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Ethnocracy or republic? Paradigms and choices for constitutional reform and renewal in Sri Lanka

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This article considers the recent constitutional reform process in Sri Lanka and offers two analytical models for explaining the options for choice and change.

Introduction

On 28th April 2015, Sri Lanka recorded an historic constitutional milestone when its Parliament enacted the Nineteenth Amendment to the 1978 Constitution. The process of its drafting and enactment had been disorganised and opaque, its passage in Parliament fought clause by clause by the opposition, and the final content of the amendment was a much-diluted version of the original proposals of the government. But this was nevertheless the most substantial reduction of the powers of the executive president since the introduction of that office in 1977. Even though since the mid-1990s various presidential candidates had obtained repeated mandates for its abolition,¹ once in office they had not merely broken the promise, but in the case of President Mahinda Rajapaksa in 2010, actually expanded its powers.²

Since the dramatic ouster of the Rajapaksa regime in the presidential election of January 2015, the new Sri Lanka government headed by President Maithripala Sirisena and Prime Minister Ranil Wickremesinghe has been engaged

in a 100-day reform programme. The centrepiece of this programme was the abolition or at least the reform of the executive presidency. In challenging President Rajapaksa, there was the widest consensus among the parties involved in the Sirisena candidacy that something must be done to reduce the deleterious consequences of the uncontrolled presidency. Executive presidentialism has been opposed on grounds of constitutional democracy ever since it was first proposed, but especially after the expansion of its powers through the Eighteenth Amendment, these problems had become acute.³ However, there was less consensus on whether the remedy was to abolish presidentialism altogether and return to a parliamentary system, or whether the benefits of presidentialism could be retained whilst removing its more egregious features.

While such debates about systems of government are common to any constitutional reform exercise, in practice choices between presidential and parliamentary models found in political science and constitutional law textbooks are never clear-cut. Heuristic models help in clarifying the available options and their strengths and weaknesses no doubt, but ultimately constitutional choices about the system of government are decided by contextual factors. History and culture – or more accurately in a plural polity, histories

¹ The winning candidates in the 1994, 1999, and 2005 presidential elections unequivocally promised abolition of the executive presidency. While in 2010 the promise was more amorphous, it was still suggested that substantial reforms to cut back its powers would be made.

² The Eighteenth Amendment to the Constitution (2010) removed the two-term limit on presidential office and procedural restraints on presidential powers. See R. Edrisinha & A. Jayakody (Eds.) (2011) *The Eighteenth Amendment to the Constitution: Substance and Process* (Colombo: CPA).

³ See J. Wickramaratne, 'The Executive Presidency: A Left Perspective' and R. Edrisinha, 'Constitutionalism and Sri Lanka's Gaullist Presidential System' in A. Welikala (Ed.) (2015) *Reforming Sri Lankan Presidentialism: Provenance, Problems and Prospects* (Colombo: CPA): Chs.27, 28.

and cultures – influence the way more fundamental ideas like nation, state, and sovereignty are conceived, and these in turn determine how institutions of government are designed. In the mid-1960s, J.R. Jayewardene's advocacy of presidentialism was based on rationales of practical politics. He identified the transience of parliamentary majorities as a major weakness of the post-colonial political system when seen against the requirements of a stable and relatively enduring executive for rapid economic development.⁴ When he eventually obtained the power to introduce presidentialism in the late-1970s, the legitimating arguments he used for this radical constitutional innovation took a more pronounced historical and cultural turn in drawing upon parallels directly from the pre-colonial Sinhala-Buddhist monarchy.⁵

This example of how presidentialism was designed and legitimated points us to a number of salient matters to bear in mind when discussing the reform of that institution almost forty years thence. Firstly, it reminds us of the importance of the “dialectical relationship between tradition and modernity” in most post-colonial contexts such as Sri Lanka, and the “powers of tradition to evolve

