CHAPTER V
FRAMING THE 1972 CONSTITUTION: POLITICAL PRESSURES AND PULLS

The intermediate bloc which came to power in 1956 effected, as seen in the last two chapters, wide-ranging changes in the economic, political and legal realms within the limits prescribed by the Independence Constitution. It could not, however, due both to the strength of the preceding comprador bloc and its own innate economic and political weaknesses, overthrow the Soulbury Constitution which consequently reflected the changing balance of forces in a somewhat diffused manner between 1956-1970. This was so much so that in conjunction with its interest in continuing the system of property and capitalist relations of production, even the more radical SLFP-dominated United Front (UF) worked for change in the post-1970 period essentially respecting the prescribed constitutional limits as will become clear in the course of this chapter. It is to an examination of the process of the framing of the 1972 Constitution, to the political pressures and pulls experienced and the salient features of the system so designed that we will now turn.

VITAL CONTEXTUAL FACTORS

The process and outcome of the exercise of constitution-making in Sri Lanka in the period 1970-1972 was deeply affected by the specifics of two events in the preceding and concurrent period -- the magnitude and nature of the UF victory in the May 1970 elections, and the impact of the JVP insurrection in April 1971. Each had its own reflection in the Constitution under creation.
"the United Front Victory, 1970"

Beyond all expectations, the UF won 115 of the 151 elective seats in the 1970 elections, gaining thereby its right to nominate six more MPs. Thus, for the first time since 1952 a winning coalition had enough strength at its command to effect substantial changes in the constitutional sphere.

Further, a greater element of stability was added by the fact that the major constituent, the SLFP, itself totalled a cohesive majority of 90 seats (excluding the additional one cornered at a by-election held later). The other two constituents, the LSSP and CP secured a supportive 19 and 6 seats respectively. In contrast to the score of the victorious coalition, the UNP got a mere 17 seats while the Federal Party bagged 13 seats in the Northern and Eastern provinces, as Table 5.1 shows.

TABLE 5.1: PARTY POSITIONS AT GENERAL ELECTIONS, 1970

<table>
<thead>
<tr>
<th>Parties</th>
<th>Seats Won</th>
<th>% of Seats</th>
<th>Votes Polled</th>
<th>% of votes polled</th>
</tr>
</thead>
<tbody>
<tr>
<td>UNP</td>
<td>17</td>
<td>11.3</td>
<td>1,892,525</td>
<td>37.0</td>
</tr>
<tr>
<td>SLFP</td>
<td>91*</td>
<td>60.3</td>
<td>1,639,979</td>
<td>36.9</td>
</tr>
<tr>
<td>LSSP</td>
<td>19</td>
<td>12.6</td>
<td>433,224</td>
<td>8.7</td>
</tr>
<tr>
<td>CP</td>
<td>6</td>
<td>4.0</td>
<td>169,199</td>
<td>3.4</td>
</tr>
<tr>
<td>TC</td>
<td>3</td>
<td>2.0</td>
<td>115,567</td>
<td>2.3</td>
</tr>
<tr>
<td>FP</td>
<td>13</td>
<td>8.6</td>
<td>245,727</td>
<td>4.9</td>
</tr>
<tr>
<td>Independents</td>
<td>2</td>
<td>1.3</td>
<td>249,006</td>
<td>5.0</td>
</tr>
<tr>
<td>Others</td>
<td>0</td>
<td>-</td>
<td>46,571</td>
<td>0.9</td>
</tr>
</tbody>
</table>

Total 151* 100.0 4,672,656 100.0

Total number of votes 5,505,028
Percentage polled 85.2

*The electoral district of Welimada went uncontested to the SLFP later and so boosts up all the SLFP totals.


1. There is a perplexing difference in percentage polled calculated by the Commission (=85.2) and one if calculated using the given data (=54.9%). Formula used is Total votes polled x 100 = 4,672,656 x 100
   Total number of votes 5,505,028

Only 0.53 percent of total votes polled were spoiled votes.
As a reflection of its ethnic base, the UF victory was based exclusively on the support of the predominantly Sinhalese-Buddhist areas. The UNP could win only 3 of the 114 seats it contested here. While the SLFP virtually swept the rural Sinhalese areas, the left parties won 20 of the 29 urban seats. Sharply highlighting the continuing suspicion and fear of the Sinhalese majority, the Sri Lankan Tamils voted outstandingly for the FP. The FP therefore, won two-thirds of the 19 seats contested in the northern and eastern constituencies.

However it needs be noted that the electoral system reflected only a fraction of the opposition's real strength in the House. While the UF's victory was impressive and debacle of the UNP unexpected; yet, the UNP's debacle in terms of seats (from 60 to 17) was not accompanied by a proportionate loss of strength in terms of votes. The system of first-past-the-post as also of electoral demarcation with its imbalances in voter strengths in constituencies acted to produce the massive landslide majority for the victorious coalition. According to one estimate, in this election a rural drop of only 1.8 percent and an urban loss of 0.4 percent for the UNP gave the UF its huge majority!

Although the former ruling party polled the maximum votes -- some 37.9 percent of the total cast, it only secured 11.3 percent of the seats in the House. In contrast, the SLFP polled 36.9 percent of the votes but wrested 60.3 percent of the seats and the UF jointly polled nearly 49.0 percent of votes to get 76.9 percent of seats.


3. The 2 Tamil seats, Kalkudah and Pädiruppu, won by the UlJP in the Eastern constituencies underlined this feature by indicating the confidence created by the UNP's efforts to establish national unity during its five-year tenure, 1965-1970.

Significantly, as a scholar remarked, it was the economic theme which dominated over all others at the May 1970 general elections as never before in all the nine general elections held on the island since the introduction of universal adult franchise in 1931. For an unhindered implementation of their objectives, they sought a mandate by which elected MPs would simultaneously function as a Constituent Assembly (CA). Though not emphasised during the election, it needs be added that the UF was the only party to include the promise of a new Constitution in its manifesto.

As the elections demonstrated, with the coalescence of the UF and despite the break-up of the UNP-led National Front, there was a clear trend towards a class-based polarisation of political forces either in favour of or against radical structural change in the Sinhalese-dominated areas as apparent in the outright contest between the UF and the UNP in about 20 percent of the total number of constituencies. In the hopeful politicised milieu, 52 of the victorious 115 UF candidates won an overall majority support of their electorates, a record which even the astounding victory of the UNP in 1977 would be unable to surpass. The percentage of total votes polled rose from the figure of 82 percent reached in the 1965 elections to nearly 35 percent in 1970 and the seats won by independents and peripheral minor parties declined

5. Ibid., p. 161.
7. This has been considered a more reliable indicator of the extent of support a party enjoys within a complete segment of population rather than a calculation done on merely the population participating in the political process by voting. The first would then also include those sections in the society left cold by the political options available and so give a more complete picture of the support actually given to a party.

Unless indicated otherwise, these and other electoral figures are derived from my own computations based on G.P.S.H. de Silva, A Statistical Survey of Elections to the Legislatures of Sri Lanka, 1911-1977 (Colombo, 1979).
from under 9 percent in 1965 to 1.3 percent in 1970.

An analysis of the support offered to the UF during this election in economic terms, underlined the areas of economic distress which the incoming coalition was expected to assuage. The entire paddy belt of the center and south-west of the island was won by the UF, with the exception of 1 seat, thus highlighting the adverse effects and unpopularity of the UNP's much flaunted "grow-more-paddy" campaign unaccompanied by agricultural reforms to relieve the problems of indebtedness, landlessness and poverty of the lower sections of the peasantry, particularly in Kandyan Sinhalese areas. As a result, despite the fact that the UNP actually strengthened its support base by its agricultural policies; as shown by the increase in the percentage of votes polled in certain central, southern and eastern districts; the UF registered some of its sharpest increases of vote in precisely the same areas as can be seen in Table 5.2 (Category A districts). In others, the UF gained at the expense of the UNP and other minor parties (Category B districts).

The widespread and growing unemployment, 88 percent of which was to be found in rural areas, further accounted for the success of the SLFP, particularly in the above regions. The success of the left in the urbanised areas not only reflected their traditional organisational advantage based in powerful trade unions in these areas, but also the response to the UF program by the growing SLFP base of smaller industrialists, handicraftsmen and retail traders -- the middle and the petty-bourgeoisie -- which had found itself disadvantaged by the previous government's "open" policy to foreign capital and aid.

