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***Flawed Expectations: The Executive
Presidency, Resolving the National
Question and Tamils***

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Introduction

Constitutional design for deeply divided societies is an old problem but as of recent times has become a distinct sub-area of study in comparative constitutional law.¹ The interest arguably stems from the belief that multi ethnic/multi-national/plurinational democracies can be designed through constitutional engineering. Samuel Isacharoff characterises this designing as something that tries to seek a balance between democratic self-governance and majoritarian oppression.² However, an obvious point that nevertheless needs emphasis is that there are other variables that determine the manner in which political dynamics interact in deeply divided societies, and it needs to be acknowledged that institutional design alone does not and cannot solve problems. We have to be careful with constitutional lawyers dominating the discourse on finding solutions to political problems. This is not to underestimate the point that the kind of institutions that are designed and put in place do have a great impact on the way the politics play out in deeply divided societies. This is a useful, but it has to be acknowledged, an exercise that has limitations.

Ulrike Theuerkauf speaks of three types of formal political institution that are of particular relevance when seeking to achieve sustainable peace in ethnically diverse societies.³ In their order of importance, these institutions according to Theuerkauf, are: 1) electoral systems for the legislature; 2) state structures (by which she means debates over power-sharing and federalism); and 3) forms of government (by which she means the choice of presidential, semi-presidential, parliamentary forms of government). According to Theuerkauf, the choice of form of government has got the least attention from scholars. The executive presidential system as a form of government was introduced in Sri Lanka, *inter alia*, with the stated intention of creating an institution that could provide a solution to the (Tamil)

¹ S. Choudry (Ed.) (2008) *Constitutional Design for Divided Societies: Integration or Accommodation* (Oxford University Press): Ch.1.

² S. Isacharoff, 'Constitutionalising democracy in fractured societies' (2004) *Texas Law Review* 1861-1891, 82

³ U.G. Theuerkauf, 'Presidentialism and the Risk of Ethnic Violence' (2013) *Ethnopolitics* 12(1): pp.72-81.

National Question.⁴ The institution was expected to stand above the politics of ‘ethnic outbidding’ hitherto practiced by the two major parties in Sri Lanka. This chapter will seek to argue that this objective both conceptually, but also with hindsight empirically, is misplaced. It further put forwards a broader argument that in the case of Sri Lanka, the form of government does not have an impact on resolving the Tamil National Question.

The chapter is organised as follows. I begin with a brief comment on the literature on forms of government that best suits deeply divided societies. I then trace the history of constitution-making in relation to the National Question with particular reference to whether and how the choice of form of government has figured in this debate. I then consider in detail the motives that drove the drafters of the 1978 Second Republican Constitution to introduce the executive presidential system, and critique these assumptions and motives, and test their relevance to contemporary Sri Lanka.

Is the presidential form of government better than the parliamentary form of government for deeply divided societies?

The literature on the subject is vast and it will not be presumptuous to conclude that the conclusions are themselves deeply divided. The Linz-Horowitz debate is the most well known scholarly exchange on this subject. There is reference to Sri Lanka in this exchange between Linz and Horowitz and I treat this elsewhere in detail.

Alfred Stepan and Cindy Skach argue that parliamentary forms of

⁴ I define the National Question in Sri Lanka as the problem relating to the hierarchical nature of the Sri Lankan state at the helm of which is the Sinhala Buddhist nation. In this hierarchical state structure the other constituent nations and peoples of Sri Lanka are regarded as subservient peoples and nations to the dominant nation. The dominant nation (the Sinhala Nation) has used the state, its constitutional and legal apparatus to preserve its dominant status. This I contend is the best explanation of the post-colonial constitution making efforts in the country and of constitutional praxis in post-colonial Ceylon/Sri Lanka.

government provide more of a 'supportive evolutionary constitutional framework for consolidating democracies' and provide a number of reasons in support of their argument.⁵ They argue that a parliamentary system's a) greater propensity for governments to be in possession of majorities to implement their programmes, b) greater ability to rule in a multiparty setting, c) lower propensity for executives to rule at the edge of the constitution and its greater facility at removing a chief executive who does so, d) its lower susceptibility to military coups, and e) its greater tendency to provide long party-government careers are attractive for multi-national states. However, other scholars have argued the complete opposite and have pointed to the usefulness of presidential systems in emerging democracies. For example, in a recent study on the working of presidential democracies in Latin America Carlos Pereira and Marcus André Melo argue the contrary.⁶ They argue that presidentialism combined with multipartism is attractive for a region marked by extreme inequality and social heterogeneity. Drawing from the Latin American experience they argue that multiparty presidentialism has boosted political stability. The problem with these generalist arguments in favour or against presidential system is that these general observations tend to break down depending on context, particularly in deeply divided societies.