creatively in a new environment.”⁶ The interrelationship between the traditional and the modern therefore is central to our analytical understanding of contemporary political institutions and political mobilisation. Flowing from this, secondly, is the methodological caution against relying solely on modern positivist categories of institutional design. If we see reforming presidentialism as solely about the relative merits of positivist models of presidentialism and parliamentarism, we fail to appreciate the deeper ideas about collective identity and the state that are at play in the societal conversation about institutional reform.⁷ Thirdly, we need to have a proper understanding of the process of constitutional change that Sri Lanka is currently undertaking, its character, and its temporal span. What happened in the January 2015 presidential election was not a routine change of government followed by changes in policy direction; it was a fully-fledged regime change aimed at bringing about a constitutional transition from a burgeoning ethnocratic state to a republican constitutional democracy. The reform moment began in mid-2014 and gained inexorable momentum throughout the latter half of the year with a growing coalescence of the broadest array of political parties and civil society groups ever mobilised against a sitting president. If the present government is re-elected in the forthcoming parliamentary election, the reform moment will not end with the

⁴ See his seminal 1966 speech to the Ceylon Association for the Advancement of Science cited in K.M. de Silva & H. Wriggins (1994) *J.R. Jayewardene of Sri Lanka: A Political Biography*, Vol.II (London: Leo Cooper): pp.377-9.

⁵ S. Kemper, ‘J.R. Jayewardene: Righteousness and Realpolitik’ in J. Spencer (Ed.) (1990) *Sri Lanka: History and Roots of Conflict* (London: Routledge): Ch.9; R. de Silva Wijeyeratne, ‘Cosmology, Presidentialism and J.R. Jayewardene’s Constitutional Imaginary’ in Welikala (2015): Ch.14.

⁶ S. Amunugama, ‘Ideology and Class Interest in One of Piyadasa Sirisena’s Novels: The New Image of the ‘Sinhala Buddhist’ Nationalist’ in M. Roberts (Ed.) (1997) *Sri Lanka: Collective Identities Revisited*, Vol.I: Ch.11 at p.342.

⁷ A. Welikala, ‘Nation, State, Sovereignty and Kingship: The Pre-Modern Antecedents of the Presidential State’ in Welikala (2015): Ch.13.

current series of reforms but will go on until a new constitution is negotiated, drafted, and adopted at some point in the next Parliament.

These analytical, methodological, and contextual considerations will inform the discussion to follow. While I will discuss recent political events for the purpose of establishing the context especially in relation to the nature of the recent reform process, the main aim of this essay is not empirical but theoretical. Underlying the debates and disagreements about institutional form – about presidentialism and parliamentarism or a combination of these – is a much deeper cleavage of political opinion about the very nature of the Sri Lankan state. Those who voted for Rajapaksa and others who voted for Sirisena reflected fundamentally different worldviews. The former voted to retain a strong presidential state not because of some inherent affinity with that form of government, but because it mapped on to a particular historical and cultural conception of the state that is heavily informed by the ideology of Sinhala-Buddhist nationalism. The majority that voted for Sirisena, I argue, desired a restoration of an alternative tradition of the Sri Lankan state, which is influenced by a modernist conception of republican statehood. Theorising these competing views about the nature of the state is important not merely because of the analytical clarity that it imparts to our understanding of the transition from the Rajapaksa to the Sirisena presidencies, but also because they will continue to influence the way the Sri Lankan electorate votes in the imminent parliamentary election. This will in turn

determine whether there is in fact a new constitution-making attempt in the next Parliament, and if so, the institutional choices that are made within that exercise.

The constitutional moment between and beyond elections

By the middle of 2014, when the reform movement that led to the regime change of January 2015 started gathering pace, the Rajapaksa government seemed at its peak political strength. On the back of the euphoria over the victory in the war against the Liberation Tigers of Tamil Eelam (LTTE) in May 2009, Rajapaksa had overwhelmingly won the January 2010 presidential election. He built upon that with a comprehensive win in the parliamentary elections of April 2010.⁸ In mobilising the public and especially his core constituency in the South in the war effort, the regime had drawn upon Sinhala-Buddhist nationalism's martial tropes copiously and without any heed to minority sensitivities.⁹ In September 2010, the Eighteenth Amendment 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.¹⁰ In securing the two-thirds parliamentary majority needed for the enactment of the Eighteenth Amendment the regime had co-opted opposition

⁸ L. Jayasuriya (2012) *The Changing Face of Electoral Politics in Sri Lanka (1994-2010)* (Colombo: SSA): Ch.6.