This polarisation was weakest in the Northern and Eastern provinces where the issues were different. In the unclear closely fought situation, the issues

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3. The minor parties alluded to here are all those besides the SLFP, UNP, LSSP, CP, FP, and TC.
TABLE 5.2: PERCENTAGE CHANGE IN VOTES FOR UNP AND UF IN 1970 OVER 1965: DISTRICT-WISE AVERAGES#

<table>
<thead>
<tr>
<th>Districts</th>
<th>UNP</th>
<th>UF</th>
<th>% of Deficit Paddy Producers</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A.</strong> Batticaloa</td>
<td>13.3</td>
<td>14.3*</td>
<td>8</td>
</tr>
<tr>
<td>Badulla</td>
<td>8.0</td>
<td>16.0*</td>
<td>31</td>
</tr>
<tr>
<td>Galle</td>
<td>7.5</td>
<td>17.3</td>
<td>43</td>
</tr>
<tr>
<td>Matale</td>
<td>5.4</td>
<td>10.9*</td>
<td>18</td>
</tr>
<tr>
<td>Matara</td>
<td>5.0</td>
<td>10.4</td>
<td>31</td>
</tr>
<tr>
<td>Polonnaruwa</td>
<td>2.9</td>
<td>7.9*</td>
<td>1</td>
</tr>
<tr>
<td><strong>B.</strong> Anuradhapura</td>
<td>-0.1</td>
<td>9.7*</td>
<td>10</td>
</tr>
<tr>
<td>Kegalle</td>
<td>-3.0</td>
<td>8.4</td>
<td>22</td>
</tr>
<tr>
<td>Colombo</td>
<td>-3.0</td>
<td>10.5</td>
<td>37</td>
</tr>
<tr>
<td>Hambantota</td>
<td>-3.8</td>
<td>5.2*</td>
<td>10</td>
</tr>
<tr>
<td>Kandy</td>
<td>-4.6</td>
<td>7.6</td>
<td>22</td>
</tr>
<tr>
<td>Ratnapura</td>
<td>-5.4</td>
<td>10.3</td>
<td>23</td>
</tr>
<tr>
<td>Kalutara</td>
<td>-7.2</td>
<td>5.7</td>
<td>43</td>
</tr>
<tr>
<td>Trincomalee</td>
<td>-7.0</td>
<td>2.6*</td>
<td>10</td>
</tr>
<tr>
<td>Kurunegala</td>
<td>-7.3</td>
<td>9.4*</td>
<td>16</td>
</tr>
<tr>
<td>Nuwara Eliya</td>
<td>-8.5</td>
<td>10.4*</td>
<td>13</td>
</tr>
<tr>
<td>Puttalam</td>
<td>-13.6</td>
<td>14.6*</td>
<td>35</td>
</tr>
</tbody>
</table>

# excluded are Jaffna (57%), Vavuniya (6%), Mannar (7%) (where there were no such contests). The figures enclosed in brackets indicate the percent of deficit paddy producers in each district.

* SLFP only in these districts


chiefly revolved around the benefits ensuing from cooperation with a major Sinhalese party and therefore, by implication, the benefits (or otherwise) of remaining within the integrated unitary political structure. As the unsuccessful broker for the recognition of Tamil interests, within the UNP-led National Front of 1965, the FP was hard put to defend its position vis-a-vis its complex opposition ranging from the Tamil Congress, variously-supported independents and the UNP. Perhaps as a fall-out of the National Government's encouragement to agriculture and subsidiary crops, the percentage of votes polled by the FP rose by 9 and 18 percent in the rural Mannar and Vavuniya districts of
the Northern Province. It, however, lost ground in its strongholds in the urbanised Jaffna region to the more conciliatory TC's and other similarly oriented unsuccessful candidates. Likewise, it recorded a drop of 7 percent in votes polled in Trincomalee to the benefit of an SLFP stalwart and independents.

In sum, the classes which backed the UF victory in 1970 were not simply a replication of the forces that had brought the NEP to power in 1956 but something more. The development and accentuation of the contradictions in society in the succeeding period had served to differentiate and polarise the heterogeneous petty-bourgeois masses backing the NEP victory. The cumulative developments at the economic and political level, discussed previously, had served to bring the left, bot\(\text{h}\) parties in ideology, or to the central.stages they had hovered in the wings before. As such, though all three parties, especially the SLFP for obvious reasons, identified with S.W.R.D. Bandaranaike's attempts to revise the Constitution in 1957-58, they envisaged structural changes that went far beyond what had been worked out then and, in fact, sought to provide a streamlined integrated structure which would facilitate an unobstructed transformation of society in the future.

Socio-Economic Background of the Ruling Elite

However, within the above program and base of support, the "representatives of the people" and the core of government -- the Cabinet and the Prime Minister -- continued to be drawn from the upper strata of society.

In consonance with socio-economic developments since 1956, an analysis of the background of legislators reveal on the one hand a decrease in the English-educated wealthy legislators. Instead, as Jupp's study shows, over half the legislators (and less than two-thirds) elected in 1970 belonging

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9. As highlighted by the defeat in close fights of two of its hard-liners, M. Sivasithamparam and A. Amirthalingam in the Wallur and Yadduvoddai constituencies respectively.
TABLE 5.3: OCCUPATIONAL BACKGROUND OF MEMBERS OF PARLIAMENT, 1970

<table>
<thead>
<tr>
<th></th>
<th>General</th>
<th>UNP</th>
<th>SLFP</th>
<th>LSSP</th>
<th>CP</th>
<th>FP &amp; UC</th>
<th>Independent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landowning</td>
<td>26</td>
<td>2</td>
<td>20</td>
<td>3</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Business</td>
<td>19</td>
<td>4</td>
<td>12</td>
<td>3</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Legal</td>
<td>39</td>
<td>6</td>
<td>16</td>
<td>7</td>
<td>2</td>
<td>8</td>
<td>-</td>
</tr>
<tr>
<td>Public Official</td>
<td>17</td>
<td>1</td>
<td>13</td>
<td>1</td>
<td>-</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Other Professionals</td>
<td>32</td>
<td>2</td>
<td>24</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>-</td>
</tr>
<tr>
<td>Professional</td>
<td>6</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>3</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Politicians</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miscellaneous &amp;</td>
<td>12</td>
<td>1</td>
<td>6</td>
<td>3</td>
<td>-</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Unknown</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>151</td>
<td>17</td>
<td>91</td>
<td>19</td>
<td>6</td>
<td>16</td>
<td>2</td>
</tr>
</tbody>
</table>

Source: Based on CDN, Parliament of Ceylon, 1970.

Overwhelmingly to the SLFP had an educational background in which Buddhism and the Sinhala language had played a greater part. Having been educated in the non-fee paying schools or the less prestigious non-Christian private schools, they could be assumed to have come from humbler rural backgrounds, with far less knowledge of English and risen up through teaching and public service also rather than predominantly through landowning and law. However, despite this; landowners (both big and small), businessmen and lawyers continued to be dominant. As Table 5.3 shows, the first two were particularly well represented within the SLFP while lawyers and other professionals were dominant in the two left and two Tamil parties, thus emphasising their primarily urban character. The six appointed MPs, the representative of special minority interests, were drawn from the sections of their communities too.

The SLFP's dominant position in the coalition in Parliament was reflected in Cabinet where 19 of the 23 portfolios were allotted to SLFP members, the LSSP being given 3 and CP 1. Sinhala dominance at the national level continued to be further exaggerated as it had been doing since 1956. Of the 23 ministers appointed, 20 were Sinhalese vis a vis one Moor, Ceylon Tamil and Burgher each.

The privileged class character of the ruling elite in Parliament was

exaggerated even more in an analysis of the composition of the Cabinet holding key members of the UF. There were 2 landowners, 3 businessmen, 7 lawyers, 3 ex-public servants and 5 professionals from other fields.11

It was, in sum, a coalition of Sinhalese, primarily intermediate class interests which dominated Parliament. Those drawn from the middle-rung provincial landowning, business and state services were particularly well represented within the SLFP in Parliament. Due to the peculiar manner in which the heterogenous socio-economic structure was constituted in Sri Lanka and the hierarchical linkages consequently exercised in the political arena along quasi-patronage lines, there was a predominance of the nationalist-minded upper landed and business classes in the highest echelons of the SLFP.12

11. These professionals consisted of 2 educators, 1 diplomat-politician, judge, engineer and journalist each: R.N. Kearney, The Politics of Ceylon (Sri Lanka) (London, 1973), p.49. The housewife in Kearney's schema being Mrs. Bandaranaike, a landowner, has been included in the landed here.

12. For instance, the most powerful figure in the UF, Mrs. Bandaranaike, was a member of the highest Kandyan landed aristocracy. Though personally symbolising the hopes of the other end of the rural class spectrum, in terms of the exercise of power she relied on, and increasingly brought into the structures of the state, kin figures like H.S.R.B. Kobbekaduwe, made Minister of Agriculture and Lands and for a short period Plantations Minister; and Felix Dias Bandaranaike, her nephew and a lawyer who was made successively Minister of Public Administration, Local Government, Home Affairs, Justice and even of Finance later. Others such as P.B.G. Kalugalla, Minister of Shipping and Tourism and later Transport and Aviation; George Rajapakse, Minister of Fisheries, were members of the highest landed classes. T.B. Tennekoon, S.S. Kulatilleke, K.B. Ratnayake, holding other less important ministries were professionals with a strong Sinhala-Buddhist background. She and her party were backed by noted monopoly capitalists such as Piyadasa and Gnanam who owed their success to the policies of the SLFP intermediate regimes, particularly that of 1960-65 headed by Mrs. Bandaranaike.

Maithripala Senanayake, her deputy from the North-Central Province, on the other hand was not only the representative of the upper peasantry and related rural capitalist interests in that province but personally related to four of the five MPs of that province.

Thus, as the central politically most active section of the intermediate power bloc, the UF ruling elite were different in class character from the masses whose interests they aspired to represent and fulfill -- the lowest classes in the rural agrarian structure and the urban labour. Though labour was represented primarily by its own parties, the LSSP and CP, it remained (as obvious from the parties' position within the coalition) in a subordinate, though vital, position within the intermediate bloc.

