of-nationalism.html (last accessed 14th August 2012)

[61] Y. Thangarajah, '*Ethnicization of the Devolution Debate and the Militarization of Civil Society in North-eastern Sri Lanka*' in M. Mayer, D. Rajasingham-Senanayake & Y. Thangarajah (Eds.) (2003) *Building Local Capacities for Peace: Rethinking Conflict and Development in Sri Lanka* (New Delhi: Macmillan): pp.20–22.

[62] B. Blodgett (2004) *Sri Lanka's Military: The Search For A Mission* (Chula Vista, CA: Aventine Press); United States State Department, *Sri Lanka Human Rights Country Report 2010*, 4th April 2011.

[63] S. Tennekoon , '*Rituals of Development: The Accelerated Mahaveli Development Program of Sri Lanka*' (1988) *American Ethnologist* 15: pp.294-310.

of scholars who stress the elite genesis of what they perceive as nationalist epiphenomena reflective of the consistent pursuit of political interests of elite or ruling classes.[64] However, if we were to leave the understanding of nationalist ideology and discourse at this truncated rationalist level of recruitment to interests, we would be missing some key components of the dynamics of discursive formation, ideology and most certainly of hegemony. Most significantly, the obsession with elites produces a hermetically sealed chamber which acknowledges the performers and planners and yet ignores the audience, consumers and practitioners as the vital living body of what Gramsci called those engaged in philosophy: the mass of populations and communities.[65] In elite-focused discourse they are at best a cipher to be decoded (most commonly by elite scholars of a subaltern field) or at worst a *tabula rasa*. Secondly and relatedly, they fail to understand or pursue the effect of elite-led discourses upon the wider social strata as a generative and yet fluid process in the formation of discourse and hegemony.

With this in mind, it is worth stating that not only has Sri Lanka witnessed the recourse of elites to nationalist ideological pronouncements and discursive practices, but that research indicates that this has been relayed and replicated (albeit with a twist) by subaltern actors, including radical political parties with a seemingly counter-state agenda. For example, from 1966 until today the Janatha Vimukthi Peramuna (JVP), an off-shoot of the Maoist Communist Party of Ceylon, has pursued a political programme that included both moments of electoral mobilisation and two counter-state insurgencies (1971 and 1987-1990) provoking violent counter-insurgencies in response. The party's constituency base lay in the rural (and later urban and semi-urban),

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[64]Bush (2003); DeVotta (2004); K. Stokke, '*Sinhalese and Tamil Nationalism as Post-colonial Political Projects from 'Above': 1948–1983*' (1998) **Political Geography** 17(1): pp. 83–113.
[65] A. Gramsci (1971) **Selections from Prison Notebooks** (Trans. & Eds. Q. Hoare & G. N. Smith) (London: Lawrence & Wishart).

vernacular-educated, mid-to-lower caste subaltern classes. Yet what is notable is that despite the radical counter-elite basis of the movement and its capacity for insurgency, its political mobilisation, its disciplinary ethos and its ideological programme all reproduced Sinhala nationalist ideological motifs and goals.[66] This is clear in the party's attitude to minority groups, including the Upcountry Tamils and the attitude to India and to the Tamil nationalist movement amongst the '1971' generation. The '1971' generation JVP feared Indian regional designs and hegemony and also viewed the Upcountry Indian origin proletariat as a fifth column (whose intended fate in a post-revolutionary Ceylon would be repatriation to the subcontinent) in their 'Indian Expansionism' and 'Economic Crisis' recruitment classes. The movement also maintained a consistently negative view of the Dravidian and Tamil nationalist movements which were essentially seen as a threat to the integrity of Sri Lanka, a perspective that echoed the deep-seated fear of invasion from South India iterated in ancient Sinhala Buddhist chronicles.[67]

As a result, despite the class, caste, linguistic and regional divergence between the JVP constituency base and the anglicised elites who dominated the political parties and the state apparatus, both sections of society tended towards the reproduction of Sinhala nationalism. In fact I would go further and state that this class and status divide played a significant part in contributing to the potency of

