CHAPTER VII
THE NEW CONSTITUTION OF 1978: POLITICAL DYNAMICS AND SOCIO ECONOMIC IMPERATIVES

The "Democratic Socialist Constitution of Sri Lanka" which came into force from 7 September 1978, dramatically moved Sri Lanka even further from its Westminster-style, or "Westminster remodelled",¹ heritage to a system more closely aligned to the French or American presidential one. However, before proceeding to analyse the politics underlying it one needs to call attention to the dangers of analysing a new constitution, particularly in the uncertain peripheral context. This factor is further underlined by the fact that the 1978 Constitution is a subtle complex document. As closer scrutiny reveals, its libertarian and democratic appearance is efficiently balanced by both explicitly countervailing provisions, and arrangements implicitly operative in the Sri Lankan context. As such, while efforts will be made to highlight various alternatives open to a governing elite in various contingencies under the Constitution, as the discussion will indicate the possibilities for the above to be actually utilised remain subject to the realpolitik of the ruling elite which offers little ground for complacency on the above score as will also be seen below.

THE RESURGENCE OF THE COMPRADOR BOURGEOISIE

The 1977 Election Results

The conjunction of socio-economic forces in Sri Lanka during this period were reflected at the political level in a no uncertain manner in the 1977

elections. In the absence of a credible alternative, the sorry impasse reached by the UF bloc served, in political terms, to channel the widespread discontentment in favour of the center-right party, the UNP -- the party traditionally aligned to the westernised, comprador elements. In contrast to the backlash and demoralisation experienced by constituents of the broken Front, the UNP reaped the benefits of the reorganisation and streamlining it had undergone in its years out of office.²

The extent and pattern of popular disillusionment with the socialist promises of the UF can be gauged from the fact that no victory in the annals of Sri Lanka's pendulating parliamentary history was quite as comprehensive as that won by the UNP in 1977. With the highest turnout to date in Sri Lanka of 86.7 percent, the UNP won not only 140 out of 168 elective seats but received absolute majorities of the votes polled in 124 of these. The electorate reduced the SLFP to a rump of 8 MPs (it had 91 in 1970), while every candidate of the left, mostly banded under the People's Left Front, was defeated.

Further, for the first time in Sri Lankan history, a clear majority of 50.9 percent of the popular vote was given to the winning party (see Table 7.1). The mechanics of the simple majority electoral system exaggerated the margin of the UNP victory so that in contrast to the UNP which secured 84.3 percent of the seats, the SLFP with 29.7 percent of the votes could secure only 4.8 percent of the seats! To everyone's surprise, it failed to emerge even as the chief parliamentary opposition party. Instead, the TULF got more

² With the demise of Dudley Senanayake in 1973, and the concurrent political and economic decline in the hegemony of the comprador plantation bourgeoisie in the early seventies, the leadership of the UNP passed to J.R. Jayawardene. He sought in the following years to strengthen his narrow power-base resting on the urban commercial-financial comprador interests through an active wooing of the intermediate rural bourgeoisie -- and so acquire a more "socialist" image for the UNP as a party of the "common man".
TABLE 7.1: PARTY POSITIONS AT GENERAL ELECTIONS, 1977

<table>
<thead>
<tr>
<th>Parties</th>
<th>Seats won</th>
<th>Percentage of seats</th>
<th>Votes polled</th>
<th>Percentage of votes</th>
</tr>
</thead>
<tbody>
<tr>
<td>UNP</td>
<td>140</td>
<td>83.3</td>
<td>3,179,221</td>
<td>50.9</td>
</tr>
<tr>
<td>SLFP</td>
<td>8</td>
<td>4.8</td>
<td>1,855,331</td>
<td>29.7</td>
</tr>
<tr>
<td>LSSP</td>
<td>0</td>
<td>0.0</td>
<td>225,317</td>
<td>3.6</td>
</tr>
<tr>
<td>CP</td>
<td>0</td>
<td>0.0</td>
<td>123,856</td>
<td>2.0</td>
</tr>
<tr>
<td>CWC</td>
<td>1</td>
<td>0.6</td>
<td>62,707</td>
<td>1.0</td>
</tr>
<tr>
<td>TULF</td>
<td>18</td>
<td>10.7</td>
<td>399,043</td>
<td>6.4</td>
</tr>
<tr>
<td>Independents</td>
<td>1</td>
<td>0.6</td>
<td>353,014</td>
<td>5.6</td>
</tr>
<tr>
<td>Others</td>
<td>0</td>
<td>0.0</td>
<td>45,082</td>
<td>0.8</td>
</tr>
<tr>
<td>Total</td>
<td>168</td>
<td>100</td>
<td>5,780,283</td>
<td>100</td>
</tr>
<tr>
<td>Total number of votes</td>
<td></td>
<td>6,667,589</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage polled</td>
<td></td>
<td></td>
<td>86.7</td>
<td></td>
</tr>
</tbody>
</table>


than double the number of seats with about a fifth of the popular vote secured by the SLFP due to the regional concentration of the Tamils, as can be seen in the table above. Thus, for the first time this regional party emerged as the main parliamentary opposition to the UNP.4 This position ironically conflicted with its proclaimed electoral mandate of forming a separate constituent assembly to declare the sovereign socialist state of Tamil Eelam.

This "parliamentary confrontation on racial lines", as one observer termed it5, was underlined by the fact that while UNP secured 60 percent of the vote of the Sinhalese population, the TULF received 70 percent of the votes of the Tamils living in the Northern and Eastern Provinces.6 It brought the

3. There is difference between the total of the individual party counts of votes polled which is =6,243,571 = 93.6% of votes polled; and the number given by the Election Commission as total votes polled = 5,780,283 = 86.7% of votes polled (only 0.53 percent of total votes polled are spoilt votes).

4. Unless otherwise specified, the computations pertaining to the elections are my own based on the Report on the General Election to the Second National State Assembly (Colombo); G.P.S.H. de Silva, A Statistical Survey of Elections to the Legislatures of Sri Lanka, 1911-1977 (Colombo, 1979); and CDU, Parliament of Ceylon, 1977 (Colombo) in that order.


6. Ibid.
nationality question to the forefront of the political stage.

While this polarisation highlighted a major failing in the brand of nationalism the UF had pursued, shortcomings in its socialist promises led to a disillusionment and depoliticisation in substantial sections of its following. The major brunt of the backlash was experienced disproportionately by the leftist parties in the coalition who experienced a halving in the percentage of votes cast for them in 1970. The SLFP slipped some 7 percent in the total of voted it had formerly polled, but it continued to elicit the support of nearly one-third of the voting population.

The bulk of the one million new voters and large sections of the "JVP vote" responded to the UNP's promises of employment and freedom to JVP activists in the last fortnight before elections. As a result, in contrast to past electoral swings in votes averaging less than 4 percent, the one in 1977 equalled 6 percent, contributing to the 13 percent increase in vote chalked by the UNP over its 1970 result.

A closer study of the election data region-wise brings out the uneven development and patterns of polarisation of the society more clearly.

The UNP virtually swept all the seats in the Sinhalese and Muslim-dominated areas, including those in the Eastern Province. Its most

7. The left parties emerged as second in some 18 constituencies, equally divided between the LSSP and CP. In others their marginal support could critically have aided an SLFP victory, though only in one, Kalawana, did such a combination produce a winning majority -- of 6 votes!

8. Ibid.

9. It won some 27 seats with leads of over 10,000 votes as compared to the UF figure of such leads in 19 seats in 1970. According to the national trend favouring the UNP, W. Dahanayake was rejected in his personal stronghold of Galle in 1977 as an independent, when contrary to the national trend he was elected on the UNP ticket in 1970. Conversely, to prove the rule, Ronnie de Mel maintained his stronghold of Devinuwara in 1977 as a UNP Member after walking out of the SLFP in 1976.
spectacular victories were scored in its traditional regions of support -- the
developed and populous Western and Southern provinces. Indicating the
hostility of the more affluent business, commercial and professional classes
to UF policies as well as the alienation of a substantial section of the
masses, only 4 SLFP MPs were returned from here. However, though the UNP succeeded in attracting a large cross-section of
the negative vote against the UF, particularly by the youth; there would seem
to have been less positive public enthusiasm in support of its political
programme amongst the more politically conscious sections of the population in
these provinces. For instance, the number of constituencies won on a majority
vote of the total electorate by the UNP were not as spectacular in the
Western, Southern and Sabaragamuwa provinces as compared to that of the UF in
1970. Indeed, if anything, the deep disillusionment and alienation of the
most radicalised sections of the UF support base with the system as a whole
was evident in the contracting percentages of votes polled in established
radical constituencies in these three provinces. In other constituencies
however, the sharpened conflict for control over the state between the two

10 of the total 59 UNP candidates in these provinces won with leads of
over 10,000 votes.

11. Only two, one of whom was Mrs. Bandaranaike, gained leads of over 10,000
votes.

12. Compared to the UF winning 33 of the possible 69 seats in these three
provinces in 1970 by a majority of the total electorate, the UNP won only
19 of the 76 seats in a similar manner in 1977.
On a nationwide basis, while the UF secured 52 of the 151 seats on a
majority vote of the electorate in 1970, the UNP score was 54 of the 168
seats in 1977.

13. Contrasting sharply to the national trend averaging an overall increase of
1.7 percent in the voting population, some 14 established radical constituencies of the LSSP, CP and also the SLFP left leadership showed such a
contraction in voting population. The sharpest decline of -5.5 percent of
the voting population was registered in Colombo South, the stronghold of
the urban working class, contributing to the defeat of Bernard Soysa, the
esteemed General-Secretary of the LSSP.
Sinhalese blocs and the left led to closely fought, often triangular, contests in constituencies which were often strongholds of one party or the other -- so that there was more involvement within the electorate with the outcome.\textsuperscript{14} Conversely, in the other Sinhalese-dominated provinces, reflecting their more traditional rural character, the chief contests were between the UNP and SLFP.\textsuperscript{15} Highlighting the disillusionment of the agrarian labouring population with the much publicised land reforms implemented by the SLFP-led government, the SLFP failed to secure even one seat in the North-Western Province or Uva Province, its traditional strongholds. This failure is particularly noteworthy in that maximum land had been distributed to individuals in the latter along with the Central Province, another traditional stronghold where the SLFP secured only two seats.\textsuperscript{16} Several SLFP-held constituencies registered drops in voting percentages while others swung with greater majorities to support the UNP.\textsuperscript{17} Rejection of the SLFP in the Kandyan heartland was further emphasised by its only win in the related stronghold, the North-Central Province. The narrow margin of victory of the respected SLFP deputy, Maithripala Senanayake, underlined the hostility of the surplus-producing paddy farmers nurtured on state benevolence to any measure by the state to

\begin{itemize}
\item \textsuperscript{14} Exceptional increases in the voting population were recorded in, for instance, Kamburupitiya (SP): 11\%, and Katana (WP): 7.4\%. The highest increase was in Hanguranketa (CP): 18.1\%.
\item \textsuperscript{15} Only 3 independents and 1 LSSP (in Yapahuwa electorate in NWP) procured second positions in the possible 65 constituencies.
\item \textsuperscript{16} One of which was by Anura Bandaranaike in the triple-member Nuwara Eliya-Maskeliya constituency.
\item \textsuperscript{17} Corresponding to the alienation from the SLFP in the two Kandyana provinces, 10 formerly SLFP-held constituencies registered a drop in the voting population while 21 of the possible 36 UNP candidates returned with a majority of popular vote. In contrast, the SLFP had procured only 10 such constituencies in 1970. Similarly, the maritime North-Western Province returned 9 such Members for the UNP in 1977 compared to the SLFP's 5 in 1970.
\end{itemize}
turn the terms of trade against them.

This hostility seems to have been shared by the surplus paddy producers, often Sinhalese settlers, of the Eastern Province; in Amparai, Trincomalee, Batticaloa. With growing development in the Eastern Province, the numbers of independent candidates continued to show a declining trend with several joining the two major parties. In consonance with the national trend, the Ceylon Muslims and Sinhalese in the Eastern Province swung towards the UNP, voting it to victory in 8 constituencies in the 1977 elections. This was surprising in view of the advantages they had received from the UF educational policies. In keeping with the unhappiness of the Tamils with the pro-Sinhalese central policies, the TULF secured 4 seats against the 2 it had in 1970. However, while one of these was procured on a majority vote in the overwhelmingly Ceylon Tamil constituency of Padiruppu, the substantial decline of nearly 6 percent in the vote of Batticaloa strongman and First Member, C. Rajadurai (FP-TULF) in this election indicated a reluctance in sections of the Ceylon Tamils of this area as also of Tamil-speaking Muslims to back the TULF's separatist demand.

In the Northern Province, the polarisation in favour of the TULF and its demands led it to sweep all 14 seats. In sharp contrast to the situation in 1970, over half of these were won with resounding victories on a majority vote


19. The two Muslim constituencies of Mutur and Kalmunai and the Sinhalese one of Amparai had been held by the SLFP since 1970, two of these -- Amparai and Mutur -- being its strong hold. This anti-SLFP trend was strong enough to oust M.M. Mustafa, elected on a UNP ticket in 1970 in his personal stronghold of Nintavur (coalesced in Pottuvil in 1976) for switching to the SLFP in between.