⁹ N. Wickramasinghe, 'Producing the Present: History as Heritage in Post-War Patriotic Sri Lanka' (2012) ICES Research Paper No.2 (Colombo: ICES).

¹⁰ Edrisinha & Jayakody (2011).

members through fair means and foul, and the continuation of this overwhelming government majority neutralised Parliament as an effective checking mechanism on the executive. Going further in January 2013, the regime impeached the Chief Justice and by replacing her with a partisan legal advisor, nullified the independence of the judiciary.¹¹ Rather than demobilising the armed forces after the war and reducing them to levels more appropriate to peacetime, wartime strengths were continued and used for militarising vast areas of civil administration, especially but not exclusively in the Tamil-majority North.¹² The public service, the foreign service, the police, the armed services, and the state media had been pervasively politicised, and members of the Rajapaksa family controlled every key lever of power and authority in the Sri Lankan state.

The construction of this outwardly impregnable fortress of constitutional and informal power was repeatedly validated by a relentless succession of local and provincial elections, which debilitated the political opposition. Civil society was emasculated under a pervasive climate of fear and impunity. Beneath this seeming invincibility of the Rajapaksa presidential state, however, multiple sources of discontent were developing, stemming from its ethnic divisiveness, the lawlessness of the ruling elite, the

inescapable nepotism, the ubiquitous corruption, the absence of an economic dividend from the end of the war, authoritarianism and the culture of impunity, and the creeping constriction of democratic freedoms Sri Lankans had traditionally taken for granted. The increasingly authoritarian state had either closed off normal institutional channels for the expression and mitigation of these grievances (such as law enforcement and the administration of justice) or undermined others to the point where they were meaningless (such as Parliament and other elected legislative bodies).

In this context, the reform movement brought together a wide number of civil society groups and political parties opposed to the Rajapaksas who could agree on two principal matters: that the breakdown of the rule of law and pervasive corruption needed to be addressed; and that major constitutional reforms were needed for this purpose, with the abolition or the extensive reform of the executive presidency being the main requirement. In building this broad coalition, all other more tendentious matters were excluded, in particular the issues relating to a resolution of the causes of ethnic conflict. While addressing minority demands for devolution and power-sharing is as important as democracy reforms in Sri Lanka, this was a wise strategic move on the part of the reform movement in the context of what needed to be done in 2014. This enabled the broadest possible coalition to be built against Rajapaksa, including on the one hand the Jathika Hela Urumaya (a small but influential party of Sinhala-Buddhist nationalists), on the other, the Tamil

¹¹ N. Anketell & A. Welikala (2013) *A Systemic Crisis in Context: The Impeachment of the Chief Justice, the Independence of the Judiciary, and the Rule of Law in Sri Lanka* (Colombo: CPA).

¹² International Crisis Group, 'Forever War? Military Control in Sri Lanka's North': <http://blog.crisisgroup.org/asia/2014/03/25/the-forever-war-military-control-in-sri-lankas-north/> (accessed 04.05.2015)

National Alliance (the conglomeration of the main Tamil nationalist parties), and everything in-between including the main opposition United National Party, other minority parties, and a sizable section of Rajapaksa's own Sri Lanka Freedom Party.

While the visible signs of the formation of an opposition coalition may not have worried the regime too much initially, a substantial reduction in the government's winning vote-share in the elections to the Uva Provincial Council in September 2014 clearly panicked it into calling an early presidential election almost two years before the next was due in November 2016. This seemed to be based on the rationale that, against the diminishing returns of incumbency, regime consolidation would be best served by making use of its biggest electoral asset in the form of President Rajapaksa himself. Together with the ability to customarily disregard the electoral law and the misuse of public resources that comes with the control of the state, it may have seemed to the regime like the routine application of a tried and tested formula.

However, the reform movement scored a major win when in November 2014 it persuaded Rajapaksa's Minister of Health and the General Secretary of the SLFP, Maithripala Sirisena, to defect to the opposition to become the common opposition candidate. The regime's usual tactic of deploying the patriot/traitor dichotomy against its opponents lost much of its purchase with Sirisena as the common candidate. That for the first time in the post-war era there was now a real contest was demonstrated by the regime's increasing desperation in the final few

weeks and days of the campaign in which it abandoned any restraint whatsoever in the abuse of state power and the misuse of public resources against the opposition.¹³ But all this was eventually to no avail, for the idea of reform had captured the public imagination and led to the emergence of Sirisena as the clear winner in the early hours of 9th January.