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[66] Rampton (2010); Rampton (2011); C.A. Chandraprema (1991) *Sri Lanka: The Years of Terror: The JVP Insurrection: 1987–1989* (Colombo: Lake House); K. Jayawardena ,'*Sinhala Chauvinism of the JVP*' (1984) *Lanka Guardian* 7(10), September 1984; G. Samaranayake, '*The Changing Attitude Toward the Tamil Problem within the JVP*' in C. Abeysekera & N. Gunasinghe (Eds.) (1987) *Facets of Ethnicity in Sri Lanka* (Colombo: SSA): pp.270–289; J.P. Senaratne (1997) *Political Violence in Sri Lanka: 1977–1990* (Amsterdam: VU University Press).
[67] For a more detailed focus on these issues, see Rampton (2010): pp.150-165. See also L. Bopage, '*Insurrection amidst Constitutional Revolution: The Janatha Vimukthi Peramuna (JVP) and the Constitution-making Process of 1970-72*', elsewhere in this volume.

Sinhala nationalist hegemony, for two key reasons. Firstly and most obviously, the Sinhalisation of state and society, particularly in the aforementioned realm of political, education and development policy and practices had resulted in the effective hegemonic discursive and ideological relay and diffusion of nationalist thought and practices to a wide level of social strata. As a result, nationalism and its capture of the state and welfare apparatus had become both the map and promise for postcolonial social and political emancipation.[68]

Secondly and relatedly, both hegemony as a fluid and shifting social framework and a multitude of social demands including those emanating from class, status and regional divides fed into and reinforced one another upon a plane of 'authenticity' characteristic of nationalism's propensity for constructing frontiers of friend and enemy along the lines of the Schmittian template of the political. This is best evidenced through some key motifs of Sinhala nationalism, most markedly in the tendency for Sinhala nationalism to posit the 'authentic' moral core of the Sinhala nation in the so-called traditional rural sphere with the peasant as simultaneously a figurehead of Sinhala Buddhist identity and the correct target for the postcolonial state's development efforts. In other words, a clear governmental blueprint of the correct nexus between population, nation-state and territory, privileging the Sinhala Buddhist vision over and above other communities in Sri Lanka. Movements like the JVP, with their constituency lying in the sphere of the subaltern, vernacular-educated rural classes, therefore presented themselves as the authentic 'sons of the soil' (*bhumiputra*) in contrast with what was presented in JVP doctrine and its recruitment classes (*panti paha* – five classes) as an urbanised, anglicised Colombo-centric comprador bourgeoisie collaborating with the neo-colonial order

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[68] J. Uyangoda, '*Social Conflict, Radical Resistance and Projects of State Power: The Case of Janatha Vimukthi Peramuna in Sri Lanka*' in Mayer, Rajasingham-Senanayake & Thangarajah (2003): pp.47-51.

instituted through what was described in these classes as the false dawn of independence.[69]

This set in motion classic and recurrent overlapping binary divisions between the *deshapremi* (patriots) and *deshadrohi* (traitors), elite and subaltern and rural and urban. This frontier fused value and interest in a confrontation with elites over the failure of political order to deal with mounting social and political problems including structural unemployment of massive scale amongst Sinhala-educated rural youth, the indebtedness and poverty that afflicted those engaged in peasant agriculture and, ultimately, the failure of the nationalist vision to produce the social and political emancipation it had promised. Yet rather than departing from the developmental vision provided in nationalist discourse, what the JVP actually did is to hold up a mirror to elites of their failure to usher in the promise that nationalist discourse pledged.[70]

What is also evidently key is that the very fact that a subaltern contra-elite movement articulated these discursive channels is testament to the profound pervasion of Sinhala nationalist discourses across a wide strata in the social field: namely to hegemonisation.[71] In this it marks a lesson for Foucauldian approaches which have attempted to "cut off the king's head" in reference to the decentered and diffuse character of modern power and of social demands.[72] Whilst the socially diffuse character of modern power is not denied but is reiterated here, what is key is that hegemonisation attempts to produce a fixity, centre and hegemon that finds its articulation in the reproduction of a nationalist political and social imaginary that is at the same time generative of material social orders.[73] As I will demonstrate below, it is this

[69] Rampton (2010): pp.150-164.
[70] Ibid.
[71] Ibid; Rampton (2011).
[72] M. Foucault (1980) *Power/Knowledge: Selected Interviews and Other Writings: 1972–1977* (London: Pantheon Books): p.121.
[73] Laclau & Mouffe (1985).