20. It represented a net gain of one constituency since Pottuvil came about through a favourable reconstitution of electorates.
of the total electorate. \(^{21}\) What is more interesting is the fact that these constituencies were situated, without exception, in Jaffna district emphasizing thereby that this area constituted the nerve-center for the separatist demand. In the more agrarian districts of Mannar and Vavuniya with non-Tamil population ranging around 35 and 25 percent of the population respectively, the UNP defeats merited respect. \(^{22}\)

The UNP, likewise, succeeded in mustering a notable degree of support within the Tamils of Indian origin as also of other Tamil-speaking people living in Sinhalese areas. Dreading the separate state cry of the TULF with which the estate Tamil leader S. Thondaman had initially flirted in his association with the TULF, according to one estimation, a large number of estate Tamils, approximating one-fifth of their population in the triple-member Nuvara Eliya-Maskeliya constituency, voted in preference for the UNP and even the SLFP candidates. \(^{23}\)

**Socio-Economic Background of the Legislators**

That the individuals who were elected to power in the 1977 elections represented a different balance of forces from those elected to Parliament in 1970, becomes manifestly obvious on a study of their socio-economic background and linkages.

---

\(^{21}\) Majorities ranged up to 74.3 percent and 71 percent of the total electorate in Nallur and Kankesanturai respectively. Their winners, the TULF leaders M. Sivasithamparam and A. Amirthalingam respectively had both lost in 1970.

\(^{22}\) The percentage polled of the total electorate was:

<table>
<thead>
<tr>
<th>District</th>
<th>TULF</th>
<th>UNP</th>
<th>Total votes polled</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mannar</td>
<td>47.7</td>
<td>40.7</td>
<td>92.7</td>
</tr>
<tr>
<td>Vavuniya</td>
<td>48.6</td>
<td>33.2</td>
<td>82.6</td>
</tr>
</tbody>
</table>

\(^{23}\) See *Tribune*, vol.22 no. 5, 23 July 1977, p.6.
TABLE 7.2: OCCUPATIONAL BACKGROUND OF MEMBERS OF PARLIAMENT, 1977

<table>
<thead>
<tr>
<th>Occupations</th>
<th>General</th>
<th>Subcategory</th>
<th>ULP</th>
<th>SLFP</th>
<th>TULF &amp; Independent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>44</td>
<td>39</td>
<td>3</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>of which: Farmer-cultivator</td>
<td></td>
<td>11</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Landed</td>
<td></td>
<td>2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Planter</td>
<td></td>
<td>30</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business/Trade</td>
<td>27</td>
<td>26</td>
<td>-</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Legal Profession</td>
<td>34</td>
<td>27</td>
<td>-</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Public official</td>
<td>21</td>
<td>17</td>
<td>1</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Other professions</td>
<td>27</td>
<td>21</td>
<td>2</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Professional politicians</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miscellaneous &amp; unknown</td>
<td>14</td>
<td>10</td>
<td>2</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>168</td>
<td>141</td>
<td>3</td>
<td>19</td>
<td></td>
</tr>
</tbody>
</table>

Source: Based on CDN, Parliament of Ceylon, 1977.

As can be seen in the Table 7.2, there was a marked rise in propertied representatives drawn from agriculture and business and a decline in the numbers of professionals. The data shows an almost threefold rise in the number identifying themselves as planters -- chiefly as proprietors and sometimes as managers, highlighting thereby the traditional power base of the UNP which the UF had struck. In consonance with the wider changes in the agrarian power structure, there was a decline in the numbers drawn from traditional landed families which were more dominant in the SLFP. Instead, there was almost a doubling of the farmer-cultivator category illustrating no doubt the impact of the reorganisation of the party that had occurred after 1973 under J.R. Jayawardene as also the dominance of the middle-level capitalist farmer in the rural non-plantation areas after the land reforms. Likewise, the numbers drawn from business were nearly double those elected in 1970. A striking proportion of these specified links of ownership with firms in the fields of commerce, insurance, banking and finance, movie distribution, road transport, gems, trade, construction and export manufacture. A large number of these also, in addition identified interests in land and in the professions particularly law. While professionals, especially lawyers exhibited a marked
decline, on the whole they continued to form a substantial proportion of the MPs within the UNP and the major proportion of those in the TULF.

A province-wise comparison of the data with that of 1970 also revealed a tripling in incidence of planter representatives in 1977 in the Western, North-Western and Sabaragamuwa provinces, together accounting for approximately one-fifth of the MPs in these provinces. Likewise, there was a doubling of businessmen among the MPs from the Western, Southern, Central and Uva provinces with the result that they weighed a quarter of the total from these four provinces. The numbers of farmer-cultivators and teachers/lawyers/public officials correspondingly declined in these areas, thus highlighting the more affluent and propertied interests dominant in the UNP in these areas. However, there was no major difference in the composition of legislators from the colonist-agrarian North-Central zone or the Eastern and Northern provinces.\(^24\)

These class characteristics of the UNP elite are exaggerated by an analysis of the Cabinet. Of the 27 members; 8 were planters, 3 businessmen, 7 lawyers, 4 public officials, 3 journalists, 1 lady social worker and 1 had been deputy commander in the army. While the planters were drawn from well-known families with UNP affiliations; the businessmen were figures exercising substantial control over major firms in finance, commerce and services, the majority of which had been closely allied with the colonial plantation economy.\(^25\)

\(^{24}\) Based on the data given in CDN, Parliament of Ceylon, 1977.

\(^{25}\) While the planters included well-known UNP figures like E.L. Senanayake, Nissanka Wijeratne, and the non-UNP CWC leader, S. Thondaman; the businessmen had interests in fields as diverse as auctioneering, brokering, ship chandling, insurance and mercantile credit, road transport companies, bulbs and electrical manufacture, textile manufacture, publishing and news. The last were the most notable for their connections to the Lake House and Associated Newspapers, the publishing firm of the Wijewardene family, the creme de la creme of traditional Colombo-based UNP interests. No less than three members of the Cabinet were connected to the firm, of whom J.R. Jayawardene himself and Ranil Wickremasinghe, Minister of Education, were important members of the family.
Despite the ethno-religious support provided to the UNP, the Sinhalese were predominant within the Cabinet. In the first Cabinet, of the total 24 Ministers, 21 were Sinhalese, 1 was a Ceylon Tamil and 2 were Muslim. With Thondaman joining later, he became the sole estate Tamil in the Cabinet.

Though the lines were not clearly drawn but overlapped to a large extent, it needs also to be pointed out for their reflection within the structures of state power, that within the UNP there were identified two broad factions. The established upper class and caste, westernised and sophisticated members of the ruling Sinhalese elite as of the minorities tended to largely be identified with the leading figure of J.R. Jayawardene. In contrast, the political support of his humbler-born deputy Premadasa was based on the middle and lower-rung petty-bourgeois Sinhalese interests in trade, commerce, construction and state services in the South-Western region centering on Colombo.26

The New Ruling Bloc and its Socio-Economic Imperatives

Clearly therefore, the forces at the helm of the UNP victory were different in nature to those the UF had brought to power seven years back in the Sinhalese-dominated areas of the island. While the comprador affiliations of

---

26: Though both factions relied on patronage networks among the lower classes, the aggregation of wealth, power and social influence found in the first was the more potent. It was provided a base of strength, moreover, by its alliance with rural capitalist interests, notably in the Central and North-Central colony areas.

In the context of the westernised coterie of Jayawardene, an important political clout was provided and exercised in the South-Western and Central areas by the Industries Minister, Cyril Matthews, an economically-privileged member of the low-status, economically-weak and incohesive Vahumpura caste. The population of the Vahumpura and the equally lowly Batgam caste have been estimated to constitute between one-third and a quarter of the Sinhalese community (for details on the two castes see Janice Jiggins, Caste and Family in the Politics of the Sinhalese, 1947-1976, London, 1979, p.29). As importantly, he was co-boss with Gamini Dissanaike over the UNP trade-union Jathika Sevaka Sangamaya (JSS) in the low-country. More than any other member in the UHP leadership, he reflected and nurtured the Sinhalese chauvinist tendency in the above sections of society.
the new power bloc were strikingly evident; in keeping with broader developments, the dominance of the old plantation oligarchy over the power bloc had declined at the highest rungs of the UNP and that of the urban financial-commercial interests had sharply increased. Not only had they diversified into newer and more promising avenues in industry and services in the past two decades but they stood both economically and politically reinforced by the reorientation in a dependent direction of the erstwhile national bourgeois interests, traditionally represented by the SLFP.

Similarly the representatives elected to Parliament were drawn from the middle strata of the same fields and from amongst the more urbanised and affluent professional classes. They belonged to the more propertied and conservative sections of the society which had been directly threatened by the UF's nationalist policies. In political terms, the relative decline in influence of the planters in the rural areas was compensated by the rise in importance of the affluent rural intermediate interests within the bloc.

As they realised, they were brought to power not only by their substantial traditional patronage networks but through the significant swing in vote of the youth and sections of the indigent rural classes alienated by the shortcomings of the UF. That this vote along with vote received from the minorities in Sinhalese areas would swing as vengefully in the opposite direction in time if not satisfied posed a serious threat to the dominant classes in the power bloc. The election results showed that the SLFP retained a substantial base. The insurrection of 1971 and the contracting percentages of vote in several key radical or SLFP constituencies highlighted that some of the most politicised sections of the population were fast losing all faith in the extant parliamentary-democratic framework which seemed merely to be manipulated to benefit particular, privileged interests. The cohesive Tamil vote for the
separatist platform of the TULF along with the outburst of communal violence in the post-1977 election period, emphasised the deepening ethnic divide between the two major communities.

Critically at variance with the past, the threat perceived by the UNP bloc was now shared by the manufacturing and agrarian bourgeoisie backing the SLFP. The ruling classes as a whole, perceived the need to stem the tide of parliamentary competition in a radical direction. Instead of further structural changes detrimental to their interests, they now collectively agreed on the need for a renewed affirmation of property, of private freedom to actively increase it and, in the dependent economic context, a reliance on foreign resources to ease the resource constraint. This was implicitly spelt out in the election manifestoes of the two major parties, particularly of the UNP and made patently obvious in its policies on its accession to power.

From the UF (and even the MEP-sponsored) model of the state being primarily the initiator of and protector of national capital, the UNP regime now spelt out a role of the state as predominantly a mediator between domestic bourgeois interests and those of foreign capital on which they were dependent. In direct terms, this involved "freeing" the economy of all controls to allow a free flow of goods and funds over the national boundary thus encouraging the advance and link-up of developed foreign capital to the domestic big capitalists in finance, commerce and industry.

Less directly, the state was to form the via media for the channelling of funds from abroad to create the infrastructure for a more efficient exploitation in the future.

27. Hindu (Madras), 8 September 1977. These riots were judged the worst since 1958.

As the third ingredient in this philosophy, in order to allow this accumulation of capital and extraction of profits on an uninterrupted and lucrative basis, the state had to contain any challenge to the same from sections of society disadvantaged or dissatisfied by the process. By virtue of the fact that the base of development of the new model was necessarily narrow and lopsided it primarily benefitted the owners of private property and capital. The lowermost classes were to be content with the indirect "trickle down" effects that the increased opportunities for investment, production and employment would provide.

Accordingly, the governing framework had to be changed to a liberal direction upholding the virtues of decreased state control, a widespread decentralization of functions and guaranteed fundamental rights. However, in the crisis-prone dependent economic context it had to at the same time be made more "stable" in several respects. It had to institute a centralised system with an executive powerful enough to swiftly intervene and deal with any challenges without undue dependence on popular majorities. To encourage investment and enterprise in the longer run, the system had to also inculcate a greater consensus across both the class and communal divides. Related to this, to augment its ideological value at all levels of society, it had to exhibit an aloofness to gross manipulation in future from political interests. Not only was it important to create an environment conducive to investment by reassuring all private enterprise of the non-arbitrary and "impartial" nature of the government as also to create a "moral and just" order universally acceptable to all.29

29. For a full report of Jayawardene's Policy Statement of the new government, see NSA, Debates (Colombo), vol.23 no.1, 4 August 1977, cols 91-111.
While for the time being the alliance of nationalist intermediate classes with the urban working class lay in shambles, the new comprador bloc represented by the UNP feared the possibility of a similarly-oriented coalition of classes gaining control over state power again. In view of their growing contradictions with the increasingly impoverished masses, the parliamentary-democratic system had also to so channelise participation as to prevent an accession to power by similarly-oriented forces in the future.