Two salient points require emphasis. Firstly, that this reform movement could not only be created but could also offer a programme that a majority of Sri Lankans found plausible demonstrates that despite decades of institutional decay and soft authoritarianism – a trend that was only exacerbated and not created by the Rajapaksa regime – the basic democratic ideal had intuitive appeal to the public. The long-term travails of Sri Lankan democracy such as ethnicisation, clientelism, and sectional nationalism are extensively commented upon in the literature.¹⁴ But the reform movement and its electoral success tells us that there is something interesting to be explored about Sri Lanka as a (non-liberal) democracy,

¹³ See for a review of the unprecedented corruption and abuses involved: Transparency International Sri Lanka (2015) *Electoral Integrity: A Review of the Abuse of State Resources and Selected Integrity Issues in the 2015 Presidential Election in Sri Lanka*: http://www.tisrilanka.org/wp-content/uploads/2015/02/PPPR_2015_ENG_Final.pdf (accessed 04.05.2015)

¹⁴ See e.g., the essays in J. Uyangoda (Ed.) (2013) *State Reform in Sri Lanka: Issues, Directions and Perspectives* (Colombo: SSA); J. Goodhand, J. Spencer & B. Korf (Eds.) (2011) *Conflict and Peacebuilding in Sri Lanka: Caught in the Peace Trap?* (Abingdon: Routledge); K. Stokke & J. Uyangoda (Eds.) (2011) *Liberal Peace in Question: Politics of State and Market Reform in Sri Lanka* (London: Anthem Press); J. Spencer (Ed.) (1990) *Sri Lanka: History and the Roots of Conflict* (London: Routledge).

which seems to have deeper roots than many would have thought possible in the intolerant triumphalism of the immediate aftermath of the war. Secondly, that the parties representing Tamil, Muslim, and Indian Tamil interests considered that democratisation should be prioritised over their own specific demands is important. While this could be explained on strategic or even tactical grounds, there is a deeper significance to the coincidence of interests created by the opposition to the Rajapaksa regime, as a spontaneous unifying moment of otherwise competing ethnic interests, around a substantively democratic conception of the Sri Lankan state and polity. This points to a rich seam of goodwill that could potentially be tapped in any future constitution-making exercise and the development of a just settlement of Sri Lanka's ethnic and religious pluralism.¹⁵ It also belies the ludicrous claims made by the Rajapaksas and their intellectual sycophants that the Tamils in particular are congenitally anti-Sri Lankan and chronically secessionist.¹⁶

If these were the political motivations that underpinned the popular reform movement, then the regime change at the

presidential election was only the first concrete step towards the realisation of the reformist goals, and the 100-day programme promised in the common opposition manifesto was the second step of this process. The moderately successful achievement of these aims through the enactment of the Nineteenth Amendment could be regarded as the end of the process and of the reform moment, but for two factors. Firstly, the reforms require to be entrenched in practice over the short to medium term, and for this they need to be democratically validated at the forthcoming parliamentary election. Put another way, the change of the old regime at the presidential election requires to be followed up with the consolidation of the new regime at the parliamentary election. For this reason, as with the presidential election if not more so, the parliamentary election will not be a routine exercise of electoral democracy based on a choice of competing sets of party policies, but a validating exercise for a deeper re-conceptualisation of the Sri Lankan state as a constitutional republic.

Secondly, the ethnic and religious minorities that voted *en masse* for the common opposition candidate, as noted above, did so without any expectation that their problems would be addressed in the 100-day programme. This however does not imply that they are content with the limited governance reforms; in fact there is a fundamental and entirely reasonable and legitimate expectation that devolution and power-sharing issues would be taken up in the next Parliament. Hence the strong indications by the current government that work would begin on drafting a new constitution after the elections.