388

hegemonic social formation that acts as the major dynamic and constraint on the recurrent colonisation of constitutionalism and the moment of exceptionalism by nationalist discourse.

The Background to Constitutional Change

As discussed at the outset of this chapter, Agamben understands exceptionalism as a space without law, a 'zone of anomie' out of which emerge not only the construction of constitutional orders, but also their increasing elision by executive power and emergency rule. However, what is ventured here is that exceptionalism, constitutional orders and the practices they generate are all structured and constrained by social and political hegemony, it is this pattern that we witness in the post-independence phase, and which is only thrown into stark relief in the First Republican Constitution of 1972. What is clear is that this constitutional change as well as the points at which earlier opportunities for reform remained unfulfilled were seen as a necessary attempt to fill the void left in constitution-building and constituent power at the moment of independence. To explain, it was widely felt by many of the political parties including the Left parties (who played a pivotal role in framing the 1972 Constitution), the Sri Lanka Freedom Party and, at least in principle, the UNP, that the Soulbury Constitution inherited at independence "was not one in which the people were directly involved" and that "sovereignty… was reposed in the Queen of England".[74] The Soulbury Constitution had indeed come with little local deliberation, having been the outcome of a three-man Commission made up of the Chair, Lord Soulbury, J.F. Rees, the Vice Chancellor of the University of Wales, and

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[74] N.M. Perera (1979) *Critical Analysis of the New Constitution* (Colombo: N.M. Perera Memorial Trust): p.7.

F.J. Burrows of the National Union of Railwaymen,[75] with some restricted consultation with local elites in the form of D.S. Senanayake and the seven-man, all-Sinhala Board of Ministers.[76] It was this process that led to the adoption of a Westminster-style unitary, centralised constitutional framework by an Order-in-Council in 1946 and its subsequent confirmation as the post-independence constitutional form.[77]

In the aftermath of independence there were clear pressures for constitutional reform, seeking what ostensibly looked like a fuller 'autochthonous' foundation in the constituent power of the people, but which ultimately operated symbiotically with the aforementioned Sinhalisation of the state apparatuses and the hegemonisation of social space by Sinhala nationalist discourse. For instance, in the 1950s a Joint Select Committee of the House of Representatives and the Senate on constitutional reform was established with one of the key aims being the adoption of a republican constitution.[78] Whilst this Committee's deliberations were stalled by the assassination of the SLFP Prime Minister S.W.R.D. Bandaranaike, the UNP Government of 1965 revived the same body anew with the same aims, but again, deliberations foundered due to opposition claims that Section 29 of the constitution was unalterable without sufficient mandate and authority to replace the constitution *in toto*.[79] Finally, the 1970 landslide election providing a United Front coalition of the SLFP, the CP and the LSSP with a two-thirds parliamentary majority (and on a specific mandate to change the constitution) resulted in the establishment of a Constituent Assembly

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[75] H.M. Zafrullah (1981) **Sri Lanka's Hybrid Presidential and Parliamentary System and the Separation of Powers Doctrine** (Kuala Lumpur: University of Malaya Press): pp.1-2.
[76] Shastri (1997): pp.177.
[77] See A. Welikala, '*The Failure of Jennings' Constitutional Experiment in Ceylon: How "Procedural Entrenchment" led to Constitutional Revolution*', elsewhere in this volume.
[78] Zafrullah (1981): pp.4-5.
[79] Ibid: pp.6-9.

and the inauguration of the First Republican Constitution in 1972.

Before studying the detail of the constitution and the policies that accompanied it in full, it would be worthwhile looking at the thrust of constitutional change within the overall envelope of nationalist hegemony in the postcolonial context. Clearly, the goal of producing a more 'autochthonous' constitution was reflective of an on-going desire to wage a belated battle with colonialism and its legacy. However, as already stated in the preceding section, this desire to confront colonialism was ultimately lacking in the kind of re-imagination of identity, constitutionality, territory and population that had occurred in the Indian context. Instead, the search for 'autochthony' was ultimately captured within the logic of Sinhala nationalist hegemony. Within this hegemonic envelope the core dynamic became a struggle for nationalist authenticity that reveals not only the ever-augmented social pervasion of hegemony but also *en route* to this depth, its fluidity and sites of contestation, particularly at the interstices between nationalist and other forms of identity and status, including ethnicity, region and class. As Ernesto Laclau has clearly stated, hegemony requires the positing of an inside and an outside to the consolidation of a populist imaginary.[80] This is not a static or solid structure (which is why the Schmittian reduction is so problematic), but consists of a series of recurrent and yet fluctuating frontiers in which different subjects are produced as inhabiting a position within or beyond such frontiers. In the postcolonial context this produced a struggle for authenticity that marginalised 'minority' communities but also impacted upon a series of tensions apparent within the Sinhala community.