As well-placed individuals within the upper and intermediate class spectrum, the UF legislators retained their faith in the parliamentary processes of representation and change. The left party leadership proved no different in this regard, hoping to push the dominant consensus consistently to the left despite their openly subordinate status to SL-P powers-that-be. Pertinently, despite their more basic differences there was a coincidence of interest between the various factions in the UF in changing the constitutional structure. If the more conservative but "nationalist" factions backing the Prime Minister were interested in overthrowing the preceding comprador order so as to establish their state power in all branches of the state apparatus, the more radical forces within the UF -- the LSSP, CP and the leftist contingent of the SLFP\textsuperscript{13} -- envisaged providing for a more integrated structure which would allow "a full play of democratic forces."\textsuperscript{14}

Deeply influenced by the shift in state power in 1956 and the trend of events since in an increasingly radical direction, they believed in the possibility of the above trend continuing and a further shift in favour of the lower, the yet marginally represented classes being effected within a more responsive constitutional framework. Though the specifics and purpose of the "socialism"

\textsuperscript{13} For further details on the different factions operating within the UF see Chapter Six.

\textsuperscript{14} Colvin R. de Silva, in conversation with author, Colombo, 14 July 1981.
envisaged differed within the UF, as will become apparent in the next chapter, the differences between the UF constituents were subsumed by the greater interest in providing a new stronger political framework.

Within this broader purpose, the new Constitution had clear roots in the past. As N.H. Perera, the Trotskyist leader and Minister of Finance remarked when he seconded the PHI's resolution in convening the CA in 1970:

We have had over forty years of experience of limited political freedom but with full franchise. We have in some ways utilized the valued portions of that experience ... No people can build entirely a new Constitution. All of us are circumscribed by our own past, by our social habits and inclinations.¹⁵

Together the various constituents objected to certain features of the Soulbury Constitution: the entrenched clause safeguarding the rights of minorities which was unalterable and unpalatable to the Sinhalese nationalist movement on the ascendant since 1956, and judicial review which they believed infringed the sovereignty of Parliament. They also objected to the British colonial-style administrative system, the second legislative chamber and the inequitable electoral provisions.¹⁶

It is interesting in this context to note that even while the UF leadership linked the new Constitution to the leader of the nationalist revolution, S.W.R.D. Bandaranaike, due to the exigencies of their situation they did not include two of his most seminal ideas which he had held for a more democratic and nationalist system than the Soulbury one. They did not include his most valuable contribution on the national question -- of subordinate language rights and regional councils. They did not also organise the new framework along the executive committee system similar to that of the Donoughmore era.

¹⁵. For the full text see CDII, 20 July 1970.

which Bandaranaike had considered more democratic and less divisive, both in terms of party and community.\textsuperscript{17}

The JVP Insurrection

The dominant consensus in 1970 in favour of structural change was further radicalised by the specifics of the JVP insurrection in 1971. By viewing their situation as a direct outcome of the socio-economic character of their society, the JVP youth in no uncertain terms posed a violent danger to the interests of the dominant classes benefitting from the same.\textsuperscript{18} The movement dramatically highlighted the need on the latter's part to act swiftly not only to defuse the seriousness of the situation\textsuperscript{19} but also to alleviate the conditions of the deprived sections and even to accomodate the demands of the same through fundamental concessions, if need be.\textsuperscript{20}

The insurrection was, moreover, of special concern to the ruling UF. Youth had been noticeably active in campaigning for the UF in the 1970 elections which promised radical structural changes, and consequently the hope of employment to them.\textsuperscript{21} In a system where a marginal percentage of votes, as noted in the last chapter, swung the scales towards an overwhelming victory, the support by the youth had constituted the "single biggest reason for the

\textsuperscript{17} S. Nadesan, \textit{Some Comments on the Constituent Assembly and the Draft Basic Resolutions} (Colombo, 1971), pp.116-118, 120.

\textsuperscript{18} Note the strong advocacy by the astute Leader of the Opposition, J.R. Jayawardene, of an All-Party government so as to unite the energies of the different parties to cope with the insurgency.

\textsuperscript{19} As apparent in the attempt by the established leaders to characterise the insurgents as "misguided children", and the attempt to win the majority of them through more persuasive means. See Ela Dutt, "Youth Protest in South Asia: A Case-study of the JVP in Sri Lanka" (M.Phil. Dissertation: School of International Studies, Jawaharlal Nehru University, New Delhi, 1976), pp.117, 130-9.

\textsuperscript{20} Witness the efforts to implement land reforms in the following period. For further details see Chapter Five.

\textsuperscript{21} 41 percent of the unemployed males came in the age bracket of 18 to 24 years: Wilson, n.2, p.221.
victory of the UF. To their minds, the failure to immediately effect the changes promised by the UF in their electoral mandate destroyed any lingering credibility of the assertions made by the established left parties. At the same time, the predominantly Sinhalese origin and orientation, rural peasant, lower middle-class character along with its regional lower-caste composition and support of the JVP movement served to emphasise the chronic discontent in the very base of the most important constituent of the UF, the SLFP.

The traumatic experience of the insurgency had an impact on the constitution-making process, particularly with regard to the provisions relating to socialism and emergency powers. While it strengthened the hand of the left in pushing for provisions for radical structural change, it also served to strengthen the arguments of the right to provide for emergency powers which had been conspicuous by their absence in the Basic Resolutions. An amendment to Basic Resolution No.14, dealing with the powers of the President, was moved by Jayawardene in 2 July 1971 which sought to strengthen the


Of the 794,141 new voters, the vast majority belonged to the newly-enfranchised 18 years old age-group added prior to the 1970 elections and who voted solidly for the UF under JVP influence.


24. For details see Gananath Obeysekere, "Some Comments on the Social Backgrounds of the April 1971 Insurgency in Sri Lanka (Ceylon)", Journal of Asian Studies, vol.33 no.3, May 1974, p.300; and Jiggins, n.12, p.127; and Jupp, n.12, pp.298-300. The latter points out that of the 9 seats around Matara and eastwards, heavily influenced or active in the movement, normally half returned Karava and Durava members and what is more, were left-inclined. In 1970, 5 SLFP, 3 CP and 1 LSSP MPs were elected from this area (p.299).

discretionary executive powers at the disposal of the President in times of emergency. The emergency clamped over the country to deal with the crisis, moreover, led to restrictions on an open debate on constitutional questions.

THE PROCESS OF CONSTITUTION-MAKING

As mentioned, the question of a Constituent Assembly and a new constitution was not a major issue by itself during the campaign of the 1970 elections. The UF had, as part of its manifesto sought and obtained an electoral mandate...

...to permit the members of Parliament to function simultaneously as a constituent assembly to draft, adopt and operate a new constitution which would declare Ceylon a free, sovereign and independent Republic and enable the United Front to carry out its socialist program.

Formation of the Constituent Assembly: Some Political Legalities

Due to certain peculiarities of the political settlement at independence between the British and the UNP leadership, however, questions were raised as to whether the convening of a Constituent Assembly drawn from the House of Representatives was a constitutionally valid procedure for the UF Government to follow and hence, was the Constitution so promulgated a legal one. For instance, J.R. Jayawardene of the UNP took the position that the proposal to establish a CA was in itself an illegal act when there was a Constitution in existence which prescribed the procedure for changing it. S.J.V. Chelvanayagam of the FP argued, on the other hand, that the 1970 mandate was not one that


27. Complaints regarding the curfew limiting discussion time was raised time and again by opposition members in the Constituent Assembly.

28. See n. 6.
had been given exclusively on constitutional reform. 29 Jayawardene's view was also held in sections of society where, as in an article printed by the Times of Ceylon 30, it was suggested that the Constitution be reformed by reference to the existing constitutional structure.

However, as was noted no doubt by the UF leadership in chalking out its strategy for constitutional change, the reform of the Soulbury Constitution within the existing legal framework posed insuperable legal problems. This was due to the paradoxical position in which the Ceylon Independence Act 1947 could not be repealed by the British Parliament or the Ceylon Parliament. The above-mentioned Act specifically prohibited the British Parliament legislating for Ceylon in future unless expressly requested by and with the consent of Ceylon -- the ambiguity lying in the phrase "the consent of Ceylon" 31. By it the Ceylon Parliament was not conferred expressly with the power to repeal the Act. 32 At the same time, numerous recognised constitutional experts asserted as a matter of principle the inability of the British Parliament to legislate under any circumstance for a state to which it had abdicated sovereignty. 33

29 Refer to Wilson, n.2, p.130; and J.A.L. Cooray, Constitutional and Administrative Law of Sri Lanka (Ceylon) (Colombo, 1973), p.75. On a political level, members of the ONP attempted to raise popular fears in the course of the electoral campaign of the danger of dictatorship being effected through constitutional change.

30. J. Austin Cooray, "Why Bypass the Constitution", Times of Ceylon, 5 October 1970, p.4. The author was the Secretary to World Peace Through Law Committee which sent these views as Memorandum 7 to the CA.


32. Ceylon Independence Act, 1947, Section 1(2).

To compound difficulties, the Ceylon (Constitution) Order-in-Council 1946 contained basic principles relating to organs of government such as the specific positions of Queen, House of Representatives and Senate, all together constituting the formal Parliament, as well as the entrenched clause regarding minorities. These could not be altered without implying a fundamental reconstitution of the Constitution which might have been considered invalid by subsequent litigation in front of the British Privy Council as had been the case in the past.

Even conceding that the British Parliament could have been considered competent to legislate for Sri Lanka, the political issues raised by such a course of action were inordinately sensitive. The interpretation and application of legal principles in a political context would corroborate, as alleged by critics, that the 1946 Constitution was not of British origin and did not derive its authority from local and indigenous legal sources. It would also raise embarrassing questions regarding the nature of the preceding twenty-two years of Ceylon's independence.