Arend Lijhpart, well known for his work on constitutional designs for plural democracies, makes clear prescription of a parliamentary form of government for deeply divided societies. He argues that in countries with deep ethnic cleavages, the choice should be based on 'the different systems' relative potential for power sharing in the executive'.⁷ The cabinet or the government in a parliamentary system, he argues, is a 'collegial decision-making body – as opposed to the presidential one-person executive with a purely advisory cabinet'. Hence he concludes that the parliamentary form of government offers 'the optimal

⁵ A. Stepan & C. Skach, 'Constitutional Frameworks and Democratic Consolidation; Parliamentarism Versus Presidentialism' (1993) *World Politics* 46:1, 1-22.

⁶ C. Pereira & M.A. Melo, 'The Surprising Success of Multiparty Presidentialism' *Journal of Democracy* 23(3): pp.156-170.

⁷ A. Lijhpart, 'Constitutional Design for Divided Societies' (2004) *Journal of Democracy* 15(2): pp.96 –109, 101.

setting for forming a broad power-sharing executive'. An additional advantage of parliamentary systems, he argues is that there is no need for presidential elections, which are necessarily majoritarian in nature.

Lijhpart's first assertion that the parliamentary system has provided for a broad power-sharing executive depends on whether there is the need and the will to accommodate parties belonging to the numerically smaller nations in a multinational state in the executive. More difficult is the question of how to ensure that this is not merely symbolic. It also depends on whether the numerically smaller nations in a multinational state consider that there is adequate political space (as distinct from legal/constitutional space) in national politics, which they can seek to influence by sharing power in the executive. As to Lijhpart's second assertion that presidential elections are more majoritarian in nature, it is not clear as to how parliamentary elections are less majoritarian in nature, particularly in deeply divided societies. Where parties are primarily divided on ethnic lines and where ethnic lines produce a clear majority and a minority, parliamentary elections also tend to more often than not, reflect the deeply divided nature of the state and tend to reproduce majoritarian politics. There are not enough reasons to support the argument in deeply divided societies that parliamentary elections are less majoritarian.

The 'parliamentary v. presidential' debate constructs a neat dichotomy between parliamentary and presidential forms of government, which however does not necessarily exist in practice. Recent scholarly work on the 'Presidentialisation of Politics', particularly that of Thomas Poguntke and Paul Webb questions this dichotomy and adds more complexity to our understanding of the contemporary praxis and functioning of governments.⁸ Poguntke and Webb suggest that irrespective of the form of government, that there has been a shift from collective or organisational power to individual power and accountability in the way all types of governments function. This change they argue has happened at three levels: within the executive, within political

⁸ T. Poguntke & P. Webb (Eds.) (2005) *The Presidentialisation of Politics: A Comparative Study of Modern Democracies* (New York: OUP).

parties, and in electoral processes. At all three levels of inquiry, a personalisation of politics has driven the focus of politics on to the individual. This has equally affected, they stress, all forms of government be, they presidential, semi-presidential or parliamentary. In this analysis, Prime Ministers in even typical Westminster-style governments are 'Presidential' and sometimes more 'Presidential' than in classical presidential systems. Political parties and collective responsibility of governments have become less important than the individuals. Modern media democracy, Poguntke and Webb demonstrate, has become a driving force behind this transformation that focuses on individual personalities. Elections have largely become referenda about a particular individual's performance in public office rather than that of a party's or a government's performance. This argument is important, and has the potential to make the debate about the choice of forms of government appear irrelevant. It is important that Poguntke and Webb's work be reflected upon in the constitutional discourse in Sri Lanka relating to the choice of form of government. As a general proposition however, given the particular features, powers and privileges that a separate institution of an executive president tends to be adorned with, and which a Prime Minister as *primus inter pares* among ministerial colleagues would not enjoy in a typical Westminster-style system, it would be wrong to suggest that the debate on the choice of government is entirely meaningless.

This chapter, however, is more interested the argument that in deeply divided societies, where there is an *a priori* question of the character and legitimacy of the state itself, the form of government with which the state is managed does not necessarily correlate with the question of how to resolve this *a priori* question. The rest of this chapter will attempt to establish that this conclusion is true for Sri Lanka.