Consequently, this intersection with ethnicity was explicit in the exclusion of minorities from constitutional deliberation whether one is talking about the Soulbury or

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[80] E. Laclau (2005) *On Populist Reason* (London: Verso).

the 1972 Constitution. As Coomaraswamy has noted of the deliberation process, "by the time the drafting was over, the Tamil political parties had walked out of the chamber and were to go on to fight elections on a platform of separatism" under the very shadow of this constitutional form,[81] again confirming the relationally reactive modality of minority nationalism. In this sense the very process, let alone the content and effect of constitution-building, had excluded the elite leaders of the Tamil-speaking communities and their demands for federalism from contributing to even a formal 'representative' conception of the 'people.' Yet, in tune with Agamben's understanding of the hierarchies of citizenship (and the place of exceptionalism within them), this was an outside or exclusion that at the same time effected an inclusion of the Tamil and Muslim communities as the necessary point of negative representation for the Sinhala nationalist identity, but at a level of subordination.

The second point is that the struggle for authenticity that lay at the heart of the search for autochthony operated through a series of fluctuating postcolonial frontiers, creating a series of tensions that permeated the class, caste and regional/spatial relationship within the Sinhala community between the Colombo-centric anglicised elites on the one hand, and the subaltern, vernacular educated, rural-peripheral classes on the other. Whilst Sri Lanka's patronage system continued to provide the vertical ties that connected these spheres in political practices at one level, at another level antagonism would frequently articulate itself through the discursive and ideological register of nationalism. This frequently positioned the elites along this axis of authenticity in subaltern nationalist discourses as classic comprador elites complicit in the reproduction of neo-colonial power through their

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[81] R. Coomaraswamy (1997) *Ideology and the Constitution: Essays on Constitutional Jurisprudence* (Colombo: ICES): p.22. See also R. Coomaraswamy, '*The 1972 Republican Constitution in the Postcolonial Constitutional Evolution of Sri Lanka*', elsewhere in this volume.

anglicised cultural background and their position as elites in a postcolonial order of states dominated by the Western powers and capital. A classic instance of this lay in one of the JVP's five recruitment classes (*panti paha*), entitled *Nidahasa* ('Independence') which emphasised the deceptive nature of decolonisation and the manner in which the establishment and continuity of the neo-colonial foreign-owned plantation economy continued to prohibit meaningful economic and therefore political independence.[82] It also portrayed the ruling elites as agents of capitalism and as socio-culturally and politically deracinated, the *kalusuddha* (literally meaning black on the outside, white on the inside) of racial discourse,[83] again operating around an axis of nationalist authenticity that placed the elites outside of and opposed to the interests of the Sinhala nation. The lecture demanded a recovery of the nation's autarky so that economic, cultural, and political facets of liberation and independence would coincide with the territorial and sovereign contours of Ceylon.[84]

As such, elites were in a position of fragility on the constant contestation for the high ground of nationalist authenticity. In the main, this would push the elite leadership of the mainstream parties further along the road in the pursuit of political and social policies beholden to and reproductive of the Sinhala nationalist imaginary, indicating that the dynamic of 'ethnic outbidding' identified in much of the literature, lay not just with elites themselves but more significantly in the on-going contestation between elite and subaltern forces. Sporadically it would also produce potential vacillation from nationalist contestation as Sinhala political leaders sought compromise and negotiation with Tamil political representatives. This occurred in both the 1957-1958 and

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[82] A.C. Alles (1990) *The JVP: 1969-1989* (Colombo: Lake House): p.16; S.R. Dubey (1988) *One-Day Revolution in Sri Lanka* (Jaipur: Aalekh Publishers): p.60.
[83] Interview by the author, former JVP cadre, 1971 generation, Colombo District, May 2002.
[84] Rampton (2010): pp.157-158.