GENESIS OF THE NEW CONSTITUTIONAL ORDER

Antecedents of the New Constitution

More specifically, it is worthy of note that interest in a presidential system of government appeared within the ranks of the UNP as early as 1966, as has been mentioned. It can even be justifiably contended to have been the result of a long-standing ideological conviction of J.R. Jayawardene, first executive President of the Republic of Sri Lanka. As early as 1966, he had advocated the need to create a governmental system with a strong directly-elected executive which was not "subject to the whims and fancies of an elected legislature". According to him, economic imperatives demanded a strong executive and economic development -- an absolute requirement for the preservation of democracy -- "cannot be achieved without a good deal of decisive government action". Astutely recognising the dangers in the emerging trends, noted in Chapters Three and Four of the present work, to the hegemony of the propertied classes that he represented he had at the same time also

argued in favour of the other important features incorporated in the 1978 Constitution -- proportional representation, an extended life of Parliament, independence of the judiciary and the application of the Rule of Law.31

This argument, though not endorsed unanimously by the UNP, assumed prominence with the establishment of the Constituent Assembly in July 1970, and the amendment to Basic Resolution No.14 proposed by Jayawardene in July 1971. The official UNP resolution, backed by Dudley Senanayake, suggested a President indirectly elected by a bi-cameral legislature and local bodies with certain discretionary powers reminiscent of the Indian schema. In contrast, soon after the youth insurrection J.R. pressed an individually-sponsored resolution outlining a stronger Presidency, directly elected, embodying a wide area of executive independence32 which later formed the substance of the Second Amendment to the 1972 Constitution in 1977.

This belief of Jayawardene's was further strengthened by the dangers posed to the status quo by the class and communal pressures and pulls manifested at all levels of society under the UF Constitution. By December 1974 Jayawardene had promised substantial changes in the Constitution along the above lines when the UNP came to power33 and later changed this to a promise for a new constitution.

In view of the growing separatist feeling among the Tamils, in the course of the 1977 election campaign Jayawardene, the undisputed leader of the UNP then, had also emphasised the need for integration and justiciable rights. As


32. CA, Debates (Colombo), vol.1 no.32, 2 July 1971, cols 2651-63.

the UNP manifesto stated under the heading "Constitution"

We seek your mandate to draft, adopt and operate a new Republican Constitution in order to achieve the goals of a democratic socialist society. We shall include in the Constitution the Basic Principles accepted by the 1975 Party Sessions with reference to Religion and Language and among them being the guaranteeing to the people their Fundamental Rights, Priveleges and Freedoms, re-establishing the independence of Press and Judiciary... The decisions of an All-Party Conference which will be summoned to consider the problem of non-Sinhala speaking people will be included in the Constitution.34

While the overwhelming majority acquired by the UNP in the 1977 elections was more than sufficient to legislate and legalise any changes considered necessary in the consitutional field, the desire for securing a more permanent change led to the attempt by the ruling-party to mobilise a more widely-based consensus. This effort by the ruling party leadership, however, encountered limited success for obvious reasons.

Consensus through Strait-Jackets

In contrast to the UF's more extensive attempts to seek public opinion and build a consensus at each step of the constitution-making process, the attempt by the UNP leadership seems to have been to limit debate, discussion and participation within narrowly prescribed channels.

For instance, it chose to ignore its pre-election assurances of summoning an all-party conference to deliberate on the vital issue of minorities. Instead, the process of constitutional change was carried out in two swift stages. This haste stood in direct variance with the accusation it had hurled against the UF in 1972 of not having given the public adequate opportunity to participate in the constitution-making process. In 1978 the UNP sought to justify speed as necessary to better enable the fulfilment of its election promises to the people.35 In view of the mammoth majority it had in the

---

34. UNP Manifesto, 1977, under the heading "Constitution".
Assembly, and the freedom the 1972 Constitution gave to the wishes of such a majority, this justification holds no water unless it is considered in reference to the anxiety of the UNP leadership to provide more permanent safeguards and reassurances to capital, especially foreign capital, than would be possible in the interim period under the 1972 Constitution.

a. The Second "Amendment": An urgent matter: The first stage of constitutional change was effected as the Second Amendment to the 1972 Constitution, tabled in the National State Assembly by Prime Minister Jayawardene on 22 September 1977. The Bill altered the relationship between the three branches of government by creating a powerful executive in the position of the President. It sought also to establish a system of District Ministers to direct the activities of the "sub-national" government in each of the 22 administrative districts, thus replacing and yet, formalising the previous Political Authority system. As Prime Minister Jayawardene clarified at the second reading stage, he sought to create a combination of the presidential system and the parliamentary system in a manner similar to that fashioned by de Gaulle for France.\(^\text{36}\)

The Bill was treated as an urgent matter as provided for by Section 55 of the 1972 Constitution. As such, instead of being gazetted as normal under Section 46(1), the Bill was despatched from the Cabinet Office for the scrutiny of the Constitutional Court and thence presented to Parliament for a speedy disposal in less than two weeks.\(^\text{37}\) It was not even submitted to the


37. The Second Reading of the Bill took place the next day, on 23 September 1977. See ibid., cols 1218-40. The Debate on the Bill took place on 4 October 1977; the interim period of ten days being all that were given for assessment of the new bill. The Debate, further amendments suggested by J.R. Jayawardene, and voting took a record time of 3 hours! The "debate was confined to 6 speeches and the emphasis on political
ruling Parliamentary Party for consideration. According to one source only 10 copies of the Bill in each of the three languages -- English, Sinhala and Tamil -- were sent for sale to the public in the interim period.\textsuperscript{38} It was given no previous publicity in any newspaper thus giving little opportunity for a public debate and response on an "amendment" of such far-reaching impact.\textsuperscript{39} Further doubts of the credibility of the party in power were aroused by the fact that having rushed the Amendment through Parliament with hardly any discussion at all by early October, its implementation was postponed till 4 February 1978 when Jayawardene assumed the presidency.\textsuperscript{40}

In regard to the contents of the new measure, we find that whereas the proposal relating to the presidential executive appeared to be more clearly conceived regarding the details of its implementation, the proposal for DMs appeared not to have been given much precise thought even till the time of its promulgation. As such, the constitutional amendments made in the latter regard were of an enabling character, leaving most of the decisions concerning the functions and duties of DMs to be worked out "administratively" -- a fact stridently denounced by the TULF in the debate on the Amendment.\textsuperscript{41} The

\textsuperscript{38} Tribune, vol.22 no.17, 15 October 1977, p.21.

\textsuperscript{39} Bala Tampoe, leader of the Revolutionary Marxist Party, considered it a "constitutional coup": CDH, 7 October 1977.

\textsuperscript{40} The choice of the date, 4 February, is significant in that it sought to restore importance to, and continuity with the status of independence achieved by the UNP in 1948, an event which had been successively downgraded by the SLFP governments till ultimately from 1972, May 22nd was proclaimed Republic Day in the place of February 4th --Independence Day. A similar continuity was sought to be maintained by the reversion to the former nomenclature for several other things such as "Parliament", "articles" of law, "acts" of legislation and so on.

\textsuperscript{41} For a complete report look up NSA, Debates, vol.23 no.10, 4 October 1977, cols 1295-1362.
reason for incorporating this change at this stage could have been both to provide direct links of control with the country at large for the proposed President who would otherwise find himself at a distance from the MPs in general, as also to give credence to the UNP promises to the Tamils to provide decentralised structures of decision-making in the new set-up. The purpose of the Amendment, as a whole, was obviously to strategically free the leader of the ruling party from the pressures of party politics for the time, however short, that would be required to make more comprehensive changes to the Constitution. It strengthened his position and powers to effect in all speed the wide-ranging economic changes he envisaged while at the same time taking determined steps to "solve the Tamil problem".

b. "Revision" of the Constitution: a Select procedure: After promulgating the Second Amendment to the 1972 Constitution the ruling party then moved on to adopt a different procedure for changing the rest of the Constitution. Sixteen days later, on 20 October 1977, it appointed the Select Committee on the Revision of the Constitution. It succeeded in enlisting the co-operation of the SLFP from the non-government benches. All left-wing parties and the leading Ceylon Tamil grouping, the TULF, refused to participate in the deliberations of the Select Committee. To criticism of the limited public participation provided by the procedure, government spokesmen argued that if the UF with 42.8 percent of the vote could proceed to unilaterally promulgate a constitution in 1972, surely a party elected with 50.9 percent of the vote could equally well appoint a select committee consisting of parties represented in Parliament to recommend changes to the Constitution.42

Aside from Mrs. Bandaranaike and Maithripala Senanayake representing the SLFP, S. Thondaman was the only other non-UNP Member on the Committee. The

42. Lalith Athulathmudali, in conversation with author, 6 August 1981.
seven other Members were leading UNP MPs drawn from diverse social groups and locations. 43

The Select Committee then moved with noteworthy speed. It held 16 meetings in all. A Questionnaire was issued to the general public after the first meeting. Its twenty-one queries related to various fundamental and technical aspects of the constitutional structure. 275 written responses were received. However, only 18 organisations and a Buddhist chief priest were invited by the Committee to present oral evidence in amplification of their views. Of these two organisations proved unable to do so. 44 As can be seen in Table 7.3 overleaf, together these covered the major organisations of the center and right since those of the left and the TULF refused to participate in anyway in the proceedings. Only the SLFP was allotted one hour for its submission; the other organisations were given half an hour each and the venerable priest fifteen minutes. 45

J.R. Jayawardene, R. Premadasa, Lalith Athulathmudali and Ronnie de Mel were drawn from the South-Western low-country (the first three specifically from Colombo District) while Gamini Dissanaike's base lay in the Kandyan hill-country. While three of these were esteemed goigamas, Ronnie de Mel was an affluent Karava and Premadasa of the humbler Vahumpon caste. K.W. Devanayagam was a Ceylon Tamil from the Eastern Province and M.H.M. Naina Marikkar was a Muslim from Puttalam. A later addition to the Committee, Harindra Corea, was drawn from the North-Western Province.

For a list of the organisations called see Table 7.3.
Wilson(ibid., p.32) has a differing figure of 281 responses to the questionnaire issued.

45. Originally two days, 12 and 13 January 1978; had been allocated for representations from individuals, deliberations on the Questionnaire and on the submissions made. Later, however, only deliberations were carried out on the meeting on January 12, 1978.
See ibid., pp. 173 ff.
### TABLE 7.3: ORGANISATIONS PRESENTING EVIDENCE BEFORE SELECT COMMITTEE FOR REVISION OF CONSTITUTION, 1978

<table>
<thead>
<tr>
<th>Date</th>
<th>Name of organisation/individual</th>
<th>Time given for presentation of views</th>
</tr>
</thead>
<tbody>
<tr>
<td>9 January 1978</td>
<td>SLFP</td>
<td>1 hour</td>
</tr>
<tr>
<td></td>
<td>Sri Lanka Vimukthi Balavegaya</td>
<td>1/2 hour</td>
</tr>
<tr>
<td></td>
<td>All Ceylon Malay League</td>
<td>1/2 hour</td>
</tr>
<tr>
<td></td>
<td>Democratic Workers Congress</td>
<td>1/2 hour</td>
</tr>
<tr>
<td>10 January 1978</td>
<td>Tamil People's Movement</td>
<td>1/2 hour</td>
</tr>
<tr>
<td></td>
<td>All Ceylon Tamil Congress Youth Front</td>
<td>1/2 hour</td>
</tr>
<tr>
<td></td>
<td>Ceylon Minority Tamils Liberation Front</td>
<td>1/2 hour</td>
</tr>
<tr>
<td></td>
<td>Ceylon Institute for National and Tamil Affairs</td>
<td>1/2 hour</td>
</tr>
<tr>
<td></td>
<td>Civil Rights Movement</td>
<td>1/2 hour</td>
</tr>
<tr>
<td></td>
<td>All Ceylon Buddhist Congress</td>
<td>1/2 hour</td>
</tr>
<tr>
<td></td>
<td>Sri Lanka Bauddha Peramuna</td>
<td>1/2 hour</td>
</tr>
<tr>
<td></td>
<td>Ven. Madihe Pannasiha Mahanayake Thero, Maharagama</td>
<td>1/4 hour</td>
</tr>
<tr>
<td></td>
<td>Center of Society and Religion</td>
<td>1/2 hour</td>
</tr>
<tr>
<td>11 January 1978</td>
<td>Sri Lanka Sinhala Sauvidhanaya Peramuna &amp; Sinhala Tharuna Peramuna</td>
<td>1/2 hour</td>
</tr>
<tr>
<td></td>
<td>All Ceylon Trade Chamber</td>
<td>1/2 hour</td>
</tr>
</tbody>
</table>


The Committee was assisted in its efforts by a substantial battery of legal help. However, the three constitutional experts were all British-trained and conventional. Interestingly, two of these, J.A.L. Cooray and M. Sanmuganathan, had been actively involved in setting up the First Republic. The youngest, Mark Fernando, seemed to have the complete confidence of the President and to have been notably responsible for the provisions regarding fundamental rights. As A.J. Wilson remarks, none of the three had any deep knowledge of the workings of the Gaullist Fifth Republic towards which the new system was designedly leaning. At times in attendance and on other occasions working behind the scenes was H.W. Jayawardene, an eminent appeal court...