From the Donoughmore constitution to the first republican constitution: choice of forms of government and the Tamils

Ceylon and later Sri Lanka's constitution-making processes have from colonial times failed to grapple adequately with the question of the kind of political institutions that would best suit the multi-ethnic character of the state. The colonial constitution-making attempts were the result of an inadequate understanding of designing institutions for a plural state, and the post-colonial constitution-making processes have been explicitly about consolidating Sinhala-Buddhist hegemony over the state through constitutional design.

The colonial 1931 Constitution (popularly known as the Donoughmore Constitution) ⁹ and the colonial given 'independence' constitution of 1947 (the 'Soulbury Constitution') approached the idea of constitutional design from a point of view that placed very little importance to Ceylon as a multi-ethnic society.¹⁰ The Donoughmore Commission introduced universal franchise, an executive committee system of government, and a shift away from 'communal' representation to territorial representation. The Donoughmore Commissioners felt that the communal representation scheme that existed hitherto had 'accentuated rather than diminished racial differences'.¹¹ The leadership of the Tamils and other smaller communities felt the opposite. The establishment of an executive committee system, as a consociational measure, it was hoped would give representatives from the numerically smaller communities an opportunity to participate in the executive branch of government. The first election under the Donoughmore scheme was boycotted by Jaffna

⁹ Colonial Office (1928) *Ceylon: Report of the Special Commission on the Constitution*, Cmd.3131 (London: HMSO).

¹⁰ As the Kandyan National Assembly put it, "The fundamental error of British statesmanship has been to treat the subject of political advancement of Ceylon as one of a homogenous Ceylonese race" Kandyan National Assembly (n.d., probably 1927) *The Rights and Claims of the Kandyan People* (Kandy) as quoted by A.J. Wilson (1988) *The Break up of Sri Lanka* (London: Hurst Publishers): p.98.

¹¹ C. Collins, 'The Significance of the Donoughmore Constitution in the political development of Ceylon' *Parliamentary Affairs* 4(1): pp.101-110 at 109.

owing to a call for boycott by the Jaffna Youth Congress that stood for *Poorana Swaraj* (complete independence) from the British colonial power and a rejection of colonial piece meal reforms. The second elections (in which Jaffna participated) produced a board of ministers that was pan-Sinhalese. The pan-Sinhala board confirmed the apprehension of the Tamils that the introduction of universal franchise within a unitary form of Government would lead to the unleashing of populist, ethnically driven mass politics,¹² which in turn would lead to a majoritarian democracy. In this scheme of politics then Donoughmore was an early reminder that the choice of form of government would have very little impact in the manner in which the country's politics was going to take shape.

Tamils and other non-Sinhalese communities were more focused on fighting for more balanced representation, but in the face of Sinhalese agitating for constitutional reform (beyond the Donoughmore Constitution), K.M. de Silva notes that the Tamils, Muslims, Up Country Tamils, Burghers and Europeans came to view the executive committee system (despite the bad experience with the pan-Sinhala Board) as an instrument that will help in buttressing their weakening political position in the constitutional reform process and hence demanded for its retention.¹³ The Tamils were alarmed by the permanent majority status afforded to the Sinhalese and the concomitant permanent minority status that they were relegated to through the universal franchise. As Stanley Tambiah noted, the Donoughmore epoch established forcefully the reality of Sinhalese majoritarian rule and monopoly over governance.¹⁴ The Tamil position at that time hence feared that an ever-increasing transfer of powers from the British to Ceylonese would be no different to a transfer of power exclusively to the Sinhalese (and to the exclusion of the Tamils). Hence their demands were anti-self-rule; for example, Tamil leaders demanded that the powers of the colonial Governor be retained.

¹² Cf. N. Wickramasinghe (1995) *Ethnic Politics in Colonial Sri Lanka (1927-1947)* (New Delhi: Vikas): p.114.

¹³ K.M. de Silva (2005) *History of Sri Lanka* (New Delhi: Penguin India): p.433.

¹⁴ S.J. Tambiah (1992) *Buddhism Betrayed* (Chicago: Chicago University Press): p.10

The Upcountry Tamils and Muslims largely supported this position.

The next stage of the constitutional reform process that led to Ceylon becoming a Dominion produced the Soulbury Constitution, which tried to tackle the ‘apprehensions of the minority’¹⁵ primarily by including a minority rights protection clause which the drafters hoped would prevent the passing of discriminatory legislation.¹⁶ This proved ineffective in preventing legislation against minority interests from being passed by the independent Ceylonese Parliament. It also tried to allay concerns of the Tamils and Muslims by creating some multiple-member constituencies. The Soulbury Commissioners expressed confidence in their report that the proposed Provincial Council system would come into operation.¹⁷ Later Lord Soulbury in a letter to C. Suntharalingam in 1964 would regret not having drawn up a more comprehensive Bill of Rights like in India, which he thought would have better protected minority interests.¹⁸ Soulbury’s afterthought only serves to further confirm the limitations of the liberal orthodox approach to constitution designing, which assumed that an individual rights approach – having a bill of rights – was adequate to respond to the concerns of Sri Lanka’s numerically smaller nations and peoples.