1966 periods when S.W.R.D. Bandaranaike and Dudley Senanayake respectively negotiated pacts with S.J.V. Chelvanayakam, efforts that were defeated by social upheavals and protests against these accords, again testifying to the hegemonic diffusion and hence potency of the Sinhala nationalist imaginary and its subsequent effect upon the trajectory of Tamil nationalism.[85]

This elite-subaltern contestation for nationalist authenticity was even at work in both the midst and aftermath of states of siege such as the 1971 JVP insurrection. This operated in two registers. Firstly, in the run-up to and in the course of the insurgency itself, the elites of the U.F. government sought to protect their legitimacy by asserting the inauthenticity of the JVP and accusing the insurrection of being either a North Korean or CIA-funded plot.[86] Even the logic of the counter-insurgency which involved spectacular violence can be understood as an attempt to demonise and degrade what was perceived and represented as a threat to national order. Secondly, in the aftermath of an extremely violent counter-insurgency during which a state of emergency was maintained until 1977, the elites, in a moment of guilt-ridden soul-searching, would frequently articulate approval of both the 'patriotic' aims and the sociological dynamics of the movement, thereby seeking an appropriation or encompassment of subaltern nationalism.[87] In this sense also, the state of emergency that formed the backdrop to the 1972 Constitution in the wake of the 1971 insurrection represented a classic

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[85] Rampton (2011): pp.265-266.
[86] Alles (1990): p.21.
[87] A classic example of this is the work of A.C. Alles on the JVP of both the 1971 and 1980s generations. A.C. Alles acted as a judge on the emergency powers-inaugurated Criminal Justice Commission which authorised the use of torture and the admission of evidence obtained by torture in the course of the post-1971 counter-insurgency and mass detentions. Yet his books on the JVP are filled with a powerful romantic admiration for and exaltation of the JVP youth's voluntarism and patriotism. See Alles (1990); A.C. Alles (1976) *Insurgency, 1971: An Account of the April Insurrection in Sri Lanka* (Colombo: Colombo Apothecaries Co.).

instance of the 'state of exception'. Yet this was a zone in which the contestation for nationalist authenticity as a key dynamic of hegemonic reproduction was still at work, connecting both the gradually unfolding effects of post-independence hegemonisation with the ongoing nationalist logic manifest in the form and content of the 1972 Constitution. In this way and although it cannot be reduced to a response to the 1971 insurgency because the search for autochthony was of longer historical provenance, it is clear that both the 1972 Constitution and the policies that accompanied this reform sought to entrench the state apparatus more heavily in the pursuit of Sinhala nationalist goals. Although, satisfaction of such demands would continue to prove elusive, this included, on the surface at least, provision for the interests of the subaltern Sinhala youth generation who had acted as the engine of the 1971 insurgency: a tendency that was to come at the expense of and therefore increasingly alienate and marginalise the Tamil community, contributing to the shift from Tamil nationalist demands for federal autonomy to secession. In this way, Sri Lanka has been caught in recurrent and tragic cycles of violence and disequilibrium compelled by the hegemonic reproduction of a Sinhala nationalist social and political order. It is this that we see in the substance and content of the 1972 Constitution, which emerges not out of a 'zone of anomie' but out of hegemony as a fluid contestation and articulation of a multitude of disparate social demands that nonetheless reproduces a dominant social and political imaginary.

The First Republican Constitution of 1972

The content of the 1972 Constitution both reflects and is generative of a governmental order entrenched in a hierarchical Sinhala nationalist conception of the nexus between the 'people', territory and state. The constitution delivers a series of articles that clearly demonstrate this hierarchy, placing a primacy upon a hegemonic imaginary locating the Sinhala nation at its apex with a

recognition of 'minority' rights relegated to a lower level, with the latter granted as a concession to, at best, practical necessity in local and peripheral borderlands whilst the former assumes a symbolic foreground which nonetheless seeks to dominate the prerogative and practices of the centre.