¹⁵ R. Sampanthan, 'The Ilankai Tamil Arasu Katchi (Federal Party) and the Post-Independence Politics of Ethnic Pluralism: Tamil Nationalism Before and After the Republic' in A. Welikala (Ed.) (2012) *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Colombo: CPA): Ch.24.

¹⁶ See e.g., D. Jayatilleka, 'Parliamentary Election: The Real Stakes', *Colombo Telegraph*, 5th May 2015:

<https://www.colombotelegraph.com/index.php/parliamentary-election-the-real-stakes/>; D. Jayatilleka, 'The Three Stooges in a Long Hot Summer', *Colombo Telegraph*, 3rd May 2015: <https://www.colombotelegraph.com/index.php/the-three-stooges-in-a-long-hot-summer/> (accessed 05.05.2015)

In this way we can see that the constitutional reform moment that began with the first signs of the revival of democratic forces against the Rajapaksas in mid-2014 would not cease with their departure, but could continue for a considerable period of time until a reasonable settlement for all the peoples of Sri Lanka can be arrived at. It is in this context that we need a deeper conceptualisation of the models of statehood that are in competition within the current reform period.

Two counterposed models of the state and constitutional change: ethnocracy v. republicanism

Mahinda Rajapaksa and Maithripala Sirisena offered radically different visions of the polity during the presidential campaign. Cast as ideal-types, Rajapaksa's vision saw the Sri Lankan state as a Sinhala-Buddhist ethnocracy, whereas Sirisena's goal was the introduction of 'yaha paalanaya'. This Sinhalese term, which translates as 'good governance', was initially used as the common opposition's principal campaign slogan. But as keen observers have noted, in the public discourse during the election campaign, it assumed an unanticipated resonance as a moral concept of good government.¹⁷ An associated term was 'maithri paalanaya' – 'compassionate governance' – which is both a play on Sirisena's first name as well as a reference to the Buddhist concept of 'loving

kindness' ('maithreya' in Sinhala and 'metta' in Sanskrit). In Buddhist eschatology, moreover, the next Buddha, the fifth of the bhadrakalpa, will be known as Maithri. In this context, therefore, the content and meaning of 'good governance' could be rather different from the liberal sense and international usage of the term, even though its precise contours remain inarticulate.

Whatever the spiritual and cultural connotations of these terms, it seems possible to clarify their secular content in the light of the reforms and principles associated with the idea of yaha paalanaya. I argue below that what it denoted was the restoration of an orthodox model of republican statehood, categorically against the corrupt, ethnocratic, and monarchic form of presidentialism of the post-war Rajapaksa regime. Building these stylised models helps us understand the two competing approaches, and define their differences, more sharply. They remain, however, analytical constructs and I would surmise that neither the candidates nor their intellectual exegetists would necessarily articulate their claims in exactly the same way that I set out here.

(i) The Rajapaksa model: ethnocratic monarchical presidentialism

An ethnocracy is a type of state that combines the practice of majoritarian democracy with the ethnicisation of politics.¹⁸ It arises in plural polities in which one dominant ethnic group, which asserts a primacy within the historical and territorial space of the polity, and therefore

¹⁷ J. Uyangoda, 'State and Governance Reforms after Elections', *The Island*, 4th January 2015: http://island.lk/index.php?page_cat=article-details&page=article-details&code_title=117127 (accessed 06.03.2015)

¹⁸ O. Yiftachel (2006) *Ethnocracy: Law and Identity Politics in Israel/Palestine* (Philadelphia, PA: University of Pennsylvania Press): pp.295-6.

claims to the ownership of the state, seeks to enforce an hierarchy of ethnic relations as the very basis of the constitutional order. It appropriates the state and uses its resources for the advancement of the dominant group, which necessarily involves the subordination and sometimes the violent suppression of minority groups. The resulting resistance by minorities may perversely take an ethnocratic form itself.¹⁹ The cultural resources of ethnicity provide the animating values of politics in ethnocracies, not secular values of constitutional democracy. They may vary in the level of oppression used against minorities, but they usually allow some forms of political representation and rights to minorities, while denying the most fundamental of the minorities' rights claims. They are not unelected dictatorships, but ethnocratic states legitimise their authoritarian control over the plural polity by recourse to ethno-cultural populism and democratic majoritarianism. Due to the fundamental injustice upon which the constitutional order is built, ethnocracies denude their own control aims by being chronically unstable and conflict-ridden.