It must be noted the Tamil leaders at this point did not imagine a constitutional design that was anything more than an adjustment within the unitary state, with the exception of the Kandyan National Assembly which pressed for a federal arrangement for Ceylon.¹⁹ G.G. Ponnambalam Q.C., who was the most

¹⁵ Colonial Office (1945) *Ceylon: Report of the Commission on Constitutional Reform*, Cmd.6677 (London: HMSO): para.120 [*The Soulbury Commission Report*]: para.177.

¹⁶ The Soulbury Constitution: Section 29 (2).

¹⁷ The Soulbury Commission Report: para.84.

¹⁸ C Suntharalingam (1965) *Eylom: Beginning of the Freedom Struggle; Dozens Documents* (Arasan Printers): p.74.

¹⁹ Bryan Praffenberger asserts that a unitary state was convenient even for the Ceylon Tamils because their middle class greatly benefited from their economic and public service roles in the Sinhalese south and hence were reluctant to devolve power to the provinces. B. Praffenberger, ‘Book Review; *The Break-up of Sri Lanka: The Sinhalese-Tamil Conflict*’ (1991) *Journal of Asian Studies* 50(1): pp.196-197 at p.197.

prominent Tamil leader of that time, in fact pushed for only a balanced representation for minorities in the legislature or what is famously known as the '50-50' demand. The '50-50' demand was couched in language of constitutional equality but there was no specific demand about state structures or for that matter about the form of government. Ponnambalam and other Ceylonese Tamil politicians at that time believed in what Michael Roberts calls 'Ceylon Tamil Sectional Patriotism'.²⁰ They were apprehensive about Sinhala majoritarianism but their politics did not seek to fundamentally question the political foundations of the Ceylonese state.

Tamil politics underwent radical change in 1949 – in Robert's terms a shift from Ponnambalam's sectional patriotism to 'Sectional Nationalism' – when the *Ilankai Tamil Arasu Katchi* was formed (ITAK or 'Federal Party'). The ITAK put forward the federal demand – the first time that the Tamil leadership put forward the demand for a constitutional design for Ceylon, which went beyond the confines of a unitary state. But this was not merely a shift in the attitude to constitutional design; it was a shift in ideology. A separate national imagination started taking root among the Tamils that fundamentally started questioning the legitimacy of the Ceylonese/Sri Lankan state. The ITAK proposals of 1949 for a federal Ceylon did not favour a change in the form of government and sought to retain a parliamentary form of government.

To summarise, prior to 1949 the Tamils position relating to constitutional reform largely was confined to demands for equality of representation (the push for more 'communal' representation and the 50-50 demand) and by attempts at slowing down the progress towards self-rule (in their view Sinhala-rule). Post-1949 and more definitely after the Sinhala Only Act of 1956, this shifted fundamentally. The focus now was on challenging the political ideology and legitimacy of the Ceylonese/ Sri Lankan state. From 1949-1977 this was couched in the demand for a federal Sri Lanka and after 1977 on independent statehood. The

²⁰ M. Roberts, 'Ethnic Conflict in Sri Lanka and Sinhalese Perspectives: barriers to Accommodation' (1978) *Modern Asian Studies* 12(3): p.353 at p.370.

form of government (choice of parliamentary form versus others) did not figure in this discourse. It just was not important.

Post-colonial constitution-making, the form of government, and the Tamils: From a supreme parliament to an executive presidency

The first attempt at post-colonial ‘republican’ constitution-making, the Constitution of 1972, despite calling itself an autochthonous constitution, reaffirmed a Westminster-style legislature and executive in its worst possible form by, *inter alia*, making legislative supremacy the cornerstone principle of the constitution, by constitutionalising the unitary state, constitutionalising the status of Buddhism, by truncating the mechanism and idea of judicial review, and scrapping the minority protection clause in the Soulbury Constitution. The constitution, and the exclusively majoritarian process through which it was made, pushed the Tamil leadership to abandon the vision of a federal Sri Lanka and to further a campaign for independent statehood.