Rather than ignoring these questions, as Wilson contends the UF leadership did, it would be more correct to say that the UF leadership undoubtedly took these issues into consideration in chalking out its strategy to effect constitutional change. After looking closely into the issue, the three-party committee for constitutional affairs led by Colvin R. de Silva preferred the "clean break" method as being the least likely to be justiciable in courts. This was done by adopting the position that the representatives to the 1970

34. In fact, the Parliament of the United Kingdom has legislated after Independence for Canada in 1960 and Cocos Islands in 1959 at the request of those countries. The validity of such legislation has not been questioned in the courts: see O. Phillips, Constitutional and Administrative Law (London, 1962), pp.67-68.

Parliament had also, according to the manifesto of the victorious Front, been given a mandate to function as a constituent assembly. Thereby, in calling for the formation of the Constituent Assembly, the nationalist UF forces juridically asserted the principle not merely of autonomy but of something stronger, of self-sufficiency of native authority -- that is, of constitutional autochthony. Politically, of course, they found it more beneficial to make the proud claim of their intention to sever all connections forged by "the present outdated imperialistic constitution" and legislate anew to make Ceylon a "free, sovereign and independent Republic".36

Doubts regarding the legality of the course followed were rendered irrelevant by the magnitude of the victory of the UF in the May 1970 elections, which was interpreted as an overwhelming mandate given by the people to enact a new Constitution. The UF could, therefore, successfully use the normal procedures to effect two major constitutional changes in 1971 even though this course of action seemed to contradict its position on the procedure employed to change the Constitution. It promulgated laws to abolish the Senate and appeals to the Judicial Committee of the Privy Council from which it feared obstructions to measures taken in the interim period before the new Constitution was promulgated. The pro-UNP Senate had already obstructed the Ceylon (Constitution) Amendment Bill seeking to alter disqualifications relating to MPs in the House of Representatives.37 Though this aroused the ire of the opposition UNP and FP, there were few tears shed by the public at large at the demise of the Senate which had, in fact, become the dumping-ground for

36. T.B. Subasinghe in CDN, 12 April 1970. Other UF leaders also spoke in the same vein.

37. House of Representatives, Debates, vol.94, 21 May 1971, cols 812-847. The opposition charged that the attempt to amend the disqualification provisions had been made so as to validate the election of Manda Ellawala (SLFP) from Ratnapura constituency.
defeated candidates of the victorious party or members selected for their services to the ruling party.\textsuperscript{38}

In view of all the factors, the opposition was rendered ineffective by its minority position in Parliament and perforce compelled to co-operate in the convening of the CA. It was thus significant, as claimed, that every political party participated in the formation of the Assembly and thus implicitly accepted the basis on which it was constituted. In other words, the presence of public opinion forced a consensus to emerge so far as the making of a new Constitution was concerned. To boycott the Assembly, as certain parties were inclined to do, would have been extremely impolitic.\textsuperscript{39} Further strength to the legitimacy of the Assembly convened was added by the fact that the participation by all the members effectively represented the entire Sri Lankan population, which had exhibited the highest voter turnout to date of 86.2 percent at the 1970 election.\textsuperscript{40}

Thus as L.J.M. Cooray asserts, though the method followed by the UF was extra-legal and extra-constitutional, a political method constituting a break in legal continuity, it was the "revolutionary" mode of setting up a new order, a mode followed by most countries in the world, and one which was based on and instituting a "political fact" on which ultimately all law, fundamental or otherwise, is based.\textsuperscript{41}

\textsuperscript{38} There was a proposal, however, moved in the Constituent in the name of Jayawardene, Senanayake and Chelvanayagam for the establishment of a second chamber. Its nature was left unspecified. See CA, Debates, vol.1 no.26, 18 June 1971, col. 1941 ff.

\textsuperscript{39} As they realised, even were they to challenge the PM to hold new elections on the CA issue, they were almost sure that they would "lose quite a number of seats they presently held": Tribune (Colombo), vol.16 no.30, 26 July 1970, pp.7-8.

\textsuperscript{40} Wilson, n.2, p.162.

\textsuperscript{41} Cooray, n.31, pp. 4-9.
Inauguration and Functioning of the Constituent Assembly

By virtue of its comfortable majority, the UF proceeded to initiate and dominate the convention and sessions of the CA. It took recourse to the dramatic to accentuate not only the break in legal continuity but itself as an arbiter of the changes being brought about. The name of the country was changed to Sri Lanka. The first meeting of the CA was convened by the PM, the popularly elected Head of the new Government, rather than the Governor-General, who in a strictly constitutional sense was an agent of the Crown. The inaugural meeting, moreover, was held at Navarangahala, an auditorium of a public school, to emphasise its distinction from the Parliament. At this first meeting the PM said:

In the name of the people of Sri Lanka, I have called upon you as Members of the House of Representatives to assemble here today... we have met in order to constitute, declare and proclaim ourselves the Constituent Assembly of the People of Sri Lanka... to adopt, enact and establish a constitution.42

In accordance to her electoral mandate from "the people of Sri Lanka", Mrs. Bandaranaike went on to explain the aims and objectives of the Constitution as being the declaration of a free, sovereign and independent republic, pledged to realise the objectives of a socialist democracy which would also secure fundamental rights and freedoms to all citizens. The PM further emphasised in the resolution that the new Constitution would help to strengthen the oneness of the Ceylonese nation and overcome the stresses caused by various racial, linguistic and religious differences. This theme of unity was reiterated by the Leader of the Opposition, Jayawardene, who perhaps as a warning declared:

We are partners in a common material enterprise the purpose of which is not to secure an advantage to a political party, but to benefit the people of our country of all races and religions.43

42. This resolution of the PM gained support from all sections and was passed unanimously by all the members: CDM, 20 July 1970, p.1.

43. Ibid.
The CA thus seemed to begin its work on a note of consensus. Two-thirds of its Members belonging to the UF had a fairly similar conception of their objective in terms of the mandate given in the election as also the UF understanding that had been worked out in some detail in preceding years by the five-member committee of constitutional affairs. The understanding they had reached had been propagated and discussed through public seminars.\(^{44}\)

Within this understanding, as the Minister of Constitutional Affairs Colvin R. de Silva elaborated, his task was to elicit the widest possible debate and discussion so as to create a constitution with the widest consensus possible. He assured the people that not only would the proceedings be open but the public would have its own role to play: the Ceylonese people would be asked through notifications to submit their views on the various facets of the Constitution for the benefit and perusal of the Consembly. Accordingly, the people's views were specifically sought at four different stages in the process of constitution-making -- in the drafting of the Basic Resolutions by the Minister, on their consideration by the Committee, before their consideration by the Consembly and on the Draft Constitution as approved by the Consembly.

The relaxed and assured mood initially of the UF majority in the Consembly was further reflected in the elaborate procedure adopted for the framing of the 1972 Constitution -- a document which, however, ultimately reflected the overriding will of the UF majority. A ministerial sub-committee comprising Colvin R. de Silva and six others was "entrusted with the task of giving form and substance to the proposed constitution."\(^{45}\) In their party-wise breakdown, 4 members were drawn from the SLFP, 2 were of the LSSP and 1 from the CP. A Drafting Committee of 13, inclusive of the Minister and carrying 9

\(^{44}\) M.S. Alif in Sri Lanka, Birth of a Republic (Colombo, 1972), p.35.

lawyers, was appointed to put the various matters into legal form. On 12 August 1970, the CA set up the Steering and Subjects Committee of which the PM herself was chairman. Composed of 17 members, the Committee included 13 pro-UF members: 9 SLFP members, 2 from LSSP, 1 from CP, 1 from TC. The 4 from the Opposition comprised of the 2 leading members of the UMP, Dudley Senanayake and J.R. Jayawardene and 2 from the FP, S.J.V.Chelvanayagam and C.X. Martyn. Both Senanayake and Chelvanayagam as the the "hawks" of their parties were only included with trepidation in the two-member second list of the members of the Steering Committee. Besides reflecting all the shades of political opinion present in the CA, this Committee contained all the major communities save the estate Tamils. It carried 6 Low-country Sinhalese and an equal number of Kandyan Sinhalese, 3 Ceylon Tamils, 1 Muslim and 1 Burgher. The lack of representation of the estate Tamils, to which the CWC protested, merely highlighted the unimportance attached to this community by the dominant Sinhalese ruling bloc.

If the final document carried the imprint of Colvin R. de Silva's ideas, it was merely in tribute to his remarkable capacity for organization, coordination and persuasion. He was the person primarily responsible for steering the Constitution from its incipient stages to the last. The repeated responses from the public resulted in a "mountain of memoranda" from virtually all sections of the community which had to be sifted, classified, printed and circulated for wider consideration of the Committee or the Conssembly. The 38 Basic Resolutions drafted by the Minister, keeping these

46. Phadnis and Jacob, n.25, p.295.
47. The UF, however, consulted the Muslim leader of the smaller estate Tamil organisation, the Democratic Workers Union (DWC), Aziz, on subjects concerning the estate Tamils.
responses received in mind, were claimed by him to be "completely in accord with UF and government policy". As such the Committee unanimously adopted the Basic Resolutions in the form submitted by the Minister and these were accepted without amendment by the majority vote in Parliament. Similarly, the Draft Constitution prepared by the Minister at the request of the Committee was approved by the Cabinet, the Committee and the CA as being in accordance with the Basic Resolutions. In order to subject the Draft Constitution to "microscopic scrutiny", as desired by the Minister, the Assembly converted itself into 11 committees which would make a careful study of allotted chapters. As an indication of the UF effort to minimise dissent by the beginning of 1972, however, it is not surprising to find that the only oppositionist appointed chairman of one of the 11 committees was J. N. Jayawardene. M. S. Alif, Secretary to the Cabinet recorded that, in all, there were 46 sittings of the CA, 21 meetings of its Steering and Subjects Committee, 114 meetings of Sub-Committees of the CA, 18 meetings of the Cabinet, 22 of the Cabinet Committee on the Constitution and 278 sittings of the Drafting Committee. In the interminable sittings of different bodies, Calvin R. deSilva would most often be present and rely on his considerable powers of persuasion to dispose of a particularly contentious issue. This elaborate procedure often aroused impatience, even in the highest quarters of

49. CDN, 18 January 1971.

50. In fact, in the background of his strong advocacy of an All-Party government after the insurgency and his strained relationship with his party leader Dudley Senanayake, it was rumoured that he might even join the Sirimavo government. See Manik de Silva, "Jayawardene's Moment of Truth," Hindustan Times (Delhi), 16 February 1972, p.6.