The Rajapaksa regime displayed all these ethnocratic characteristics. Its main basis of political mobilisation and regime legitimisation was a chauvinistic version of Sinhala-Buddhist nationalism.²⁰ The political, cultural, and historical claims of the majority nation supplanted the civic conception of an inclusive Sri Lankan

nation. Secular law was increasingly replaced with ethnic politics, including monarchical traditions of political power, in the way power and authority were organised and exercised. The nation-state defined this way was constructed unambiguously against minority claims to equality and autonomy. The resulting tension and conflict-potential were addressed via increasing control and militarisation. A political constitution derived from the mytho-historical worldview of Sinhala-Buddhist nativism constantly superseded the surviving remnants of legal modernity as reflected in the text of the legal constitution. Monarchical motifs from Sinhala-Buddhist historiography were widely used to rearticulate the nature and purpose of presidential power.²¹

The regime also went further than nationalism in its sheer extractive appetite. As noted, clientelism and corruption were pervasive, facilitated by the breakdown of the rule of law and the arbitrariness of family rule. In short, the Sri Lankan state, which despite its many limitations – including most importantly its congenital incapacity to accommodate minority claims – had maintained a formally constitutional and democratic character,²² was transmogrified into an organised cartel for the furtherance of the economic interests of the ruling family and its clients. If the ethnocratic aspect of the regime provided it with populist

¹⁹ J. Uyangoda, 'Travails of State Reform in the Context of Protracted Civil War in Sri Lanka' in Stokke Uyangoda (2011): Ch.2 at p.55.

²⁰ S.J. Tambiah (1986) *Sri Lanka: Ethnic Fratricide and the Dismantling of Democracy* (Chicago: Chicago UP): pp.92-102.

²¹ Wickramasinghe (2012); M. Roberts, 'Mahinda Rajapaksa as Modern Mahāvāsala and Font of Clemency? The Roots of Populist Authoritarianism' in Welikala (2015): Ch.17.

²² J. Uyangoda, 'The Puzzle of State Reform during the Civil War: Contexts, Barriers and Outcomes' in Uyangoda (2013): Ch.3.

legitimacy, it was this latter dimension that eroded its electoral support even within its core constituency. It is the factor of corruption and excess that mainly explains how a nationalist and populist president dissipated a majority of nearly two million votes within four years. Sirisena's programme was sufficiently attractive for a substantial segment of Rajapaksa's core constituency to desert him, and I now consider the main elements of this alternative vision of the country.

(ii) The Sirisena model: Yaha Paalanaya as republicanism

Republicanism is a set of ideas and practices concerned with the common good, which is opposed to political tyranny and corruption, and which foregrounds the concept of civic virtue as the defining feature of a well-governed polity. There are three principal elements to the ideal republican state. These are: anti-monarchism and popular sovereignty; the notion of 'non-domination' as the basis of freedom; and the value of accountability and its institutional design.²³ A republic is of course the binary opposite to a monarchy as a type of state. But more normatively, republicanism represents the view that the ultimate power and authority to govern a polity – sovereignty – emanates from the people (therefore, 'popular' sovereignty) and that it is created, exercised, and reproduced in an on-going political relationship between the people and their governing institutions.²⁴ It rejects the view that sovereignty vests in a hereditary office, or originates in some

metaphysical source. Second, the idea of non-domination is a complex and multifaceted concept, but for our purposes what it means is the rejection of all forms of arbitrary government, the corollary of which is the assurance of accountability of government to the people.²⁵ The scope for arbitrariness is reduced in a republic by the provision of robust mechanisms to ensure limits on the extent of governmental power, procedures to confine and structure its exercise, and most importantly, the space for citizens to continuously have a say in the process of government. The principle of non-domination thus carries three consequences: (a) open government and freedom of information, so that government in the public interest may be ensured; (b) civic virtue, or a citizenry concerned with ensuring the common good and assuming some personal responsibility towards realising it; and (c) equality, which is again a complicated concept, but here understood as the assurance of basic legal, political, and socio-economic conditions in order that citizens can play the role expected of them by the republican ideal. Finally, there is little value in merely declaring these normative values and aims as desirable goods if there are no means by which they can be actualised. Republicanism therefore pays serious attention to how institutions might be designed so as to ensure accountability of government.