---

46. Wilson, n.43, p.33. Sanmuganathan had been the equivalent of a permanent secretary throughout the preceding regime to its Minister of Constitutional Affairs.
lawyer and brother of the President. Along with other prominent members of the island's Bar Association they concerned themselves primarily with the judicial structure. The attendance and opinion of the Commissioner and Acting-Commissioner of Elections was sought in the deliberations regarding the system of presidential elections and delimitation of constituencies. Since the 2 SLFP members did not have any legal background, they were permitted to be assisted by lawyers of their choice in later deliberations.

Deep interest in the outcome of the proceedings was exhibited by J.R. Jayawardene, as indicated by his presence in each meeting of the Select Committee. In contrast to the frequent absences of the Finance Minister, Ronnie de Mel, presumably due to more pressing financial concerns elsewhere, Jayawardene continued to attend the deliberations of the Committee even as an invite after he had taken over as President and handed over the chairmanship of the Committee to the new Prime Minister, Premadasa.

The Questionnaire issued by the Committee, evidence taken before it and discussions on matters which required amendment in the existing Constitution confirmed the general belief that the government's strategy was to effect constitutional changes within the framework of the 1972 Constitution. However, despite two previous drafts to this effect, the Final Report of the Select Committee and therefore adopted. They were, seemingly, also inspired by Indian provisions.


Stanley Tillekaratne, also a member of the SLFP politburo, was most often present with either Nihal Jayawickrama, former Secretary in the Ministry of Justice or K. Sanmugalingam, a lawyer.
Committee, stated that the Committee had early in its deliberations

...formed the view that having regard to the fundamental changes
necessary in the basic structure of the Constitution, it was
more convenient to formulate the principles according to which
the Constitution should be revised in the form of a Draft
Constitution, rather than to attempt to formulate a multitude of
specific amendments to a number of sections of the 1972
Constitution.49

Among other things, this naturally aroused the hostility of the SLFP which
vehemently opposed the rest of the proceedings declaring "...we would not be
so naive as to participate in an exercise to repeal the Constitution we our-
selves have promulgated and to replace it with an entirely new Consti-
tution."50 To this the President raised the issue of the mandate the UNP had
received in the last elections. He pointed to the relevant section of the
Manifesto of the UNP in the 1977 elections relating to a new constitution with
its broad features.51 Others indulged in polemics asserting that the term
"revision" could as well imply an overall change.52

The Report (together with the Proceedings of the Committee and Minutes of
Evidence) and the Draft Constitution were tabled in the Assembly on 22 June
1978. A Dissenting Report by the SLFP and Memorandum by Thondaman were
included in the Report.

The two documents were then available for general scrutiny, study,
discussions and debate. It was given a Second Reading and debated in the
Assembly on 2 and 3 August 1978. The debate, as in the case of the Second
Amendment, became not only an occasion for the examination of all vital


52. Lalith Athulathmudali pointed this out to the author in a conversation, 6
August 1981; as did J.A.L. Cooray in another interview on 16 September
1981.
changes incorporated in the new Constitution but also for political exchanges of a largely unedifying character. Particularly shaming to the Government was the uproar by the Opposition parties against three articles (discussed in the next section) which had been included in the Draft Constitution without ever having been discussed during sittings of the Select Committee.

The Bill was then submitted to a Committee of the whole Parliament on 16 August 1978 for a clause-by-clause appraisal and adopted the same day. Its formal promulgation was delayed till 7 September 1978.

Opposition Resists Change

a. SLFP hostility: In relation to the consensus evoked by the 1978 Constitution, it is necessary to note that the manner in which the changes were brought about gave the SLFP, the former ruling party and the major opposition force to the UNP, substantial reason to vociferously oppose and fear changes from the start. In the debate to the Second Amendment, Mrs. Bandaranaike questioned the urgency with which the Second Amendment was being passed when all other questions were to be referred to a select committee. In the SLFP's view, the Amendment was "an attempt to impose a dictatorship on the people by vesting supreme state power in the hands of one individual". The PM became "reduced to the status of a public relations officer of the President, and his whipping boy" in the event of a defeat of any government policy in Parliament. The Cabinet would have "little more status than an advisory committee" while the real government according to the SLFP, would consist of the President's staff appointed by him.53 Immediately after Mrs. Bandaranaike's statement, the 8 SLFP members walked out of the Assembly.

The SLFP however deputed members to serve on the Parliamentary Select Committee to revise the old Constitution so as to purportedly restore the

supremacy of the NSA and prevent a further strengthening of presidential power. As such, in the proceedings of the Committee it continued to advocate the supremacy of the Legislature.

While agreeing to a presidential executive, the SLFP preferred a model essentially continuing the old system with a new amalgamation of powers of the President and Prime-Minister -- a separation which had been formally only operative under the 1972 Constitution for a PM having a two-thirds majority in the House and ruling with emergency powers. It was relevant, therefore, that in the suggested model, future executives would not be dependent on a similar majority available to the SLFP in 1972 only after alliance with the two left parties and withdrawn at a crucial juncture in 1977: Related to this, it advocated the President and PM (or Vice-President) be leaders of the majority party in Parliament elected at the same election under the old electoral system. Interestingly, this was the situation that actually was prevailing through the Second Amendment.

Though not explicitly stated at any stage, clearly there was a recognition of the fact by the SLFP that, being grounded in a more indigenous rural base in the majority community, it was most effective in a personalised parliamentary system in which the majority community could exercise more influence through the simple-majority system. As such, it objected to the new political and electoral system which increased the importance of various factors:


55. Providing that the leading party secured more than 50 percent of the seats in the Assembly -- to ensure greater stability. If no party secured more than 50 percent of the seats, it was suggested that the President should be elected by the Assembly at its first meeting with an overall majority. Nihal Jayawickrama, ibid., p.209.

56. It quoted the Commissioner of Election's observations in its favour in its Dissenting Report, ibid., p.151.
the support of the minority community, a well-knit party organization, a sophisticated literate electorate, a skilful use of the urban mass-media and the specific features of the new system. All of these together delegated the loosely knit SLFP with its lower-class rural base to a permanent disadvantage vis a vis its major opponent, the UNP.

Implicitly, however, the SLFP agreed to the basic ingredients of the new system favouring the ruling classes: a presidential executive and encouragement of private and foreign capital and a more centralised administration. Tellingly, signally absent in its dissent to the Report of the Select Committee and in all other proceedings was any affirmation of the socialist principles it had formerly sworn by. As a further reflection of its new status quoist character and attempts to protect its interests while out of power, its position on justiciable fundamental rights, more equitable minority rights, and delinking of the judiciary and public services from the political executive did not differ markedly from the UNP's.57 Though continuing to advocate the concept of a Constitutional Court, the SLFP abandoned the position taken under the Interpretations (Amendment) Act of 1975 and advocated now that the exercise of any delegated power to an official "must conform to the provision on fundamental rights."58

However, after exhibiting a reconciliation to the central features of the envisaged system it learnt in May 1978 that the Report of the Committee was intended to form the basis for a new Constitution as also to include a provision for the retroactive deprivation of civic rights for decisions by former public figures. The SLFP Members on the Committee felt tricked and heatedly resigned from it. This and the constant heckling from the government benches

57. Though it did not think it wise to return to the restrictions of the commissions prevailing before 1972.

in Parliament which often prevented Mrs. Bandaranaike from speaking weighed seriously against the bipartisan acceptance of the new Constitution. In its Dissenting Report the leader of the SLFP promised a new Constitution if the SLFP came to power in the next elections. 59

Subsequently, a serious charge made by Mrs. Bandaranaike against the new Constitution was that after the Report of the Select Committee had been presented to Parliament and published as a sessional paper, three new sections had been "smuggled" into the new Constitution. As she put it, these were "so fundamental in nature and draconian in character that had they even been suggested at the meeting of the Select Committee, the SLFP would have immediately withdrawn and disassociated itself from further deliberations of the Committee." Section 157 in the Draft Constitution had, according to her, sought to "entrench" the Constitution so-to-speak, by making it an offence to "advocate" any amendment by way of alteration, addition, repeal or replacement to the new Constitution with offenders liable to imprisonment up to ten years or fine or both plus confiscation of all property. This could as well be directed to the SLFP now, if it persisted in advocating a new Constitution. Section 158 meanwhile pertained to an unconditional guarantee to foreign investors of the safety of their investments which Mrs. Bandaranaike dubbed as a "sell-out to the multi-nationals." The third provision had sought to enable the President "to expel any one or more of his 141 members of Parliament and to substitute new members of his choice." 60

Faced with mounting protests both from inside and outside the Assembly, the Government withdrew the first and third amendments altogether and

59. Such a constitution would be consistent with the views expressed by the SLFP in its Dissenting Report and the Republican Constitution of 1972. Ibid., p.153.

b. TULF ambivalence: The chief parliamentary opposition party, the TULF, displayed an ambivalent and recalcitrant attitude from the outset to the proposed changes and preferred to remain outside the constitution-making process. Legally, it justified its non-participation in the proceedings to amend and revise the 1972 Constitution on the grounds that since the Tamils had rejected that Constitution and had refused to accept it as binding on them, they could not be a party to amendment to it. As the Leader of the Opposition and Secretary of the TULF, A. Amirthalingam, explained sovereignty had thereby devolved back to the Tamil people who had in the 1977 elections given an overwhelming mandate to the TULF for Eelam.61

The fact however remained that the 18 TULF MPs had been elected under and taken oaths (albeit belatedly) to serve under the 1972 Constitution. Manifestly, their refusal to participate directly in constitutional reform was a tactic seeking on the one hand to pressure the Center into an equitable consideration for the Tamils. On the other hand it sought to placate their more militant lower middle-class following concentrated in the Jaffna peninsula. As such, the TULF sought to strategically exploit the position it had in the Assembly as the chief opposition party to influence the direction of

61. For the complete statement by Amirthalingam, look up NSA, Debates, vol.23 no.10, 4 October 1977, cols 1286-90. See also the TULF Manifesto, 1977: "Liberation - How will it be Achieved?"

The Tamil-speaking representatives who get elected through these votes, while being members of the National State Assembly will also form themselves into the National Assembly of Tamil Eelam which will draft a constitution for the state of Tamil Eelam and to establish the independence of the Tamil Eelam by bringing that constitution into operation either by peaceful means or by direct action or struggle."

The choice of means offered seems to indicate the unresolved differences within the Tamil movement.
constitutional change in its favour while at the same time seeking to reinforce its strength by demands and declarations of separatism, militant demonstrations and resolutions and even resort to violence outside the Assembly.

It is interesting in this regard, therefore, to notice that while Amirthalingam was declaiming against participation in the debate on the Second Amendment in a pre-emptive explanatory "statement", he simultaneously pointed out that the UNP had been given a mandate for a **new constitution**. The listing of Tamil grievances implicitly ennumerated the problem areas which the new constitution would be expected to resolve. The proposed Second Amendment as it stood "did not even touch the problem of the Tamil people" who had "lost the right to life itself" he said. After the statement all the TULF members left the chamber quietly without making a demonstration of quitting.

In line with their dichotomous stand, the TULF refused to serve on the All-Party Committee originally intended to thrash out the changes to be incorporated in the 1972 document unless its demands relating chiefly to the declaration of Tamil as a national language along with Sinhala were conceded. Testifying to the pressure put by its militant youth on the older liberal leadership, when faced by the possibility of their demands being conceded in the Draft Constitution, the TULF continued to maintain a hardline stand regarding the guarantees of a devolution and the implementation of the regulations regarding language. M. Sivasithamparam, the President-elect of

---

62. Emphasis added.
63. As he declared this was evident in the communal violence of August 1977: NSA, *Debates*, n.63.
64. *Tribune*, vol.22 no.16, 8 October 1977, p.4.
66. See *CDN*, 3 August 1978.
the TULF declared

Any concession given to the Tamil language without autonomy to work out the administrative machinery to implement it, was not worth the paper on which it was written.67

Instead, the party renewed its electoral pledge. It unanimously adopted a resolution at its Second Regional Convention in Jaffna on 30 July 1978 directing its Central Committee to convene at the "appropriate time the National Assembly of the Tamil Eelam to draft and implement a Constitution for the sovereign and independent Tamil State."68 While its vague wording would seem to imply a threat more than a final declaration of intent timed as the resolution was to fall just before the debate on the new Constitution, it highlighted the uncertain compromise existing between the moderates and extremists within the TULF and the determination of the latter to secure an independent homeland.