51. CDN, 26 September 1972.
the ruling party itself. The host of amendments moved by the two independent members were all lost so that on 3 January 1972 the vote in the Conssembly on the Draft Constitution being in accordance with the Basic Principles registered only two dissenting voices.

Clearly, all differences among the constituents of the UF especially between the SLFP and the LSSP were relegated to the background once a decision was jointly arrived at. If the leftists felt in retrospect that they should have insisted on a truly national document incorporating a more balanced basis of representation, greater minority rights, a more moderate position on Buddhism and a more substantial resolution of the language question; they compromised in recognition of their subordinate strength in the coalition on these questions. Within these constraints, however, the leftists succeeded in imbuing the new Constitution with their philosophy of maximising popular control over the structures of the state.

The Erosion of Consensus

Having placed the broader scenario of country-wide consensus over the process of constitution-making in perspective, it would be necessary to take

52. The PM wondered aloud to her Minister of Justice whether the elaboration of the Basic Resolutions necessitated so much time and whether another draft Constitution could not be prepared to assist the efforts. A "pacemaker" document based on the Resolutions was then prepared by Nihal Jayawickrama, Secretary to Ministry of Justice and Victor Tennekoon, Chief Justice, scrutinised by F.D. Bandaranaike and presented to Colvin R. de Silva. Notably, the provisions relating to the public services were adopted "lock, stock and barrel" and continue essentially even to this day: Felix D. Bandaranaike in interview with author, 3 August 1981. Bandaranaike was, incidentally also Chairman of the sub-committee framing the provisions for public services.

53. From talks with various leaders of the two left parties and the SLFP left-winger, T.B. Subasinghe. When the Sinhalese-Buddhist and Tamil pressures began being exerted on the Assembly, Colvin R. de Silva suggested to the PM that she and Chelvanayagam should arrive at a resolution of the minority problem through mutual discussions, which they could both as leaders having the undisputed confidence of their communities, present to the people.

Told to the author by C.R. de Silva, 14 July 1981.
note of the erosion of consensus that occurred over the constitutional document promulgated nearly two years later. This erosion occurred chiefly in regard to the degree of radicalism and secularism to be institutionalised in various provisions of the Constitution. The major incidents highlighting this decline of consensus were the JVP insurrection, the FP walk-out and consequent boycott of the CA, and the UNP opposition to the adoption of the Constitution framed.

a. Insurgency and emergency: The relaxed and assured mood of the Consemblly was shaken by the outbreak of insurgency in the first week of April 1971, the consequent emergency clamped over the country and the crisis situation into which the ruling UF was plunged less than a year after assuming power.

The extent to which the process of constitution-making was a mirror of its own environment is evident from a brief chronology of the process.

On 26 April 1971 the Assembly met only to resolve adjournment till 14 May 1971 by when it was hoped the emergency would be well in control. The date of the next meeting scheduled for 19 May 1971 was preponed to the 15 May 1971 ostensibly to make up for the time lost during the emergency. However, the fact that it was Basic Resolution No.4 dealing with the socialist Principles of State Policy which was on the agenda of the scheduled meeting for discussion cannot, in the circumstances, be considered insignificant.54 After that, the Assembly concluded the discussion of over half the Basic Resolutions in merely 5 of the 26 days it took to cover the whole. Table 5.4 makes this amply clear.

In the prevailing emergency the government restricted public meetings and imposed censorship on the press. This prevented political parties and other public organisations from conducting campaigns in the country for or against

TABLE 5.4: DEBATE ON THE BASIC RESOLUTIONS, 14 MARCH 1971
TO JULY 1971

<table>
<thead>
<tr>
<th>Basic Resolutions</th>
<th>Dates</th>
<th>Duration of debate</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>14 and 15 March 1971</td>
<td>1 3/4 days</td>
</tr>
<tr>
<td>2</td>
<td>15, 16, 27 March 1971</td>
<td>2 1/4 days</td>
</tr>
<tr>
<td>3</td>
<td>29, 30 March, 14 May 1971</td>
<td>2 1/2 days</td>
</tr>
<tr>
<td>4</td>
<td>14 and 15 May 1971</td>
<td>1 1/2 days</td>
</tr>
<tr>
<td>5</td>
<td>19 and 20 May, 10 and 11 June 1971</td>
<td>4 days</td>
</tr>
<tr>
<td>6</td>
<td>11, 12 and 13 June 1971</td>
<td>3 days</td>
</tr>
<tr>
<td>7</td>
<td>17 and 18 June 1971</td>
<td>2 days</td>
</tr>
<tr>
<td>8</td>
<td>24, 25, 26 and 27 June 1971</td>
<td>4 days</td>
</tr>
<tr>
<td>9</td>
<td>28, 29, 30 June 1971</td>
<td>3 days</td>
</tr>
<tr>
<td>10</td>
<td>(17) 4 July 1971</td>
<td>1 day</td>
</tr>
<tr>
<td>11</td>
<td>22-26</td>
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</tr>
<tr>
<td>12-21</td>
<td>26A</td>
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<tr>
<td>22-26</td>
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<tr>
<td>26A</td>
<td>(17) 4 July 1971</td>
<td>1 day</td>
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<tr>
<td>27-30</td>
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<tr>
<td>32-38</td>
<td></td>
<td></td>
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<tr>
<td>31</td>
<td>10 July 1971</td>
<td>1 day</td>
</tr>
<tr>
<td></td>
<td></td>
<td>26 days</td>
</tr>
</tbody>
</table>

Topics with which Basic Resolutions deal were as follows:


The proposed Constitution and thus eroded the bonafides of the consensus behind the new Constitution. However, in answer to the suggestion by the opposition to put off the proposed discussions on the Constitution till a later date, the Minister of Constitutional Affairs argued that to do this
would be to make insurrectionists "the key to constitution-making, not the Constituent Assembly or the government of this country." 55

On the whole, the continuation of the emergency throughout 1971 and 1972 along with the deteriorating economic situation, which will be discussed in greater detail in the next chapter, led to a rise in popular impatience at the constitution-making exercise as a necessary prelude to the promised structural changes.

b. The Federal Party Boycott: The FP which had, like the UNP, participated with some reluctance in the CA proceedings withdrew from it at the end of June 1971 when its demands of federalism, language and citizenship were rejected.

The socio-political marginalisation of the Tamils became apparent early in the long-drawn contentious debates over the first five Resolutions. The nomenclature of the state was changed to the Buddhist "Sri Lanka". The state was constituted as a unitary structure rather than a federal one as demanded by the FP. 56 Primacy was given to Buddhism. Increasing central control was implied by the socialist principles of state policy. The exclusion of the right to property and the non-justiciable character of fundamental rights further worried the representatives of the Tamil minority.

However, as evident from the proceedings of the CA debates, no issue evoked so many speakers or such a long, heated debate as the language question which had direct economic implications in the constricted economic framework.

55. CDN, 30 December 1971.

56. There was an internal proposal discussed within the FP advocating the reorganisation of Ceylon into five provinces, the boundaries of which would be so drawn up as to give the Tamils (both of the North and the estates) a substantial weight in at least two of the provinces. Strongly supported by some FP members from the North, reportedly, it led to a vitriolic debate within the leading FP figures: see the report on C.X. Martyn's letter to the FP on being expelled from it, CDN, 9 August 1971, p.1.
for both the majority and the minority communities.\textsuperscript{57} Due to the particularly fateful importance it had had for the Tamil intermediate classes in the post-independence political framework, it became the testing-ground for the Tamils of the bonafides attested to by the UF Sinhalese majority in their search for a long-lasting national consensus which was to be embodied in the new Constitution.

The FP opposed the Resolutions 23, 24 and 25 relating to the position of the Tamil language and moved an amendment to them demanding that both Sinhalese and Tamil be recognised as official languages of Ceylon and the language of the courts.

The UF leaders, in turn, contended that by participating in the drafting of the Implementation Regulation of 1966 for the Reasonable Use of Tamil, the FP had ipso facto accepted the position of Sinhala as the only official language. The FP's suspicions of the intransigence of the Sinhalese majority were, however strengthened by the utterances of a leading member of the UF, Felix R. Dias Bandaranaike. In a marathon speech in the Conssembly he maintained that the regulations of 1966, enabling the implementation of the Tamil Language Act of 1958; were not put through by the former government, that they could not stand certain tests in a court of law and thus they were "ultra vires of the Main Act and of the enabling statutes".\textsuperscript{58} In its stead, the UF leaders

\textsuperscript{57} As can be seen from Table 5.4, it took four days. One of the FP Members, C.X. Martyn, even decided to cross the floor during the debate on the resolution pertaining to language. As a "dove" in the FP camp; he felt that the party was willing to accept the "Regulations" of doubtful validity as a solution to the language problem, but not a parliamentary statute as promised by the new Constitution: see CDN, 9 August 1971, p.1.