At the heart of the constitution lies the assertion that Sri Lanka is a territorially integrated, unitary state,[88] a claim that clearly effaces the consistent federal demands of Tamil parties and therefore reinforces a conception that constituent power is grounded in the Sinhala community and its representatives. The fact that the role of the state to 'safeguard' this order was explicitly stated as a 'Principle of State Policy' merely reinforced the hegemonic effect of this governmental framework. The chapters on 'Buddhism' and 'Fundamental Rights and Freedoms' most explicitly betray the hierarchical design at work in the constitution.[89] The very fact, for instance, that Chapter Two is entitled, 'Buddhism' rather than say 'Religion' and then goes on to assert that "it shall be the duty of the state to protect and foster Buddhism" whilst the right to the freedom of other religious practices are placed elsewhere in 'Fundamental Rights and Freedoms'[90] (see also below), is itself testament to this hierarchy. The same can be said of Chapter Three on 'Language' which asserts that the "Official Language of Sri Lanka shall be Sinhala as provided by the Official Language Act, No. 33 of 1956" whilst Tamil will remain a subsidiary language of practical necessity at the periphery with centralised records being translated into Sinhala.[91] The section on 'Fundamental Rights' (which were in any case limited by "principles of state policy, national economy and public security")[92] also signals a

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[88] Constitution of Sri Lanka (1972): s.16(3).
[89] Ibid: s.18.
[90] Ibid: s.6. See also B. Schonthal, '*Buddhism and the Constitution: The Historiography and Postcolonial Politics of Section 6*' elsewhere in this volume.
[91] Constitution of Sri Lanka (1972): s.11.
[92] Coomaraswamy (1997): p.25.

removal of the (admittedly rather weak) protection of 'minority' rights contained in the Soulbury Constitution,[93] to an almost complete homogenisation and therefore neglect of ethnic or cultural difference.[94]

Again, the significance of these elements of the constitution require little supplementary analysis, given that they are self-evident in the reproduction of a hegemonic and hierarchical design that renders Sinhala nationalist domination of the monolithic nation-state architecture into clear relief. Furthermore it clearly surpasses merely an issue of state power but seeks to effect a particular vision and imaginary of life and of development, a tendency that is self-evident in the Principles of State Policy committed to both planned development and the "organisation of society to enable the full flowering of human capacity both individually and collectively in the pursuit of the good life."[95] Yet this is a conception of both 'life' and forms of 'development' that are clearly beholden to a hegemonic Sinhala nationalist order.

Much has been made of the authoritarian character of the constitution, which removed any framework for the separation of powers or independent avenues for addressing minority grievances. Instead, state power was concentrated in the overlapping institutions of the Prime Minister, the Cabinet of Ministers and ultimately the institution of the now singular parliamentary National State Assembly, alongside the profound politicisation of administrative apparatus, the civil service and the subordination of the judiciary to the will of the National State Assembly. [96] It also provides no checks on exceptionalist emergency powers in the Public Security Ordinance, which remained entirely at the whim of the

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[93] Welikala (2008): p.74.
[94] Constitution of Sri Lanka (1972): s.18.
[95] Ibid: s.16(2)(g)
[96] Coomaraswamy (1997): pp.22-27; Shastri (1997): p.179; Zafrullah (1981): pp.9-11.

Prime Minister. [97] The 1972 Constitution therefore contains many of the seeds of authoritarianism that would later become more explicit in the presidential centralisation of power in the 1978 Constitution, albeit that with the former, the tendency was for the supremacy of the Cabinet and Assembly rather than a more clearly demarcated and more autonomous executive that would emerge in 1978. [98] Moreover, it is clear that this authoritarianism is evidently at the service of a first-past-the-post electoral majoritarianism and centralised, unitary framework which reinforced Sinhala nationalist Buddhism and in turn assured the continuing colonisation of the state, governance and administrative structures by Sinhala nationalist governmental rationality.[99] This is also instructive in the light of Agamben's emphasis on the issue of executive power and its predation on and undermining of parliamentary legislative power in the modern and contemporary age when it is clear that repressive and exclusivist frameworks and policies have operated, at times, as seamlessly with the former as with the latter; a fact that alerts us to the need to explore the hegemonic potency of nationalist identity, a focus lacking in Agamben's work.