In Colombo two days later in the debate on the Draft Constitution in the National Assembly, Amirthalingam took a more conciliatory stand akin to that of the FP of old. He spoke for over five hours and conceded that the Draft Bill contained several favourable departures from the 1972 Constitution with regard to language and, to some extent, self-administration. Nevertheless he alleged that various provisions remained discriminatory and uncertain such as the stipulated requirement for "sufficient knowledge of the official language within a reasonable time after admission to any such public service" made on all public servants. The proposed scheme of representation moreover reduced the weightage of the Ceylon Tamils by giving all provinces 4 seats each. By doing so they removed the very rationale for the introduction of seats on a

territorial basis in the Soulbury Constitution and instead it worked in the reverse, to the majority community dominating seven of the nine provinces, a greater weightage. He pointed out that no reassurance against state-aided colonisation of Tamil areas had been included in the Constitution. Amirthalingam stringently denounced the Article 157 which made any move to seek a change in the new Constitution an offence as seeking "to prohibit any peaceful agitation towards the establishment of self-determination of the Tamil people." 69 Most importantly, the TULF rejected the new Constitution for declaring Sri Lanka a unitary state.

However, significantly, by absenting themselves at the time of the vote they evaded voting against a Constitution which while not conceding all their demands, had made the most substantial concessions made to them hitherto by the Sinhalese majority or any ruling party. Nor did the upper class leadership, as notably, initiate the functioning of a separate constituent assembly for the Tamil people as declared in the 1977 election manifesto and the Jaffna Convention in 1978 which would have been tantamount to inviting outright confrontation with the Centre.

c. Other minority opinion: Despite the non-participation of the TULF, the UNP succeeded in eliciting the co-operation of the more moderate Ceylon Tamil opinion which advocated varying degrees of decentralisation. Oral representations by the Tamil People's Movement and All Ceylon Tamil Congress Youth Front, both northern based, as also the Colombo-based Ceylon Institute for National and Tamil Affairs (CINTA) were heard by the Select Committee. It is interesting to note from the evidence presented by the former two bodies, that by and large, the direction of their suggestions were at direct variance to the Sinhalese-based SLFP. They favoured a powerful Presidential executive in

69. For details refer to CDN, 4 August 1978.
the American tradition elected separately and directly by the people, though maybe at the same time as the Parliament, and relying on a non-parliamentary body of advisors. They also strongly pressed for a "running mate" for the President who should be a member of a minority community as in Cyprus and Lebanon. They favoured the proportional representation (PR) system for the protection it offered the Tamil community. All of them pressed for more comprehensive fundamental rights, including the right to use one's own language, which should be justiciable and guaranteed against acts of discrimination or abuse even in time of emergency. Tamil should be made a national language, if not a second official language, and be guaranteed its status by the Constitution. They advocated independent judicial and public service commissions as of old. They pressed for a greater decentralisation of functions (including colonisation) and funds for development to local bodies. The DM should necessarily be a locally elected figure even if from a non-government party. Failing these measures they warned the Committee, the situation could fast become irretrievable, if it had not already become so.

While these essentially upper class and upper caste organisations argued for explicit checks and balances in the envisaged politico-legal structure to stem the tide of separatism sweeping the broader Tamil petty-bourgeois classes, the organisation of the most depressed sections of Tamil society -- the minority Tamils -- were arguing against Eelam. In the fashion of other repressed minority groups, they perceived greater gains through collaboration with the central dominant majority. As such, the Ceylon Minority Tamil Liberation Front appealed to the Select Committee for a return to the system of

70. For a general discussion of both the preferential and the proportional system of voting see W.I. Jennings, The British Constitution (Cambridge, 1942), pp.21 ff. For a description of the two systems, as implemented in Sri Lanka, see next section.
nominated MPs so that members of their communities could be appointed to Parliament and a minority Tamil Minister be placed in charge of a separate ministry to look after their affairs.\textsuperscript{71}

A similar attitude was taken by S. Thondaman for whose base of plantation workers situated in the heart of the country, the demand for a separate state held little appeal and more danger. Having been directly affected by the UF policies and as a reflection of his limited goals, Thondaman was more appreciative of UNP concessions to the Tamils and sought to join with the UNP and work from within the government. As such, he supported the UNP endeavour for constitutional change in both its stages. He expressed himself clearly in favour of a strong Presidential government to "put an end to lawlessness" and usher in "peace and stability" in the course of the debate on the Second Amendment. At the same time, he reminded the UNP of its mandate to promulgate a new Constitution in which statelessness and "second-class citizenship" should be removed.\textsuperscript{72}

On the Select Committee he showed particular interest in constitutional safeguards to bolster the role and numbers of minority representatives -- appearing almost communal on several occasions.\textsuperscript{73} His position on the Committee was strengthened by the fact that he functioned also as the informal representative for the TULF, with whom he had been in close association till

\textsuperscript{71}. See the evidence presented by the Ceylon Minority Liberation Front: Report of the Select Committee, pp.253-56. A similar representation was made by the Malays for a nominated voting member: see ibid., pp.235-36.

\textsuperscript{72}. For the text of his speech see NSA, Debates, vol.23 no.10, 4 October 1977, cols 1329-35.

\textsuperscript{73}. At one point he even suggested to a delegation of the All Ceylon Muslim League that they ask for incorporation of provisions that each party nominated candidates in proportion to the minority in that district: See Report of Select Committee, p.260.
so recently. However, in his Memorandum he voiced criticism of the high cut-off point, anomalies and ambiguities in the citizenship and language law, the blanket limitations on fundamental rights under emergency and failure to deal with the problem of decentralization. He voted for the new Constitution later as being "definitely a step forward though not perfect".

d. Non-participation of the Left: Unlike the SLFP, the left parties refused as a matter of principle to be associated in anyway with the deliberations of the Select Committee and the installation of a centralised presidential system. Due to non-representation in Parliament, they could only impotently watch the changes being effected in the constitutional sphere. They vehemently opposed the enormous aggregation of powers in the hands of the President which could be used to override the restraints provided upon their use. Coupled with the constitutional guarantees to private foreign investors, they foresaw a danger of the new powers being used to the detriment of the working class. They viewed with concern the new system of PR and the provisions for amendment which aimed at perpetuating the UNP and its Constitution in power.

The Final Round

In the final reading of the Amendment Bill on 4 October 1977, in response to pressures against too powerful a President, Jayawardene moved amendments to the Bill of which two sought to retain the provision which would grant the

74. See his "Memorandum" submitted to the Select Committee: ibid., p.171.
75. Hindu, 8 August 1978.
President immunity from suit, while leaving him open to suits in his exercise of functions as a Minister. In another amendment it was made obligatory for the President to consult his Cabinet in making appointments to the Presidential staff. The absence of both the TULF and SLFP during the vote led to its acceptance by an unanimous vote of 128 to 0 by those present in the Assembly. Thondaman had the double distinction of being the sole non-UNP Member present and voting in favour of the proposed Bill.\footnote{CDN, 5 October 1977.}

Likewise Thondaman was the only non-UNP Member voting for the passage of the Draft Constitution on 16 August 1978. 54 amendments to the Draft Bill were pushed through during the Committee state of the debate on the same day, the most notable of which strengthened the provision for retrospective legislation, granted citizenship rights for 10 years to stateless residents (as a concession to Thondaman), limited or clarified certain powers of the President to call for referendum and modified the constitutional guarantees given to foreign treaties and agreements. The new constitution was then adopted by 137 of the 168 members voting in favour, the SLFP contingent of 7 voting against and TULF members remaining outside the Assembly.\footnote{For details refer to Sun, 5 and 17 August 1978; and CDN, 17 August 1978.}

Thus, with the chief Sinhalese opposition party hostile to the proposed changes, the Tamil representatives presenting an ambiguous front and the left parties outside the framework, the new Constitution was as unilaterally imposed as the 1972 Constitution had been.

\section*{THE CONSTITUTIONAL BALANCE}

Turning to examine the system designed by the UNP, one finds it neither identical to the French or the American one but an amalgamation of provisions...
from the two along with aspects of the Soulbury legacy all modified at places to specifically meet contingencies peculiar to the Sri Lankan situation. Not simply its various novel features but the Constitution's very ideological underpinnings made the new system a departure from the earlier one. However, despite its separation of powers and checks and balances, the Constitution contained in it a fusion, in reality, the executive powers of the formerly elected Head of Government and the constitutional Head of State. Along with its provisions relating to representation and amendment, the new Constitution proves to be a sophisticated and complex instrument seeking to provide a restricted democratic framework for an unrestricted development of a dependent capitalism. As such, it carried the possibilities for the political system to develop in various alternative directions as deemed fit by the dominant classes.

"Democratic Socialism"

The economic underpinnings of UNP policy were enshrined in the Preamble of the Constitution as well as the Directive Principles of State Policy (in Chapter Six) which enumerate the objective of a "democratic socialist" society that the state pledged to establish in Sri Lanka. The inclusion of the word "socialist" was obviously in deference to public sentiment established in the preceding two decades in its favour. While continued use was made of socialist terminology in the Chapter the reversal of policy were clear and unambiguous. For instance, in Article 27 the state was declared a possible agent of exploitation and concentration of means of production along with privileged private interests. Similarly, the "fundamental duty" was included in Article 28 to work and protect public property against waste which was implicitly directed against labour unrest and strikes. Constitutional recognition was explicitly

79. For an exhaustive comparison of the new Constitution along these lines, see Wilson, n.43.
provided in the Preamble for the country's rapid development by both public and private economic activity. Most tellingly, in sharp contrast to the earlier trend towards indigenisation and nationalisation of foreign capital an explicit guarantee against contravention of any foreign treaty or agreement on economic matters was given in the 1978 Constitution. The safeguard of approval by a two-thirds majority in Parliament of any controversial treaty as not being detrimental to the national economy or security was only included in Article 157 as a concession to public pressure. In effect, the above provision allows a Parliament with such a majority opinion to pass a bill offending the Constitution into law without having the effect of amending the Constitution. Clearly, this safeguard would work less to monitor the inflow of foreign investment during the extant tenure of the UNP and more to serve as a barrier against any denunciation of the same by a future Parliament elected under the proportional system with an opposing majority short of two-thirds as was deemed most probable.

A Strong Presidential Executive

The 1972 model had sought to rest an aggregation of power in the position of the PM by virtue of his/her responsibility to the Legislature which was considered the supreme and sovereign body and the President was deigned the constitutional Head of State. The 1978 Constitution, significantly, rested the exercise of sovereignty in both the Parliament and the President, but literally reversed the relationship extant between the two institutions by spelling out a powerful executive Presidential system both explicitly and implicitly.

a. Presidential powers and prerogatives: The strong executive President was made not only Head of the State, Head of the Executive and Commander-in-Chief of the Armed Forces as in the 1972 Constitution but also, more
importantly, the Head of the Government under the new one according to Section 39(2). He was empowered to appoint as PM a Member of Parliament who in his opinion was most likely to command its confidence. He was further empowered to select, dismiss, reconstitute and guide the Cabinet (of which he is the head) and to supervise directly government departments of his choice under Sections 43(3) and 44. Emphasising the divide between the President and the others, is the non-provision in the Constitution for any person to automatically act for the President however temporarily. 80 While the President was held responsible to Parliament through the Cabinet; his powers to prorogue or dissolve Parliament, declare a state of Emergency and call for a referendum over any issue in controversy with the legislature or judiciary, enhanced his effective powers immensely. 81

Devolving from this authority flowed two features of the new system which made the new concentration of powers qualitatively different from the 1972 schema. The first was the fact that the President could address the Assembly and his Ministers were answerable to Parliament, but he was not accountable to Parliament for any of his actions in his capacity as a President or Minister except through a substantive motion. 82 Under the Constitution, though the Parliament was empowered to remove the President for corrupt, illegal or

80. Article 39(1) states that the President may appoint the PM or if he is unavailable, the Speaker, to act for him in case of illness and absence from the country.

81. Any amendment to the Constitution voted against by half the total Members of Parliament on a matter "other than a Bill" considered not to be one of "national importance" cannot be submitted by the President for referendum: Articles 85 (2), 86.

82. According to the Standing Orders of the House any reference cannot be made of him or his conduct questioned in the Parliament except through a substantive motion. He cannot, thus, be criticised even regarding the conduct of ministries or any residuary functions in his charge. Any such questions have to be presumably be answered by the PM or Deputy Minister, if any, for the ministry concerned.
treasonous acts, it could do so only through the lengthy and difficult procedure provided for impeaching the President. In view of the fact that the required two-thirds majorities would be difficult in future Parliaments elected under the PR, the procedure offers the legislators a remedy which can be used under only the most extraordinary circumstances.

The second was the fact that while the President could dissolve the Parliament at will, in normal circumstances he would remain in power for the full term of his office regardless of the majority returned to Parliament.

What is more, he would remain there as an active figure on the post-election scene to forge coalitions and cabinets which coupled with the vast powers of state patronage at his disposal would give to him a powerful lever with which to influence internal equations of power in opposing parties. In the narrow majorities to be expected under PR, this maneuverability of the President could prove decisive in delivering him a majority agreeable to him and rendering impotent any opposition gathering a threatening cohesiveness in Parliament.

In contrast, the powers of a president with a two-thirds majority such as in the post-1978 period were virtually unlimited.