\textsuperscript{58} CA, Debates, vol.1 no.28, 15 June 1971, cols 2104-05.

On an earlier occasion, he stated that the promise of his party in the election had been to continue the extant policies of the UNP government towards the Tamils, that the 1966 Agreement contained an option in the implementation of the 1958 Agreement and that his government was at that moment carrying out its promise of continuing the UNP policy -- which had been of doing nothing in this sphere:

pointed out that they were making provisions for the use of Tamil in the courts of Northern and Eastern provinces and the right of a Tamil-speaking person to obtain a Tamil translation of judicial proceedings anywhere in the island as a significant concession to the Tamil community in the new Constitution. The Tamil Language (Special Provisions) Act of 1958 would now be constitutionally recognised and the new Bill of Rights would replace safeguards offered to the minorities by the redundant Section 29(2) of the old Constitution.

The FP, however, was not satisfied with these provisions, it demanded that the subordinate legislation to be framed under the Tamil Languages Act 1958 be also incorporated in the Constitution like the provisions relating to Sinhala, and not left specifically at the mercy of an ordinary Sinhalese majority in Parliament.

In a final unsuccessful attempt at compromise on 25 June 1971, the FP offered to drop its demand for parity of status for Tamil if the provisions of the 1957 Pact were incorporated in the Constitution promising, that Tamils anywhere in the island be administered in their own language and the Tamil language be the language of administration in the Northern and Eastern provinces along with Sinhala.59

These proposals failed to evoke the necessary response from the ruling group, which insisted on merely legislating to this effect as it had already done in the past.60

Apart from these, the FP strongly opposed provisions dealing with citizen-

59. CDN, 26 June 1971.
60. CDN, 25 May 1971.
ship rights and the extension of the tenure of Parliament to six years.61 Commenting on the discriminatory character of the former, the Tamil leaders rightly argued that the new Constitution reduced the status of registered citizens, consisting chiefly of the hill-country Tamils, to that of "second-class citizens".62

The lack of success of the Tamils in incorporating the desired safeguards into the new Constitution served to underline the dominance of the Sinhalese Buddhist majority in the central structures of the state apparatus. The imperfect as well as the discriminatory character of the new consensus incorporated in the new Constitution highlighted the marginalisation of the minority community in the context of the polarisation of forces within the Sinhalese majority by the onset of the seventies. The economic implications of the language issue in 1971 to the Tamil intermediate classes contrasted sharply with and yet carried a continuity with the issue of electoral weight-ages which had been politically important to the Tamil upper classes in 1948.

c.UNP opposition to adoption of the Constitution: The major opposition party of the Sinhalese majority, the UNP, also voiced serious differences with the Basic Resolutions.63 But in contrast to the FP, probably due to the dominant overtones of the new consensus, it considered it expedient to participate in the proceedings till the very end.

61. For the dispute over the tenure of the National Assembly, see CA, Debates, vol.1 no.25, 18 June 1971, cols 1800 ff.

The initial proposal for 6 years was reduced to 5 years from the date of the promulgation of the Constitution for the extant Assembly in the final draft of the same as a concession by the UF. See The Constitution of the Republic of Sri Lanka, 1972 (Colombo, 1972), Section 42(5).


63. These were essentially similar to those it spelt out in the statement by Dudley Senanayake during the final vote on the Constitution.
However, witnessing the decline in consensus by mid-1972, the UNP found it opportune to make allegations of "undue haste" with which the Draft Constitution was rushed through the Consenbly in "the extraordinary and inhibiting circumstances of rule by emergency regulations." The UNP leader, also deplored the fact that instead of arriving at some consensus on vital issues, the government had alienated the Tamil community by its "parochial attitudes and policies" and the use of its majority in the Consenbly. However, the most important reason for the unhappiness of the rightist opposition party with the new Constitution (though not stated as such) was undoubtedly the uncertainty created in the minds of its propertied supporters by the exclusion of the fundamental right to property. Related to this, it was also unhappy with the non-justiciable character of the Fundamental Rights and the effort by the UF to extend its tenure in Parliament. In conjunction, the supremacy of the legislature over the judiciary and the proclaimed goal of socialist democracy embodied in the Directive Principles seemed to emphasise the determination of the UF to brook no obstruction to their efforts to implement radical changes.

As a result of the above factors, by the time the Constitution was finalised, the initial mood of all-party accommodation had faded. The voting on the final draft showing a majority of 119 to 16 brought this out clearly. The FP was in a rebellious mood outside the Consenbly, the TC membership found itself divided with two members opposing it and one siding with the government, while the chief Sinhalese opposition party, the UNP, recorded its dissent by giving a negative vote to the adoption of the Constitution on May 22, 1972.

64. See the speech of Dudley Senanayake on the reasons for the negative vote of the UNP in CA, Debates, vol.2 no.11, 22 May 1972, cols 901-907.
SALIENT FEATURES OF THE NEW CONSTITUTION

In keeping with the contextual factors in which it was formed, the new Constitution was imbued with socialist philosophy, in which the supreme organ of state power, the popularly elected National Assembly, was unobstructed by other centers of authority -- be they foreign, nominated or judicial. The greater centralisation of powers was sought to be operationalised through the effective domination of the political executive over every branch of government, circumscribed individual rights and a constitutional recognition of the dominance of the Sinhalese majority.

A "Socialist Democracy"

The Republic, as stated in the Preamble of the Constitution, was "pledged to realise the objectives of a socialist democracy". The Directive Principles of State Policy established these objectives as including the effort to secure full employment for all citizens of working age, "the distribution of the social product equitably among citizens", the elimination of "economic and social privilege, disparity and exploitation" and the "development of collective forms of property such as state property or co-operative property in the means of production, distribution and exchange as a means of ending exploitation of man by man". The exercise and operation of fundamental right were made subject to legal restrictions framed to give effect to the Directive Principles.

However, since the Directive Principles were not legally-binding, they can be held, as asserted by supporters of the government, to reflect the ideology of the time. The communistic terminology and intent, in going further than that employed in the constitutions of neighbouring South Asian countries,

65 Section 16, sub-sections 2-10.
seems to reflect the compulsions by the left, both inside and outside government that the SLFP had to contend with.

**Supremacy of the National State Assembly**

The means by which the UF instituted a strong government integrated enough to effectively introduce change were simple. The doctrine of constitutional "checks and balances" was discarded, and the balance was heavily tilted in favour of the legislature and, through the legislature, the executive. The new National State Assembly (NSA) was made supreme. In accordance to the philosophy of the people being the ultimate judges in their collective wisdom, the nominated and indirectly-elected checks on the legislature were done away with through the abolition of the Upper House. The six nominated members in the Lower House were also considered essentially undemocratic and abolished. The single elected chamber was left untrammelled. Section 3 clearly stated that, "In the Republic of Sri Lanka sovereignty is in the people and is inalienable". Section 5 of the Constitution concretised this by stating

The National State Assembly is the Supreme Instrument of State Power of the Republic. The National State Assembly exercises (a) the legislative power of the People (b) the executive power of the People including the defence of Sri Lanka, through the President and the Cabinet of Ministers, and (c) the judicial power of the People through Courts and other institutions created by law...

Under pressure from critics and in the shadow of the insurrection, this was modified to provide that the National State Assembly could, as an exception, delegate power to declare Emergency and make regulations under it to the President (which in reality meant the Prime Minister) in the interests

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As a matter of political expediency, however, the six Members nominated to Parliament in 1970 were permitted to complete their tenure. One of the two displaced Ministers (from the Senate) was Chelliah Kumarasuriar, the Education Minister and the only Tamil in the Cabinet, who was accommodated in the Lower House through the resignation of one of the nominated Members.
of public security and other matters. Likewise, the Assembly was empowered by Section 45(3)(a) to confer power to make subordinate legislation to prescribed persons or bodies, such as local government authorities.

In logical consistence to the supremacy of the Assembly, by Section 48(1) bills passed by the Assembly became law as soon as the Speaker or this deputy certified they had been duly passed. The signature of the nominal executive (the Governor-General, and now the President) was no longer necessary as it had been in the past.

The Constitutional Court

The supremacy of the elected Assembly was further asserted by the fact that judicial review was reduced to "an appendix" in the shape of the Constitutional Court.

Logically, courts could hardly exercise judicial review over the acts of a body of which they were an arm. The UF leadership adhered to the position that being committed to a speedy and vigorous programme of implementing socialistic measures, they wanted to avoid the delays that litigation could impose should the constitutionality of their measures be challenged in the ordinary courts. In this, they were taking to heart the difficulties that their nearest neighbour, India, was facing concurrently from the judiciary.

Clearly, the provision that a Bill to be passed by Parliament be referred to the Constitutional Court was a compromise between those who thought some form of check on unconstitutionality was desirable and those who thought it reprehensible. If the Court found that a Bill was inconsistent with the


Constitution, the Bill could nevertheless become law, but with the requirement that it be assented to by two-thirds of the majority in Parliament as required in the case of constitutional amendments. Thus as Saul Rose observed, unconstitutional acts were permissible, but with a two-thirds majority. A government with such a majority, such as the UF's, could secure the passage of valid legislation inconsistent with the Constitution. This provision making a two-thirds majority in Parliament sufficient to legalise any legislative acts or amendments to the Constitution acquired yet greater importance in the light of the provisions regarding the powers and position of the executive.

The Dominance of the Prime Minister and the Political Executive

The powers of government were centralised by the new Constitution to a far greater degree than ever before in the office of the Prime Minister (PM), the leader of the majority party.