Although an understanding of the 1972 Constitution through authorship is explicitly not the approach taken here, it should be noted that despite the fact that Colvin R. De Silva, as a leader of the Trotskyist LSSP, was the central architect of the 1972 Constitution, the fact that the Left was directly involved in the development of the

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[97] Constitution of Sri Lankan (1972): s.16; Coomaraswamy (1997): pp.24-25.
[98] Coomaraswamy (1997): p.26.
[99] This was exacerbated by the pervasive logic of patronage in accessing employment within a context of Sinhala majoritarianism in the electoral system. Since the 1960s, access to all levels of state public sector employment had become totally infused by the logic of patronage with applicants and school-leavers having to be supplied with an authorisation from their local MP. See for e.g., G. Obeyesekere, '*Some Comments on the Social Backgrounds of the April 1971 Insurgency in Sri Lanka (Ceylon)*' (1974) **The Journal of Asian Studies** 33: pp.381-384.

constitution did not lessen its majoritarian force. Again, the significance of hegemony cannot be gainsaid as the mainstream Left parties had themselves been hegemonised by Sinhala nationalism in the wake of the populist stirrings of 1956, to the extent that they had dropped the struggle for parity of linguistic and citizenship status as early as the 1960s, and had increasingly adopted political practices oriented to and reproductive of Sinhala Buddhist nationalist order.[100] Again the aforementioned dynamic of hegemonic contestation within the Left is key, a process which was also heightened within the context of the rapid and escalating mobilisation of a rural youth-oriented, populist and radical New Left, epitomised by the JVP, that was more nationalist than Marxist in its practices and discourses.

This same dynamic also contributed to a series of extra-constitutional changes which must nonetheless be read as simultaneously both adjuncts to, and effects of, constitutional change. This was clearly evident in policies of university entrance standardisation geared towards expanding admission to rural Sinhala youth but at the expense of Tamils from the same and subsequent generations (which in turn limited social and mobility and access to employment), a dynamic that would clearly impact upon the ascendancy of the secessionist project amongst young Tamils.[101] The U.F. government also continued to place emphasis on peasant farming as a route out of youth unemployment,[102] a form of development that was again both emergent from and reproductive of the Sinhala nationalist imaginary.[103] As in the past, these ambitious plans for developmental change remained highly constrained, yet again reproducing failures to address the continuing exclusion and marginalisation of both Tamil and Sinhala youth and the

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[100] Rampton (2010): pp.134-138; Roberts (1994): pp.3-11.
[101] Shastri (1997): p.179.
[102] Attanayake (2001): pp.98-104.
[103] Moore (1989): pp.179-207.

future recurrence of insurgency. In the 1980s, the JVP would again hold up a mirror to the elites of the failure of the social, political and economic order to fulfil its claims for nationalist emancipation, thereby reproducing the, often violent, contestation around the axis of nationalist authenticity; a process that would simultaneously only ignite and deepen the secessionist impulse of a proliferation of Tamil militant parties, dissatisfied with the constant failure of federal power-sharing platforms.

Conclusion

So what we need to understand in relation to constitution-building and the political exception that serves as the space for its emergence is that this cannot be understood either in the static and statist model provided in Schmitt's account of either the pre-political, the sovereign or the friend/enemy distinction, nor can it be reduced to Agamben's ideologically stripped down understanding of either biopolitics or a 'zone of anomie.' What is instead apparent from this survey of the case study of the First Republic of Sri Lanka is that the state of exception and the process of constitutional reform it engendered in 1972 has been entirely permeated by the hegemonic logic of Sinhala nationalism in the course of the postcolonial search for autochthony. Yet it must be emphasised that 'hegemony' is not a monolith, but is a social construction that emerges from the articulation, as well as contestation, of multiple social and political forces around a set of fluctuating frontiers that position different subjects and identities on the inside or outside of this social formation.[104] In turn, this has been reproductive of a governmental framework and set of practices that place the Sinhala nation at the apex of a hierarchical territorial order. It may well be that Agamben's notion of a 'zone of

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[104] I have not had the scope here to do full justice to the multi-faceted character of hegemony and the way that the subaltern sphere is itself constituted out of multiple social demands. For a more detailed account see Rampton (2010).

anomie' is an attempt to provide some measure of emancipatory hope for new frameworks of political community and citizenship, yet the problem remains that through a neglect of the constraints and discursive limits confronting us, the possibility for a counter-hegemonic liberation is missed.