Thus, while the President under the new Constitution is less closely linked to Parliament than is the British PM, in not being a Member of it; he is also less free from involvement with Parliament than is the French or American President. Unlike the American President, his Cabinet is drawn from Parliament rather than outside. Unlike his French counterpart, from whence he draws inspiration, his Ministers continue to remain MPs and the President not merely presides over his Cabinet but also supervises the execution of policy himself -- a task left to the PM in the Fifth Republic in France.

Admittedly, the power of the President could be checked by the existence
of a determined opposing majority in Parliament which could seek to block policies or moves initiated by him or control the purse. Apparently this would seem, as insistently pointed out by the SLFP in the proceedings of the Select Committee, to negate the whole purpose of the new system in providing a strong executive. Viewed differently however, this prospective hostility was deliberately incorporated into the new system by its progenitors to encourage the emergence of consensus politics between the two institutions and therefore, between the two major parties -- the UNP and SLFP -- who could conceivably be dominating one institution each at a future date. Underlying this remained the unexpressed premise, as we shall see below, that the Presidency would remain with the UNP in the foreseeable future. As such, within the provisions of the Constitution, the President would have three options -- the conciliatory but unlikely one of withdrawing to the position of constitutional Head of State\textsuperscript{83} or the conflicting ones of either resorting to a referendum to decide the issue or dissolving Parliament and seeking a new majority more to his liking. An adverse verdict in the latter two courses of action would compel the President to come to a working compromise with the opposing majority in the legislature. This could involve a Cabinet drawn from the minority in the House and an acceptance of appropriation bills modified to the dictates of the majority in legislature. By Article 70(1), a dissolution was constitutionally permissible only a year after a general election or if an appropriation bill was rejected twice by the House within such a period. Politically, however, a dissolution would be feasible only if the surrounding political climate had changed discernibly in such a period. Needless to say, a President with the aforementioned powers of maneuverability could conceivably make no

\textsuperscript{83} In view of the partisan nature of Sri Lankan politics, this opinion, though propounded by President Jayawardene himself, if faced with such a situation (Wilson, n.43, p.46) seems rather far-fetched.
mean contribution towards the creation of such a climate.

b. Direct preferential election: The moral authority of the President to arrogate this wide area of discretion was derived from the fact that he would be elected by the people for a six year term and by Article 30(2) he could be re-elected only once.

The preferential system of voting for the President provided in Section 94, requires the winning candidate to amass a majority of the total votes polled, which if unavailable on the count of first preferences stated by the voters, would require the inclusion of the second (and if need be, the third) preferences by voters for all but the two leading candidates.

Implicitly, in the Sri Lankan situation of two major somewhat evenly balanced parties, it was envisaged by the constitution-makers that this mode of election would pressurise candidates to moderate policies both in left-right terms and with regard to the linguistic groups since any Presidential candidate would have to cultivate the support of the majority and the minority communities. By permanently favouring centrist electoral positions, such a system of election would place the UNP at an advantage over the SLFP, because of the UNP's fixed conservative vote bank and its greater appeal for the Tamil minority (constituting nearly one-fifth of the electorate). There would be little similar compensation provided to the SLFP by its former left allies. Moreover, the non-coincidence of the tenure of the President and Parliament would deliberately ensure an additional degree of continuity between changes of regime such as that provided by the French and American systems by preventing sweeping majorities changing political landscapes in one stroke. This would also, it was hoped, help contain the increasing political violence attending each general election.84

The same accent on political stability perhaps guided the illogical provision for a Presidential successor in the event of a President's death, resignation or similar vacation of his office before the expiry of his term. Contravening the rationale and basis for Presidential authority derived directly from the people, Article 40 provided that the Parliament elect one of its members as President in case of the above eventualities to takeover for the unexpired period, however long.85

The institution of certain other significant measures in the Constitution added up to further enhance the powers of the President in relative terms by instituting a greater decentralisation of functions at the lower levels of the political and administrative system at the expense of the traditional intermediary institutions such as the Cabinet and Parliament. Clearly, the UNP leadership sought not only merely to defuse tensions at the local level or to accomodate them individually within the system. As importantly, it sought to avoid open and organised confrontation at the national level as far as possible. It preferred to operationalise a fractionalised consensus model of politics more protective of the status quo as also of its own interests, as we shall see now.

**Downgrading Intermediate Institutions: The Parliament, PM and Cabinet**

Parliament was both explicitly and implicitly downgraded from its supreme position under the 1972 Constitution. Explicitly, it no longer constituted a direct check on the chief executive -- the President who was no longer accountable to it. Implicitly, the difficulty of any party, particularly of the center-left, attaining a two-thirds majority under the PR system would curb

85. Fresh elections are only required according to Article 39(1) in the event that a Supreme Court declares the election of a President void and no other candidate is determined as duly elected.
the Parliament's powers in the foreseeable future to effect substantial legis-
lation, amendments to the Constitution or exercise control over the President
through impeachment. Instead the fractionalised majorities to be anticipated
under the PR system would offer more malleable material to the powerful Presi-
dent in his search for a supportive majority.

In addition to this, by the new Constitution, even the discretion of the
individual MP to act at will was taken away. Instead, the formal party struc-
ture was given precedence. Purportedly, to stem political defections and
splintering of groupings from established parties chronic to the PR system,
according to Article 99(13)(a) any dissenting or defecting Member could be
disciplined by the relevant party by expulsion from Parliament and replaced
after a month by the next aspirant on the party list for the concerned dis-
trict in the most recent general elections. 86 Hypothetically, a President
who commanded the party machine could even execute policies to which the
majority of his party in Parliament or Cabinet were opposed.

In view of the experience of the Fifth Republic of France in the construc-
tion of reasonably stable governing majorities drawn from the "centrist
morass"87 of politically fragmented Parliaments, Wilson views the above
provision with disfavour. It would, in his view, obstruct the possibility of a
President constructing a majority with the help of defecting individual MPs
and splinter groups. 88 The naivete in transposing the French experience to a
dependent Third World context needs to be pointed out. The purposes of a
sophisticated rightist leadership in such a context are perhaps better served
with the entrenchment of a party system conducive to a systemic stability. The
constant horse-trading and bargaining inherent in the French model, coupled

86. As a remedy an expelled Member could appeal within the month to the
Supreme Court for a judgement on the case. A judgement had to be given
within two months of filing the petition.
87. A term coined by the political scientist Maurice Duverger with reference
to the French context: see Wilson, n.49, pp.47-48.
88. Ibid., p.72.
with an outflow from the governing majority at times of socio-economic crisis (so frequent in Third World countries) would inevitably breed a disillusionment and cynicism regarding the system as a whole which would be most dangerous to its continuance. In contrast, from the viewpoint of the ruling classes in such societies, compromises by parties as a whole such as encouraged by the new Sri Lankan system would tend to perpetuate moderate stands and keep uncompromising parties out of positions of power.

The PM as the leader of the Parliament was constitutionally totally subordinate to his executive chief. Though the chief actor on behalf of the government in Parliament, he was not designated a status of first among equals vis a vis his ministerial colleagues. As such, he could not oversee their activities or give them their orders under the new Constitution.

However, within the above parameters the PM could emerge as a possible rival to the President because of his closer contact with the MPs. An intrepid PM, even belonging to the presidential party, could create a base of support for himself and pose a challenge-of-sorts to the person in presidency. This may well have been the reason for the ambiguity regarding the person to be considered automatically the next in command.

Conceivably, such a challenge to presidential authority would be all the more potent if coming from a PM commanding an opposing majority in Parliament. The search for a "national government" so dear to J.R. Jayawardene thus finds new potential in the opportunity for the President to create a Cabinet drawn from a coalition of parties. It leaves however the problem of collective responsibility and secrets of a Cabinet, posed by the SLFP in the Select Committee proceedings, \textsuperscript{89} unresolved. In case a hostile majority recurred despite dissolution and re-election of Parliament, another alternative open to

\textsuperscript{89. Report of the Select Committee, p.208 ff.}
the President could well be to depend on a minority government. In both the latter cases, as pointed out by Wilson, mechanisms for sharing power with the opposition majority would have to be evolved.90

The Creation of District Ministers

The diminution of the powers of the Cabinet vis a vis the President was further reinforced by provision for the appointment of "other Ministers" from MPs, thus allowing for a system of District Ministers under Section 45(1). Though treated in a status between that of Minister and Deputy Minister, and accountable to the Cabinet [Section 45 (3)]; DMs remained the President's creatures providing a direct channel of communication to the President with the district level and in the process fulfilling certain needs.

They provided a compensatory and rival link to the President for his loss of contact with the individual MP and thus with the local level. In view of the fact that these nominees of the President could be drawn from non-government members,91 a feature which would gain importance after elections under PR, they encompassed in a way, again, the concept of "national government" so dear to J.R.Jayawardene. As such they would uphold the advantages of co-operating with the governing party over adherence to rigid party loyalties and affiliations by those in opposition. The scheme constituted an attempt also to co-opt the minority intermediate interests and thus was a

90. Wilson, n.43, p.47.
See the PM and Chairman of Committee J.R. Jayawardene's remarks to the SLFP delegation on the necessity of checks and compromise within the system: Report of the Select Committee, p. 213.

91. Seemingly, there can also be joint DMs for an administrative district having ethically-sensitive mixed populations. Wilson, n.43, p.66.
response to TULF demands for decentralisation of powers. In reality, it merely provided a constitutional status to the earlier DPA system replacing SLFP functionaries with UNP ones.

The Judicial and Public Services

In line with the need for a stable state structure, the framers of the 1978 Constitution favoured an independent judiciary and efficient public services to form the strong pillars of the new system. However, while a return to the structural hierarchy of the pre-1972 system was made, the process of political control over these branches of the state apparatus explicitly introduced by the 1972 document was also continued, though in a somewhat veiled manner.

The provisions relating to the judiciary were lengthy and involved and emphasised the importance placed on this subject by the framers of the Constitution. They grew to occupy some 46 of the total 172 articles in the document. Superior courts, namely the Supreme Court and Court of Appeal, were established in Chapter 16. The Judicial Services Advisory Board and Disciplinary Board of the 1972 period were amalgamated into the Judicial Services Commission (JSC) similar to the pre-1972 period. Notably, the appointments to the superior courts, and in turn to the three-member JSC constituted from among Supreme Court judges would be made by the President.

The so-constituted JSC was, in turn, responsible for all matters pertaining to the lower judiciary. Though in a return to the pre-1972 position, the actions of the insulated JSC were not made questionable by Parliament, Article 115 permits testimonials for any applicant to judicial office.

92. While the TULF was never directly present in the deliberations its demands clearly influenced the proposals put forward by moderate Tamil opinion, based both in Jaffna and Colombo. See the discussions of the Tamil Peoples Movement and CINTA on the issue of DMs in the Select Committee: Report of the Select Committee, p.204 and 243-44.
In such a context obviously, as Wilson points out, the JSC is hard put to ignore testimonials from politically powerful figures and thus remains subject to political influence.

In contrast to the 1972 Constitution, the new Constitution did not guarantee the re-appointment of all judges on the same terms and conditions in the new reconstituted superior courts. Thus the impartiality of the higher judiciary was greatly compromised when only 6 of the existing 18 judges of the Supreme Court were reappointed, 5 others were downgraded to the Court of Appeal and 7 were, in effect, dismissed by not being reappointed at all.93

While adequate security of tenure was provided to Supreme Court judges, an examination of the provisions reveals that the judges could prove susceptible to material inducements of non-governmental office after retirement against which no prohibitions were placed. Similarly the differing retiring ages of judges of the two superior courts could work to influence judges of the Court of Appeal to favour the political executive in the hope of securing promotion to the Supreme Court bench and so continuing service for another two years.94

In terms of function, the Supreme Court was made virtually into a "third House of Parliament" which could find itself in a position of direct conflict with the elected representatives of the people in Parliament. It would be called upon to pronounce on the validity of charges against the executive President in any move by Parliament to remove him even if by a two-thirds


Except for the notable exception of C.T. Samarawickrame, all other Supreme Court judges who had served on the Constitutional Court under the UF were either 'demoted' to the Court of Appeal or sacked altogether.

94. According to Article 107(5) judges of the Court of Appeal retire at the age of sixty-three years while those of the Supreme Court retire at sixty-five.
majority. It was delegated the powers of ruling on the constitutionality of proposed legislation in imitation of the incapacitated Constitutional Court of the 1972 system. In contrast to the position under the preceding Constitution, the Court was also given a limited right of judicial review regarding constitutional matters in their post-legislative stage. It was given the "sole and exclusive jurisdiction" to interpret the Constitution in case of controversy -- signifying a retreat from the dominance of Parliament pushed by the UF.

There was thus a new subsumption of the judicial apparatus to the control of the political executive while it was placed in a countervailing position to the Parliament. In this, there appears to have been the attempt to provide another bastion in favour of stability and continuity of the constitutional system. As Wilson rightly comments, judges of the highest courts are characterised by their profession the world over to be highly qualified and aloof. Coupled with the fact that it would be the powerful vested interests who would be able to avail themselves of the services of the Court and the most sophisticated legal counsels in the defense of their rights, the effective role of the Court would foreseeably be a conservative one similar to that in the pre-1972 period.