Unlike his counterpart under the earlier Constitution, the Governor General, the President became a mere constitutional figure head. Moreover, the latter's position was perhaps unique in that like no other system in the world, the President who was the Head of the State was nominated by the Prime Minister. This constituted a departure from the practice of all existing republics where the Head of the State is either directly or indirectly elected.

The initiative and discretionary authority of the Head of State were substantially reduced. The framers were alive to the fact that discretionary powers the Governor-General possessed had left him room in the past

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70. Rose, n.68.

71. At a seminar on 11 December 1969, Colvin R. de Silva, stressed that Parliament must, if the UF was to implement its socialist policies, be characterised "by leadership and not consensus". For details see CDN, 14 December 1969.

72. Section 25.

73. Wilson, n.35, p.253.
for partisan manoeuvre, if he were so inclined. Instead, the President was made answerable to and dependent on the Prime Minister except in regard to the performance of functions and duties specifically assigned to him by the Constitution for which he was answerable directly to the National Assembly. The PM could even have him removed from office if a resolution to that effect was moved by him in the Assembly and was adopted by it, or if the President was deemed incapable of performing his duties in view of mental or physical infirmity by the PM! The only occasion he could exercise his discretion and was answerable to the Assembly for his actions was in the event of the death or resignation of a PM during the period between the dissolution of the Assembly and the conclusion of the general election, and that only if, by chance, there was no other Minister available to fill the office. Underlying the provision for a strong PM, the document laid down in some detail the occasions on which a PM could be deemed to have resigned his office. The framers were in particular influenced by the circumstances surrounding the appointment of, and subsequent dissolution of Parliament by the head of minority administration (Dudley Senanayake) in March-April 1960.

The Cabinet of Ministers and Deputy Ministers was appointed by the President on the recommendations made by the PM. The latter could by Section 94(3) at any time advise the President to change the assignment of subjects and functions as well as the composition of the Cabinet at any time. The above

74. See Wilson, n.45, pp.175-76.
75. Section 98(3).
76. Section 99.
77. Opinion among the constituent parties of the UF which were in the opposition at that time was that a PM who ab initio had no majority in the House and who met with defeat on his very first presentation to the House of his government's Statement of Policy (the Throne Speech) was not entitled to a dissolution through a partisan Governor-General: Wilson, n.45, p.176.
power along with the principles of collective responsibility to the Assembly ensured that the Cabinet functioned as a team under the authority of the PM.

Besides the President and the Cabinet; the judiciary, the public and civil services and powers of emergency were also effectively brought under the purview of the Prime Minister.\textsuperscript{78}

The Judicial and State Services

Appointment of judges of the higher courts -- the Constitutional, Supreme and Appellate -- were made by the President, again on the recommendation of the PM in contrast to the earlier practice when, formally, the entire prerogative to appoint judges lay with the Governor-General.

However, as Wilson points out, once appointed, the provisions made to safeguard their position and tenure were adequate.\textsuperscript{79} The appointment, transfer, dismissal and disciplinary control of all other judges and state officers with duties of a judicial nature was vested in two boards, the Judicial Services Advisory Board (JSAB) and the Judicial Services Disciplinary Board (JSDB). The Chairman of each was the Chief Justice. The members were appointed by the President, on advice of the PM. While the four other members besides the Chairman of the JSAB could be removed by the President; the two judges besides the Chairman appointed to the JSDB could not be so removed.

Powers in respect to the state services in regard to appointment, transfer, dismissal and disciplinary control and matters relating thereto were

\textsuperscript{78} In contrast to the centralisation of powers in the hands of one individual in the final document, an earlier draft had sought to provide a model approximating a politburo one by making the PM primus inter pares among his/her colleagues. The conservative faction of the SLFP saw a danger in this and advised Mrs. Bandaranaike accordingly.

\textsuperscript{79} Wilson, n.35, p.216, 252.
vested in the Cabinet. The Ministers were made answerable to the Assembly for all their actions.

The State Services Advisory Board (SSAB) and the State Services Disciplinary Board (SSDB) each comprised of three members, one of whom was Chairman, appointed by the President on advice of the PM for four years. While their salaries were secure; in contrast to the judicial boards, all members remained subject to removal by the President on the PM's advice.

The above change abolished, therefore, the earlier independence and relative impartiality of the public and other civil services and their Commission vis à vis the political executive and replaced it with the principle of commitment to the implementation of policies of the political bloc in power. This last thus constituted a fundamental departure from the British concept of an independent public service and a move towards the introduction of the concept of a "committed bureaucracy" akin to that found in socialist countries.

Powers of Emergency

A field of major importance under which the PM was invested with undisputed authority, was that relating to emergency. Previously, in terms of the Public Security Act of 1947, he (or she) might on occasion have had to persuade the Governor-General to declare a state of emergency. The new Section 134(2) which re-legitimated the above Act with its subsequent amendments made it clear that the President was required to act on the PM's advice, while

80. The Cabinet was also empowered to make appointments to the posts of heads of departments and to such other positions as it might have determined after receiving the recommendation of the Minister concerned who, before making such recommendations, was obliged to consult the State Services Advisory Board (Section 113).

The extent to which the public services weighed on the minds of the framers is indicated by elaborate provisions concerning the appointment, transfer, dismissal and disciplinary control of its members contained in Sections 105 to 120 of the Constitution which run into a little more than six of its fifty-three printed pages.
Section 45(4) provided for the National Assembly to delegate to the President, which in reality meant the PM, the power to make emergency regulations which could override, amend or suspend the operation of the provisions of any law except the provisions of the Constitution.

Thus while the goal of socialist democracy established clearly the direction to be followed by future governments, the dominance of a PM leading a two-thirds majority in Parliament ascertained that the will of the popular representatives of the people as embodied in its legislation would be unobstructedly put into effect by the political executive. As a converse to the free hand that a popular party with such a majority would possess to effect substantial change, it needs to be noted that a government in office without such a majority would inherit substantial powers but it would be compelled to function within the constitutional framework.

Limited Individual Rights

Though not a "unique innovation" as enthusiastically described by a commentator,81 the incorporation of a Declaration of Fundamental Rights in the 1972 Constitution was one which was markedly absent in the Soulbury Constitution. Section 18(1) conferred the usual rights -- equality before the law, freedom of thought, religion, speech and expression, of peaceful assembly and association, of movement and the like. It also upheld the right of every citizen who was qualified for appointment to the state services to equal consideration with every other applicant.

This section coupled with the principles enshrined in the Principles of State Policy, proclaimed an extremely generous body of individual rights.82


82. Even more so than those provided by the Indian Constitution which does not proclaim the right to employment.
And despite the criticism levelled by the UNP regarding the non-justiciable character of these rights as also the non-incorporation of the fundamental right to property, there was a wide measure of unanimity in the UF on these questions. However, the absence in the relevant portions of the Constitution of any guarantee of the rights to private property implied also an absence of the guarantee of "due and reasonable" compensation in the event of property being taken over due to state policy. This injected a sense of uncertainty in the minds of not only the propertied classes at large but probably also a measure of caution among those backing the SLFP. While it was generally agreed within the UF that the issue of compensation could not be conceded as a fundamental right, it was also stated that the payment of compensation would be dependent on the circumstances of each case.83

A charge more relevantly levelled against the individual rights promised was that what was guaranteed in one section of the Constitution was taken away in another.84 Broadly categorised, the contingencies envisaged for such an abridgement of fundamental rights were specifically two: the implementation of the socialist program of the government and the effective management of any public emergency or disorder. The extensive qualification following the statement of the Fundamental Rights and Freedoms stated in Section 18(2)

The exercise and operation of the fundamental rights and freedoms provided in this Chapter shall be subject to such restrictions as the law prescribes in the interests of national unity and integrity, national security, national economy, public safety, public order, the protection of public health or morals or the protection of rights and freedom of others or giving effect to the Principles of State Policy set out in Section 16.

Further, Section 18(3) validated all existing law even if these were inconsistent with the fundamental rights listed in it earlier.


Interestingly therefore, not only did the new state formally brought into being by the 1972 Constitution inherit the legal superstructure legitimised by the preceding power bloc but it continued thereby two of the most important policy formulations of D.S. Senanayake himself. The first of these, the Public Security Act of 1947 with its subsequent amendments provided teeth to the qualifications to fundamental rights contained in Section 18(2). As scant protection, the Constitutional Court was authorised to determine whether any legislation infringing fundamental rights came strictly within the confines of the circumstances enlisted in the blanket Section 18(2).

The other important measure legitimised concerned the provisions relating to Ceylonese citizenship. The discrimination between "citizens by descent" and the "citizens by registration" who qualified for and obtained citizenship under the Citizenship Act of 1948 was continued. In addition, some 150,000 persons of Indian origin who fell in the latter category could thereby be deprived of citizenship rights and status through legislation by the NSA under Section 67 of the new Constitution.

Moreover, as a particularly vicious aspect of the Kandyan Sinhalese influence prevailing in the SLFP, fundamental rights with their shortfalls remained unrealised for the vast majority of the estate Tamils. By Section 18(3), this community was further marginalised in political terms in that all rights were confined to citizens. As such, as Colvin R. de Silva clarified, the "non-citizens" were not covered even by the fundamental right against arbitrary detention.85


In keeping with the prevailing spirit of Sinhalese chauvinism, the motion moved by Aziz, leader of the DWC was lost. The pro-UF DWC merely demanded that the term "person" replace "citizen" in the provisions on fundamental rights. The CWC, in contrast, demanded that all persons should have justiciable fundamental rights. In addition, it demanded that all those born in Ceylon
Dominance of the Sinhalese Majority

The imprint of the will of the Sinhalese ethnic majority in the Assembly was further apparent in several other sections of the Constitution.