Even though it was not explicitly defended as such, it can plausibly be argued that Sirisena's manifesto closely conformed to the requirements of this conceptualisation of the republican ideal.

²³ A. Tomkins (2005) *Our Republican Constitution* (Oxford: Hart): pp.57-65.

²⁴ M. Loughlin (2003) *The Idea of Public Law* (Oxford: OUP): p.83.

²⁵ P. Pettit (1997) *Republicanism: A Theory of Freedom and Government* (Oxford: Clarendon).

The 100-day programme was entirely about institutional reforms that are aimed at realising the republican norms outlined above, and equally important is the deliberate change of leadership style. The new President has been at pains to demonstrate the public service dimension of the institution, in contrast to the ostentation and grandiloquence of his predecessor. In substantially reducing the powers of the executive presidency, the Sirisena-Wickremesinghe administration has rejected the monarchism associated with that institution. Substantively, what the pruning of presidentialism entails is the expansion of democracy, through better checks and balances, lesser arbitrariness, and more space for participation and consultation. Not only is the executive reshaped, but Parliament is also to be strengthened, by improving its scrutinising capacity through a reform of the committee system. Both political and legal accountability is the underlying aim of the proposals to remove the blanket legal immunity of the President (the Nineteenth Amendment subjects the President to the fundamental rights jurisdiction of the Supreme Court) and to make the executive responsible to Parliament. The Nineteenth Amendment has made the right to information a fundamental constitutional right, and this will be reinforced with enactment of freedom of information legislation currently under preparation.

The Sirisena administration demonstrates a commitment to equality in its economic policy as reflected in the interim budget of January and its cost of living reliefs. Some of its fiscal measures – such as the one-off tax on certain categories of businesses that were clear

beneficiaries of Rajapaksa largesse or the so-called ‘mansion tax’ that targets the same group – have been controversial, but might be defended at least in principle on grounds of republican equality. The new government is also based on a commitment to some form of political equality, which is important in two ways. Firstly, in appealing to the notion of a political community that has the capacity for constitutional renewal and to self-correct the democratic sanction for authoritarianism, and secondly, in eschewing the ethnic hierarchy denoted by the ethnocratic model, and appealing to the minorities to join the common purpose of rebuilding the post-war nation on a basis of pluralism and equality. The latter aspect may not satisfy, indeed may be wholly inadequate, as a policy response to the sub-state nationality claim asserted by the Tamils,²⁶ but it does denote that at least symbolically the new government is responsive to the claims of minorities. In recognising the plural character of the Sri Lankan polity, the new dispensation impliedly recognises the validity and legitimacy of minority claims to accommodation. That is a promising start, and a decisive renunciation of Rajapaksa ethnocracy.

In this way we can see how sharply differentiated was the choice between the two models of polity and state that were offered by the respective presidential candidates. It is therefore a matter of historic significance that the electorate chose to regain the dignity and self-worth

²⁶ A. Welikala, ‘Constitutional Form and Reform in Sri Lanka: Towards a Plurinational Understanding’ in M. Tushnet & M. Khosla (Eds.) (forthcoming, 2015) *Unstable Constitutionalism: Law and Politics in South Asia* (Cambridge: CUP).

of citizenship implied by the republican model, and reject the authoritarian domination, the lack of accountability, and the political injustice of an ethnocracy in a plural society represented by the Rajapaksa regime. And for reasons already canvassed, this dichotomy of models with regard to the nature of the Sri Lankan state will form the inevitable backdrop for the political contest to come in the parliamentary elections. It is hoped that the conceptualisation of the two models offered here helps us understand what is at stake not only in that election but also for the future of reform.

Conclusion: continuing challenges

While the desire for *yaha paalanaya* could be theorised in its best light as a democratic republican ideal as I have proposed above, in practice the process of the 100-day reforms left much to be desired. There was a lack of substantive coherence and core agreement among the coalition partners, process requirements such as transparency and public participation were often disregarded, and the programme was riven with problems of sequencing and prioritisation. Aside from these process weaknesses, there are two major political challenges to the continuing reform process, the management of which will test the new government's ability and competence to the full. These are the twin challenges to the very idea of reform posed by ethnonational extremism on both sides of the ethnic divide.