Likewise, the Public Services Commission (PSC) similar to that of the pre-1972 era was established through Chapter 9. The 1978 system, however, incorporated the more questionable features of the two preceding constitutions -- the non-responsibility of the Commission to Parliament and the subjection

95. By Article 121(2) it has to give its decision within three weeks of reference -- a period which could, however, lapse in the face of determined government counsel filibustering.
In case of urgent bills, under Article 122(1)(c) the Court has to give its opinion within a twenty-four hour period or a period not exceeding three days, as the President may specify.

96. See Wilson, n.43, pp.111-112 and 130-121.
to control by the political executive, either the President and under him, the Cabinet.

The President would appoint the chief officials of the state bureaucracy, including the five-member PSC. He would also appoint the Secretary to the Cabinet, his Presidential secretaries and secretaries to all ministries who would thus be constitutionally directly subject to his authority rather than that of the Ministers above them.

The Cabinet would appoint not only higher-grade public officers involved in formulation of policy as in the 1972 period but also all heads of departments. It would also be responsible for determining all principles and procedures relating to public officers as also, interestingly enough, promotions — a subject over which the Commission would have no function and regarding which a public officer would have no recourse to appeal. In contrast to the Soulbury system, in the new system the independence of the Commission was non-existent in that the Cabinet could delegate and withdraw powers at will and exercise them itself.

**Fragile Show-case of Individual Rights**

In consonance with the requirements of private initiative and enterprise

97. Namely these include the chiefs of the armed and police forces, the Attorney-General, Commissioner of Elections, Auditor-General, Ombudsman and Secretary-General to Parliament.

98. The change to nomenclature in the Constitution from the looser term "advisor" used in the Second Amendment, thus leaves room for them to grow into a powerful Presidential staff.

99. However, the right to numerous appeals by offending officers was re-established by Article 58. This could result, as in the Soulbury era, for such officers remaining for years in interdiction till the case was finally settled, perhaps by a favourable change in the government itself. Again, as in the case of judicial appointments, the Commission would be open to influence through testimonials from politically powerful figures given to candidates seeking public office and by the fact that the Commission's members would be eligible to reappointment for a second term. See Articles 55-60.
encouraged by the new combination of classes in power, a wide-ranging body of
Fundamental Rights were guaranteed to the individual in the 1978 Constitution,
chiefly in Chapter III. These Fundamental Rights were not only enumerated as in
the 1972 Constitution but also made justiciable in Section 17 through appeal
to the Supreme Court even in cases where violations of rights had not occurred
but seemed imminent. If the right to property was absent for contingent
reasons, the lacunae was made up by the provision of private economic
activity, mentioned earlier.

There was an obvious attempt to conform to recent developments in this
sphere in the international field regarding fundamental rights as embodied in
the Universal Declaration of Human rights and the International Covenant on
Civil and Political Rights of the United Nations of 1976. Accordingly, certain
rights such as those relating to freedom of thought, conscience and religion
in Article 10; and freedom from torture in Article 11 were made with no quali­
fications. However, it needs to be pointed out that the former three seem
rhetorical since these freedoms are difficult to control in any case, the
latter is hypocritical. The use of torture as a regular process by the
island's police force in extracting confessions continued to be used. Other
rights in the Covenants, and advocated by the Civil Rights Movement in its
submission to the Select Committee, such as non-discrimination by race, sex,
or political opinion, access to courts and fair trial at all times and, limi­
ted periods of detention;100 were markedly absent from this category of
rights.

As a further demonstration of the concern for individual freedom, by
Article 156 it was made imperative for Parliament to establish the new office
of Parliamentary Commissioner for Administration (Ombudsman) to investigate

100 See Report of the Select Committee, pp.266-67.
and report on the executive/administrative infringement of fundamental rights and other injustices.

Along with the above, certain illiberal provisions were included which diluted the scope of the guarantees given. All pre-existing laws and punishments were declared valid under Article 16 even if they were inconsistent with fundamental rights. In an attempt to provide for any loopholes or oversights in the provisions, the Parliament was delegated powers under Article 75 to make laws having retrospective effect despite an assurance as a fundamental right against trial under retrospective legislation in Section 13(6). Aimed clearly against political opponents of the regime Article 81(1) allows Parliament to pass with two-thirds majority the recommendations of a Presidential Commission of Inquiry to impose civic disabilities for acts committed or omitted even before the commencement of the Constitution. Against all tenets of Anglo-Saxon law, to which Sri Lanka ascribes, under Article 13(5) an accused could be required to prove his innocence if so specified by law. Notably, some fundamental rights were made subject in Article 15 to restriction by law in the interests of racial and religious harmony and a number of others in the interests of national economy. The latter category admits an especially broad interpretation and caused concern among the opposition and trade unionists.101

Patently, the fear of the guarantees for individual freedom being used by opponents of the government or the system for their protection led to the

101 Despite qualification of particular rights in earlier clauses of the provision, Article 15(7) constitutes an almost blanket provision restricting all the traditional rights ...in the interests of national security, public order and the protection of public health or morality, of for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society.
incorporation of restrictions and qualifications, which virtually emptied the rights of all content.

**Limited Recognition of Minority Rights**

Concessions were circumspectly made to placate the fears of both the major communities of the island and thereby to prove the bonafides of the UNP to communal sensibilities.

The place of Buddhism remained the same, in effect, as earlier though the Constitution stated more explicitly in Section 9 that it would be the duty of the State to protect and foster the "Buddha Sasana" -- that is, the dispensation of Buddhism. This explicit emphasis on local Buddhist customary law and religious organisation vis a vis the more loose term "Buddhism" used earlier underlined the commitment of the powers-that-be to established institutions. Similarly, Sinhala continued to be the only official language.

However, with the de facto establishment of Sinhalese predominance embodied by the 1972 Constitution and continued by the new one, a more flexible posture was adopted to the Tamil question by the Sinhalese ruling classes. The new Constitution granted a large measure of the demands which had been made by the FP in the 1972 Constituent Assembly. In accordance with the Tamil Language (Special Provisions) Act No.28 of 1958 and the Language of the Courts (Special Provisions) Law No.14 of 1973 and the regulations made under each, Tamil was declared to be a national language in Article 19. In the distinctly subordinate status accorded it, the Tamil community was accepted as constituting "a distinct nationality with a separate

102 Nihal Jayawickrama made a like point before the Select Committee when he asserted that the rigid position of the SLFP on the language question was necessary to effect change in 1956. The predominance of Sinhala having been established now the acts relating to Tamil in a subordinate position could be given a constitutional status: See Report of the Select Committee, p.221.
As a "national language", the use of Tamil was guaranteed in the legislative process at the Center, in the administrative and judicial process (in courts exercising original jurisdiction) in the Northern and Eastern provinces. Related concessions were the conferment of the right to receive communications and transact business in Tamil with both public and judicial authorities elsewhere in the island. It would be used on equal terms with Sinhala in education.

However, knowledge of the official language, Sinhala, remained mandatory in most branches of public service. Likewise, the demands of the Tamils for regional autonomy in a federal set-up and control over state-aided colonisation was firmly ruled out by the declaration of Sri Lanka as a unitary state (Article 2) and freedom of movement and residence guaranteed as a Fundamental Right [Article 14 (1)(h)] was qualified only "in the interests of national economy".

As a major concession to the Indian Tamils supporting the ruling party, stateless persons were granted many (though not all) of the civil rights enjoyed by the citizens of Sri Lanka for a period of 10 years. Also, by Article 26 the distinction between "citizens by descent" and "citizens by registration" was abolished.

Provisions for Emergency

To prevent the operation of long periods of emergency damaging to the democratic norms upheld by a liberal constitution, the stipulation was made in


105 By Article 14, freedoms of expression, assembly, association, occupation and movement are open to all "persons" legally resident in the island.
Article 155 that all proclamations made under the Public Security Act be reviewed and approved within a fortnight and every month thereafter by Parliament. If any such proclamations remained operative for a period totalling 90 days in six consecutive months, then no further proclamation could be made for more than 10 days in the succeeding six months without an approval of a two-thirds majority of the whole Parliament. Since such a majority would be more difficult to come by in future legislatures elected under PR, this recognisably constituted an improvement over the provisions in the preceding Constitution.

Notably however, the President in the new system would remain unaccountable to the legislature for shorter periods of emergency of up to fourteen days in every one and half months allowed him by Article 155(7). A President with an ordinary majority in Parliament would have ninety days at his disposal to deal with a threatening situation. As importantly, however, no restriction was placed in the Constitution prohibiting such a majority from enacting special legislation investing the President with powers akin to those of emergency to be used in periods of normal rule to deal with specific challenges the ruling elite found troublesome.

Introduction of Referendum

The novel feature of referendum was introduced in Section 85 ostensibly in an attempt to prevent the undermining by a ruling majority of the structure laid down in the Constitution. It was designed to allow for consultation with the people in a "variety of situations of basic importance". Such consent was required in addition to a two-thirds majority in Parliament to amend provisions in the Constitution relating to presidential powers, to alteration of the unqualified Fundamental Rights, to changes in the basic features of the

State and to the extension of the term of office of the President and the
duration of Parliament. This was done to prevent the prolongation of emergency
rule or the tenure of Parliament as had occurred under Mrs. Bandaranaike.

By Article 85(2), the President in his discretion was allowed to submit a
Bill rejected by Parliament to the people for Referendum. While explicitly
such a Bill was prohibited from seeking to alter the Constitution in any
manner, it could conceivably be used by an ambitious and charismatic President
to appeal over the head of Parliament directly to the people. The approval by
an absolute majority of valid votes cast, with a minimum of one-third of the
total electorate voting in favour as required by Article 85(3), would not
prove excessively difficult if issues with sufficiently populist appeal
(possibly even along communal lines) were included.

Proportional Representation

The switch-over to the proportional system of representation was central
in the organisation of the new framework.

Studying the new Constitution in fine detail, A.J. Wilson observes

The purpose of proportional representation is to fractionalise
the legislature so that the Executive President has room to
manoeuvre so as to enable him to construct a majority which will
be supportive of his policies. The legislature's majority will
then never be coherent and stable enough to obstruct and
overrule the President.\footnote{Wilson, n.43, p.86.}

Pertinently to the intentions of its framers, a fractionalised legislature
would not be able to effect any substantial change either to the Constitution
or to the system itself.

Instead, by its specific details, it would perpetuate a representation of
the major centrist parties in Parliament at the expense of the smaller, often
more extremist or radical parties. The proportional system would not, like the
simple-majority system amplify minor percentage differences in votes polled
between parties to landslide proportions in situations when differences were evenly dispersed over a large number of constituencies. Conversely, neither would it relegate a substantial body of opinion in favour of the defeated major party to a marginal position in Parliament. It would thus work to give a permanent and substantial representation to conservative, centrist forces in Parliament. Indeed, as President Jayawardene plainly stated, he sought a permanent "center-right" consensus and even aimed in the long run to attract moderate elements from the other major party, the "center-left" SLFP, to form such a consensus.

While there are many forms of PR, the system as introduced in Sri Lanka was that of the party list on a district basis. Candidates of each party would be declared elected in the order of priority as listed on the ballot sheet, in numbers approximately proportional to the strength of the vote cast for each particular party-list in that district.

The number of electoral districts was fixed at twenty-two, of which all except Vanni electoral district were made identical with administrative districts. The number of seats in Parliament was to be increased and fixed at 196 at the next elections. Of these, 36 were to be distributed permanently at 4 per province and the other 160 seats would be divided among the districts.


His overtures to SLFP moderates focused upon Anura Bandaranaike (ibid., p.381). As early as July 1977, the SLFP had been offered two Cabinet posts by Jayawardene which Mrs. Bandaranaike and other leaders of her party could have accepted, had they so wished: see Hindustan Times, 27 July 1977.

110 Article 99.

111 The administrative districts of Mannar, Vavuniya and Mullaitivu would be combined to form the Vanni electoral district for Parliament.
according to the number of registered voters in each.\textsuperscript{112}

To its credit, the new system brought Sri Lanka closer to the ideal of "one man, one vote, one value".\textsuperscript{113} The inequality between areas was not completely removed by the new scheme, however, due to the distribution of 36 seats to the 9 provinces. According to one estimate the greatest disparity between electorates was reduced from over 1:3 to about 1:2.\textsuperscript{114} In operational terms, this change dramatically shifted the center of political gravity once again to the South-West region of the country, the traditional stronghold of the UNP, so that the Western and Southern provinces combined would elect approximately 40 percent of the Parliament in future. The hill-country area suffered a corresponding loss with two electoral districts -- Kandy and Badulla -- suffering an absolute decline in the number of Members returned to Parliament; despite the overall increase in seats. The Tamil-majority areas in the North and East suffered negligible losses in this regard and could perhaps hold the balance in future in an evenly-divided Parliament,\textsuperscript{115} a factor more likely to favour the UNP.