The principles governing electoral demarcation and constituency weightage in Section 78 were lifted completely from the discarded Constitution. The attempt by the left-wing constituents of the UF, especially the LSSP, to establish some equality in the franchise between the rural and urban areas as also of the FP who sought to eliminate the disproportionate weightage accorded to the Kandyan Sinhalese by demanding "citizenship" rather than "persons" as the basis of electoral demarcation proved abortive reflecting thereby the realities of political power in the country. 86

It needs also be noted that in a situation where the competitive, issue-oriented single-member simple-majority electoral system offered the best returns to the three constituents of the ruling coalition over opposing forces, it was adopted in toto. However, by making no concessions to the demands of the Tamil minority for a more fairly balanced system, it contributed to intensifying frictions between the various sections of the population and provoking a resort to extra-constitutional action leading to a weakening of the political order.

Bearing evidence to the importance Buddhism had held in the nationalist consensus and as a statement of a fait accompli, a separate chapter, Chapter Two, but comprising only four printed lines, was devoted to Buddhism in deference to the views of the Sinhalese Buddhist majority. The demand for providing except those born to citizens of other countries be made citizens. See the motions submitted by the two organisations in "Motions received by the Minister of Constitutional Affairs on Draft Basic Resolutions submitted by him to the Steering and Subjects Committee", 73/2 - From Associations, Nos.27 and 42, pp. 49-51.

for a Buddhist President and for Buddhism as the "state religion" as demanded by conservative Buddhists both within and outside the SLFP was not conceded by the Minister of Constitutional Affairs. However, Buddhism was accorded "the foremost place", and accordingly it was considered the duty of the State "to protect and foster" it. Even the term "foremost place" was a last minute replacement for the vaguer term "rightful place" which had been pushed by the LSSP into the Draft Constitution. While one Tamil writer later dismissed the term "foremost place" as denoting clumsy draftsmanship and conveying nothing legally; another Tamil scholar, Wilson, rightly warned that it could add up to very much more than what the state had hitherto been doing for Buddhism if it decided in earnest to implement it. The rights of other religionists to pursue their activities unhindered but subject to the usual requirements of law and order were ensured along with protection against discrimination in appointments in the public sector.

Likewise, Sinhala was guaranteed a pre-eminent position in all official spheres: in the legislative, administrative and judicial branches of government. The Tamil language, as earlier seen, occupied a clearly inferior position, since all regulations providing for its use in the administrative and legal set-up were to be treated as subordinate legislation. However, the constitutional provisions in Section 11 for the use of the Tamil language in

87. He rightly held that all citizens by birth should have the right to aspire to the highest post, though political realities may function to place only a Buddhist in the position of the President or, for that matter, the PM. In conversation with the author, 3 July 1981.

88. Section 6.


90. Wilson, n. 35, p.246.

91. Section 6 and Sections 19(1)(d) and (a) respectively.
courts constituted an improvement on the past.

Viewing the conflicting and competing positions of the Sinhalese majority and the Tamil minority, an interesting paradoxical and contradictory situation is apparent in the attempts of both the majority and the minority communities seeking to safeguard their respective positions through provisions guaranteeing their status in the Constitution.

DISCUSSION

Assessing the new Constitution as a whole therefore, it would be true to state, as Kearney does that, "The constitution of 1972 -- reflected the populist and socialist currents of the preceding decades". It cannot however be as justifiably contended that the "basic structure of government it created did not appear to differ radically from that set forth in the earlier constitution".92

Instead, the comments made by an astute British analyst regarding the nature of the "Westminster model" instituted in Sri Lanka in 1972 hold greater truth. Observing that the 1972 system instituted the supremacy of parliamentary legislation in a manner more similar to the Westminster model in Britain than did the former Soulbury Constitution, Saul Rose notes that the principle of sovereignty of Parliament was invoked, however, not to restrain the exercise of its power, as in Britain, but to facilitate it.93

Implicitly, the 1972 Constitution sought to embody and legitimise -- with a time-lag -- the process of social transformation set in motion in the post-1956 period. Due to inherent weaknesses of the peripheral social order, the

92. Kearney, n.11, p.35.
intermediate classes required a state structure centralized enough to organise and facilitate the process of indigenous capital accumulation. As such, in consonance with the interests of the propertied classes between which the new Constitution was to mediate, it was promulgated respecting the basic legal processes for change. It also provided for a parliamentary democratic system similar to the British one. However, to make up for the weakness of the nationalist intermediate classes in a period which was essentially a transitional conjuncture between the overthrowing of the hegemony of the oligarchic comprador bloc and establishing the dominance of the other at all levels of state power, the structure adopted was of a centralized nature. The state structures had to be strong enough to overcome socio-political fissures and conflicts generated by the ongoing process of nationalisation, indigenisation and socialisation. The new Constitution thus embodied the socialist-mobilist model as its ideal to achieve the desired change. It sought to mobilise the people behind a philosophy, and implicitly a coalition of interests, upholding radical structural change, and to provide a pyramidal organisation of the state structure to implement the same effectively.

The specifics of the document and of its formulation were governed by the nature and extent of two events: the overwhelming victory of the UF in 1970 and the JVP insurrection in April 1971. The latter underlined the radical and Sinhalese orientation of the former.

According to the above parameters, the whole endeavour of framing a new Constitution was sought to be dramatised in relation to its antecedents for the advantage of the ruling coalition in a number of ways: through following the "revolutionary" mode of setting up a new order (albeit only in the legal-constitutional sphere), formalising Sri Lanka's break with Britain through the declaration of a republican, assembly form of government deriving its sove-
reignty from the people of the country and the incorporation of the objective of socialism, of Principles of State Policy and Fundamental Rights in the new Constitution. In terms of organisation of the state apparatus, the Soulbury Parliamentary structure of government was "turned upside down", with sovereignty flowing from the people, to the Assembly, the Cabinet and thence to the Prime Minister. Supreme sovereignty was attributed to the Assembly while executive power was concentrated in the Prime Minister leading the elected majority in the Assembly. The Senate was abolished; the President, the judiciary, and the public services became mere adjuncts to the outlined structure. The centralisation of power in the representative structures of the state apparatus was nowhere more evident than in the sweeping provisions regarding emergency and constitutional amendment which could be activated with little obstruction by a two-thirds majority in Parliament.

As its chief architect, Colvin R. de Silva emphasised, viewed more holistically, it was a Constitution designed to allow the full play of parliamentary-democratic forces in the political arena. However, more implicitly, in the calculations of those in power, especially of the left, the continuation of the old electoral process in the politicised Sri Lankan milieu offered them an advantage over the conservative but still strong bloc led by the UNP. The new Constitution by continuing the old electoral system but providing a new untrammelled structure was designed to provide a new virility to the people's will expressed through competitive issue-laden elections.

To the extent that the desire for an autochthonous constitution and an "independent" republican status in accordance with the increased nationalist consciousness was in keeping with widespread emotions, the new Constitution registered a consensus on the part of all the significant political parties. In that respect it completed a process in May 1972 started by the gaining of
independence on 4th February, 1949. Likewise, there was little regret for the abolished Senate.

There was, however, disagreement over the other essential aspects of the new Constitution framed -- reflecting the pressures and pulls in the prevailing society. The radical youth support base registered its disillusionment with the leftist credentials of the ruling coalition in a compulsive manner, forcing the UF to spell out its objectives of socialism clearly in the new Constitution. Simultaneously, in response to the above development the UF embarked upon a body of progressive legislation both in the economic and in the administrative sphere -- surpassing what it had envisaged, as shall be seen in the next chapter. The major opposition party, the UNP on the other hand, in keeping with its conservative comprador orientation was wary of where the socialist objectives of the ruling bloc were leading. It not only disagreed and voted against the new Constitution but in the succeeding period began actively agitating against the UF and the new Constitution.

While the Sinhalese nationalist feelings of the majority were more or less assuaged by the dominance granted to Buddhism and Sinhala in the 1972 Constitution; the intermediate classes of the minority community represented by the FP, in contrast, initially sought to temper the constitutional provisions and protect their own position, failing which they boycotted the remaining sessions of the CA and began agitating for nothing less than a federal solution to their problems. The estate Tamil population remained totally excluded from the whole process of constitution-making. Indeed, as the distinguished lawyer and critic S. Nadesan pointed out at the time of drafting of the Constitution, while the basic principles incorporated were in several respects similar to those contained in the constitutions of communist countries, provisions found in the latter in respect of minority rights and language rights were not
included. This underlined the shortfalls in the character of the nationalist consensus the new document embodied. It also highlighted a vital area in which the consensus institutionalised differed from that envisioned over a decade earlier by the leader of the nationalist revolution, S.W.R.D. Bandaranaike. Instead, in line with the interests of Sinhalese petty bourgeoisie inheriting the mantle of the Sinhalese oligarchy, the SLFP-dominated UF continued various central features of the Soulbury Constitution: particularly those related to the unitary structure of the state, public security, electoral demarcation and weightage and citizenship rights.

Consequently, while the ideal of socialism and the principle of sovereignty of Parliament were invoked to facilitate radical structural change; the realities of state power still weighted in favour of the Sinhalese property-tied classes worked to ensure quite a different conclusion to the one envisaged -- as we shall see in the next chapter.

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94. Nadesan, n.17, p.111.