Mahinda Rajapaksa may have been defeated in the presidential election and forced to cede the leadership of the SLFP

but he has not gone gracefully into retirement. Neither have his more zealous supporters, whose political survival depends on his active role in politics, allowed him to do so. He has made regrettably divisive comments unworthy of a former President of the Republic, both he and his supporters in politics and the press have sought to question the legitimacy of his successor's election, and they have actively sought to undermine the 100-day programme at every turn. Among others, one of the most deleterious of these arguments has been to highlight the fact that Rajapaksa won a majority of the votes of the Sinhala majority, whereas Sirisena won the election only with the help of the minorities. The implication is that the latter can be expected to betray Sinhalese interests and undermine the war victory against Tamil secessionism. In this way they seek to destroy the significance of the presidential election as a unifying moment at which all of Sri Lanka's ethnic communities came together for the common purpose of restoring democracy and the rule of law. The SLFP has distanced itself from Rajapaksa and the various initiatives and public rallies organised by his supporters to galvanise a political movement calling for his return as the SLFP prime ministerial candidate in coming parliamentary election. It is difficult to predict whether these efforts will succeed or fizzle out. But this is clearly a challenge, which if it is not addressed with firm resolve and an appeal to the better instincts of the Sinhalese, that can derail the reforms, defeat the government, and reinstate the manic nationalism that was the hallmark of Sri Lankan politics in the recent past.

Similarly, Tamil moderates are increasingly being challenged by latent separatists and hardliners within Tamil nationalist politics, on the grounds that the moderates' willingness to work with the new government is a sell-out of Tamil interests. The new government has taken certain measures to address Tamil grievances, including the appointment of civilian Governors for the Northern and Eastern Provinces, the release of some military-occupied land, and commencing a process of accounting for missing persons, and a review of those held under anti-terrorism laws. These are admittedly small and incremental, and their implementation is fitful at best, but the government is attempting to balance a complicated set of interests, including to foreclose the possibility of a Rajapaksa resurgence in the South if it is perceived as being too soft on Tamil demands. The government's insistence that deeper constitutional issues in response to Tamil autonomy demands can only be taken up after the general election, its policy that an accountability mechanism for alleged atrocity crimes during the final stages of the war can only be domestic and not an international investigation, and its successful request to the United Nations Human Rights Council for a deferral until September of the report the Office of the High Commissioner for Human Rights Investigation on Sri Lanka,²⁷ have all inflamed Tamil nationalists' view that their demands are being overlooked. While in essence these complaints are legitimate, the intemperate and self-defeating ways in which these

vocal elements are conducting their campaigns of opposition could very well signal a fatal disruption of the fragile reforms process. It is clear that the government can do more to assuage Tamil fears and that it must ensure that both moderate Tamil opinion and leaders are strengthened against the extremists.²⁸ A fair and just settlement for the minorities must also be transparently articulated, and openly defended within Southern politics, and it is more than likely that the moderate majority of the Sinhalese would support the government rather than the intolerant extremists.

These two challenges from both North and South, then, have the potential to destroy the reform moment. Whether Sri Lanka manages to consolidate the historic gains of the 2015 presidential election, and to set itself on an irreversible path of democratisation and progress with the forthcoming general election, will therefore depend not only on the skill, tact, and acumen of President Maithripala Sirisena and Prime Minister Ranil Wickremesinghe in navigating the treacherous waters of ethnonationalist politics, but also whether the state-wide republican majority will hold against the ethnocratic majority within the ethnic majority. 🇱🇰

²⁷ OHCHR Investigation on Sri Lanka: <http://www.ohchr.org/EN/HRBodies/HRC/Pages/OSL.aspx> (accessed 06.03.2015)

²⁸ R. Hoole et al, 'Internal Political Power Bashing in the Name of Justice for War Victims', *The Island*, 6th March 2015: http://island.lk/index.php?page_cat=article-details&page=article-details&code_title=120781 (accessed 06.03.2015)

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