As proponents argue, the proportional system would permit a truer reflection of the support of each party than the preceding plurality system.

However, as critics pointed out, as instituted in Sri Lanka, it harboured

\textsuperscript{112} See Articles 95, 96 and 98. The total number of registered voters for an election (based on the register of the previous June) is divided by 160, yielding the "qualifying number of electors". Each district would be then entitled to one Member for each qualifying number of electors, with those districts left with the largest remainder of voters allotted any remaining seats.


\textsuperscript{115} de Silva, ibid., p.14.
certain biases in favour of an entrenched and formalised party system. While
the planned coincidence of the administrative with the electoral district
would leave some local leverage for candidates, the vote for a "party-list"
would tend to, as noted by Wilson, promote the "dictatorship of the party
machine" at the cost of the more personal contact of an MP with his consti-
tuency\textsuperscript{116}-- a fact early noted by the rural patronage-based SLFP. The
emerging "entrenched" nature of political parties in the proposed system vis a
vis the voter is manifest in the total lack of freedom to the voter to vote
for candidates of his choice, by altering the contents or priority of given
party-lists. For all practical purposes, the party position would be "frozen"
immediately after a general election since any vacancies occurring for what-
ever reason would be filled by the next unelected name on the party's nomina-
tion list. The pernicious hold of the party leadership on its Members in the
future was secured by Article 99(12) which gave a party the power to further
change at will the order of priority of persons elected on its list. Reliance
on party-organised gatherings, appeals through the media and on collective
party funds would also consequently tilt the weightage in favour of urban-
centered political activity. The provision for the award of an additional seat
to the party with the maximum votes in each district would favour the large
established parties. The provision for the high cut-off of one-eighth (or 12.5
percent) of the total votes polled in a district for a contesting party to be
eligible for the award of seats won by it place the smaller parties at a
disadvantage in areas where they have a more tenuous influence. Likewise, the
requirement that a party-list offer the required number of candidates in a
district plus one-third the same number (to fill in vacancies occurring later,
As the SLFP put it, PR would make the elected representative a "... mere
name on a list, a remote figure, having no contact with the voter...":
if need be) pre-empts the decision of smaller parties regarding their strength and strategy in any area and reinforces the advantage of the larger parties.

The system, as designed, would tend to perpetuate the domination of the two major parties, particularly the UNP. The provisions would thus limit regionally based parties such as the TULF to its bases in the North and East and the left to its strong-holds in the Western, Southern, and Sabaragamuwa provinces. That the intention was indeed to rigidify the existing party situation can be seen in that besides the power given to the party machine, according to Article 99(2) independent candidates despite their views, have to present themselves as a group at an election and function as such thereafter.

As a result, in keeping with the status quoist aims of the constitution-makers, majorities won by a party would not be as skewed or cohesive as in the preceding system but would in all probability be substantial and stable for the two leading parties. In the longer term, the Parliament would maintain a fractionalised complexion with the established parties gaining their corresponding proportion of seats, modified according to the political climate at a general election.

In view of the proclaimed search by its progenitor for a consensus, it was no accident that the proportional system coupled with the preferential mode of election of the President was designed to overcome the two major politico-social divisions threatening the extant structure and the interests of the dominant classes. The bias towards centrism inherent in the new system would arrest the polarisation of forces encouraged by the preceding one and encourage a blurring of fundamental differences between the positions of established parties. In that context, it was no coincidence that the possibilities of limited programmatic alignments were deliberately weakened by the requirement of separate party lists — a provision which made it difficult for
the established parties of left and center-left to enter limited electoral or coalitional agreements before elections as they had successfully done in the past.\textsuperscript{117} While PR was not entirely injurious to the left, it would most certainly relegate them to permanent and marginal opposition.\textsuperscript{118} By so cutting the ground from under the SLFP who had secured its greatest successes through such alliances in the past, the system's progenitor could conceivably hope for an alignment between the two major centrist parties in future, and thus see his search for a "national government" fulfilled -- a development which would implicitly embody a united Sri Lankan capitalist class once again.

Likewise, it was envisaged that the new system would blur racial divisions by compelling more moderate postures by the major Sinhalese parties vis à vis the minority community and encourage a process of bridge-building towards them in contrast to the preceding system. At the local level, under the PR system, pockets of minorities in Sinhalese majority areas would encourage the incorporation of non-Sinhalese candidates on the lists of Sinhalese parties. At the national level, on the assumption that voters would continue to vote party-wise much as they had in the past, Tamil MPs would in all probability hold the balance of power in Parliament on any substantial issue.

Thus, in a broader perspective, the new mode of elections of President and Parliament, by favouring centrist positions, would tend to ensure in objective terms, that no radical, irreconcilable differences would exist between the

\textsuperscript{117} The power of a party over its party lists would place the members of aligning parties elected on a mixed list in jeopardy. The concession of a district or two to smaller coalition parties necessary for them to feel reasonably secure would be a considerable concession for a major party to make in view of the narrow majorities to be gained under PR and the bargaining lever which the smaller parties could wield subsequently. A joint national list would submerge the identity of the smaller parties, while a decision to have post-electoral agreements based on their relative strengths would unnecessarily split the anti-UNP vote and benefit the UNP.

\textsuperscript{118} However, had the system been in effect in 1977, there would have been 3 Marxist MPs instead of none.
outlook and policy-programmes of the two institutions, even if dominated by
the two major parties. However, in the new schema while the legislature would
encompass a more varied and diverse assortment of class and community inter-
ests, with a favourable weightage accorded to established interests, the
President would represent the condensation of only the more conservative
opinion of the majority and to a lesser extent, the minority community.
Critically also, in the period that the power of the center-left and left
forces remained substantial, the new system would facilitate the search for
the support of the Tamil minority community by the UNP despite the communal
consciousness of the Sri Lankan society, and thus allow for a strategic
alliance which would enable the political advantage to be retained by the UNP
whilst it forged ahead with its plans for the country's economic development.

An Entrenched Constitution?

Besides the rigid procedure involving referendum prescribed for amendment
of the more entrenched provisions, the rest of the Constitution was made
amendable as earlier, by a two-thirds majority in Parliament. But, the
unlikelihood of any party gaining a simple-majority in Parliament, much less
the two-thirds majority required to institute change, was calculated to ensure
a certain rigidity for the Constitution as drawn up. The same consideration
seems to have been at work in allowing legislation inconsistent with the
Constitution to be passed by a two-thirds majority in Parliament but leaving
it open to be repealed by an ordinary majority.

In view of the repeated emphasis on stability by its framers, it seems
clear that by making the possibility of any substantial change to the
Constitution a remote one, they sought to arrest the erosion of the credi-
bility of the Constitution as a supreme law of the land. In so doing, they
sought to reinforce its ideological value in support of the existing socio-
political order. Precisely for this reason the new Constitution instituted a democracy and mode of participation that could at best be described as plebiscitary in nature, with meaningful political participation being necessarily either filtered through the ruling-class party machines or as limited, simplified responses to issues posed by the state political apparatus.

**Evolving Perspectives**

Thus the 1977 elections brought a reconstituted comprador bloc to power politically reinforced by the disillusionment with the outgoing regime. Having faced a serious threat to their interests under the UF, the comprador and affluent classes dominant in the new bloc feared a similar popular coalition of forces gaining control over state power in future. Consequently, on the one hand they sought to rehabilitate the economy through open dependence on foreign capital. On the other hand the incumbent UNP leadership sought to safeguard the new pattern of development beneficial to them by using its mammoth majority in Parliament to reorganise the structures of the state. In doing this, they sought to perpetuate a conservative consensus in favour of capital at the level of the state in future.

In this context, the Jayawardene regime moved to institutionalise a

119 "To the extent that the popular masses could not be excluded from the politics of the "legal nation", nor be kept isolated and encapsulated by the local bosses and notables, the classical form of parliamentary politics was no longer an adequate instrument. It had to be supplemented or replaced by an original politics able to take hold of these new, partly-emancipated masses and keep them in a position of subordination. This new kind of bourgeois leadership may be termed plebiscitary politics:"[emphasis original] Goran Therborn, What does the Ruling Class do when It Rules? (London, 1978), p.53.

An essential component of this new form, as pointed out by him, is the inculcation of consensus by means of mass appeals, the politician's message and above all his personal image projected through the mass media.
liberal democracy consistent with its economic philosophy of *laissez-faire* in a dependent economy. The widespread decentralisation of functions and guarantee of fundamental rights were accompanied by moves in the opposite direction to institutionalise an interventionist state. In being so, the new model incorporated certain features which were outlined as characteristic of exceptional capitalist regimes and which had been evident in the preceding bonapartist state.

A strong presidential executive was created which would be powerful enough to intervene and deal swiftly with any socio-political challenges deemed necessary by the ruling elite. The new Presidency consisted of a fusion, in reality, of the executive powers of the formerly elected Head of Government and the appointed Head of State. As such, the President would control all branches of the state apparatus, while remaining virtually free of accountability to any other body during his tenure. He would derive his authority from the majority vote in a direct preferential election, a mode which would bias the system in favour of urban-centered big-party activity.

In keeping with his independent mandate, there was also provided more scope for the President to rely on bureaucratic-technocratic structures for policy-formulation and decision-making.

Evidently, in more ways than one, the new President would be the concentrated embodiment of the interests of the domestic capitalist classes. As such he would function as the "executive of the whole bourgeoisie", above intra-class rivalries at the national level during the length of his term. These would, instead be allowed circumscribed play at the subordinate parliamentary level.

The instituted proportional system of representation would fractionalise the increasing cohesiveness of parliamentary majorities encouraged by the
preceding electoral system. It would thus act to weaken the potency of parties as traditional vehicles for political representation and change at the level of the state. Instead, the new system would seek to "congeal" the political situation by allowing the representation of all substantial parties within Parliament and hence to formalised opinion in the country. Provisions relating to party-lists and political defection further increased the hold of the party hierarchy, derogated the freedom of the individual MPs and voters and struck at the vertical links of populism and patronage. In line with the integration of society desired by the UNP leadership across class and communal lines, the new system would maintain the preponderance of the centrist conservative vote (of the two major parties) in Parliament, inflate the importance of the minority communities and their vote, while relegating the more radical forces to a permanent marginal position in the foreseeable future.

Since the integration of the society was imperative as a precondition for the success of the economic recovery which the UNP leadership envisaged for Sri Lanka during its tenure, limited concessions pertaining to language and citizenship were also made to the Tamil community.

The UNP followed precedents set by the UF in claiming a "mandate" for promulgating a new Constitution and proceeding to do so by virtue of over a two-thirds majority. In its search for a stable system, however, it carried the matter much further. Important to note is the fact that not only did it proceed to construct a system based on a highly centralised executive elected directly and then deem the incumbent to have been so elected but it also qualitatively changed the rules of the game by providing for elections through PR. This last with its specific details would not only forseeably maintain the future party system within the realms of "substantial orthodoxy", but it

---

120 Colvin R. de Silva, in conversation with author, 14 July 1981.
would also not easily deliver the two-thirds majority in Parliament in future necessary by the new Constitution to effectively challenge the power of the President. Simultaneously, it would also make more substantial changes to the guarantees made to foreign capital as well as to the instituted constitutional structure itself well nigh impossible. Needless to say, the extant Parliament with its mammoth UNP majority delivered under the former system continued to complete the better part of its term without any qualms.

Within the more formalised mode of participation and representation that the new system instituted, its democratic bonafides were based on the premise that a two or three-major party system would thus be stabilised within Parliament which would then effectively check the powers of the executive President. Furthermore, also voiced was the premise that from henceforth each party would have to evolve its own democratic norms and processes to allow for a satisfactory hierarchical ordering of persons and interests that the new system of party-lists in elections, and party discipline in Parliament would require. The new Constitution was also very obviously based on the assumption that popular votes and party alignments would continue much as before.

Furthermore, in the broader social context, it was based on the assumption that the pattern of economic development that the new bloc would encourage and resuscitate, would foster a percolation of benefits to substantial sections of society and allow a broad distribution of benefits. It would thus facilitate the President's task of coalescing a consenting majority in Parliament in favour of his policies.

It remained a matter of conjecture how far each of these assumptions would be fulfilled. However, the fear that a non-comprador coalition of forces would gain access to state power in the future led the ruling elite to compromise its attempts to institutionalise a conservative national consensus acceptable
to the Sri Lankan bourgeoisie as a whole. Bi-partisan acceptance of the Constitution was jeopardised by the clandestine, hurried and partisan manner by which it instituted the new system. While the UNP heeded the views of the upper-class leadership of the minority communities, it succeeded in securing only an ambivalent response from the TULF leadership under severe pressure from its lower-middle class base. It aroused the hostility of its major rival, the SLFP, by its calculated provisions to handicap the latter in future. Parties representative of the working class were virtually ignored. In sum, even during the process of framing the new Constitution the actions of the ruling party actively served to inhibit and even obstruct the development of a national consensus

***