The Second Republican Constitution enacted six years after the First Republican Constitution made a radical departure in the form of government by introducing an executive presidential system. The reasons and motives for the introduction of the executive presidential system are diverse. Normative political ideology (by which I mean a particular political vision for the state) and instrumentalism (by which I mean furthering a particular political party’s interests) have both impacted constitution-making in Sri Lanka. Both the republican constitutions were about ideology and instrumentalism.²¹ In both the constitutions the desire to consolidate the Sinhala-Buddhist character of the state was a clear normative ideological position that both the UNP and SLFP shared and agreed. There was, for example, no contestation from the UNP in the Constituent Assembly of 1970-1972 that drew up the 1972 Constitution, of the SLFP’s endeavour to constitutionalise the unitary state, the

²¹ C.f. R. Coomaraswamy (1997) *Ideology and the Constitution* (Colombo: ICES).

official language, and in granting Buddhism a constitutional status. In fact the UNP did the same when it was their time to enact a constitution in 1978. The commitment to a unitary state and to Buddhism is an ideological commitment that was and continues to be important for both the mainstream Sinhala nationalist parties – the UNP and the SLFP.²² For these mainstream parties there was absolutely no question of considering alternative state structures in the process of constitutional designing for a multinational state. Despite agreement over the normative political ideology underpinning the constitution, the two parties had different economic interest based preferences, at least in appearance. Socialist grandstanding partly drove the constitutional philosophy of the 1972 Constitution. The 1978 Constitution, and particularly the creation of an executive presidential system, was conceived as being important to push forward a neo-liberal economic agenda for Sri Lanka. In addition to these ideological motives, the motives were also instrumentalist in that the SLFP and the UNP in 1972 and 1978 respectively used their extraordinary majorities in Parliament to further their party's interests through constitutional reform. For example, J.R. Jayewardene introduced the proportional representation system in the 1978 Constitution to make sure that the UNP would never be reduced to the state it found itself in the 1970 elections. Another common theme that underlies both the republican constitutions was, as Rohan Edrisinha and N. Selvakkumaran have shown, the desire for executive convenience.²³ Taking note of these instrumentalist narratives is important while examining the 1978 Constitution and the executive presidency in a holistic manner. This chapter, given its focus, is not interested in the instrumental narratives but rather with the normative reasons advanced for the

²² Between 1995 and 1997 and in 2002 the SLFP (under Chandrika Bandaranaike Kumaratunge) and the UNP (Ranil Wickremesinghe) respectively, wavered from this position momentarily but returned to their original positions soon after. Even these momentary swings were instrumentalist in nature, largely pursued to convince the International Community of their commitment to liberal peace and to delegitimize the LTTE's agenda of creating a separate state.

²³ R. Edrisinha & N.Selvakkumaran, 'The Constitutional Evolution of Ceylon/Sri Lanka 1948-98' in W.D. Lakshaman & C. Tisdell (2000) *Sri Lanka's Development since Independence: Socio Economic Perspectives and Analyses* (New York: Nova Science Publishers): p.96.

introduction of the executive presidency, particularly those in relation to the resolution of the National Question.

Alfred Jeyaratnam Wilson, who was a key advisor to J.R. Jayewardene in the drafting of the 1978 Constitution, asserted in his seminal book on that constitution, *The Gaullist System in Asia*²⁴ that the prime purpose of introducing an executive presidential system was to 'promote economic growth and national unity'.²⁵ He believed that a presidential form of government would increase the possibility of finding a political solution to the national question. He guarded this optimism by acknowledging that the whole framework of the constitution 'hangs on the skill and ability of one person – the elected Executive President'²⁶ and that the potential cost of the project was that the President could in practice become a 'constitutional dictator'.²⁷ This excessive focus on one person led to a very peculiar executive presidency being enshrined through the Second Republican Constitution, wherein executive powers, in Urmila Phadnis' terms, were 'uni-personalised'.²⁸ Wilson seemed to believe that only President J.R. Jayewardene was fit for the job and anyone else would convert the system into a '*fidélismo*'.²⁹ The drafters' intention behind the constitution, as discerned from A.J. Wilson's account, was animated by the possibility of having a popularly elected leader who would be able to push through a solution irrespective of opposition³⁰ and the related hypothesis that a presidential candidate will have to appeal to minorities.³¹ The rest of this chapter will critically examine these assumptions.

²⁴ A.J. Wilson (1980) *The Gaullist System in Asia: The Constitution of Sri Lanka (1978)* (Macmillan).

²⁵ *ibid.*: p. xiii.

²⁶ *ibid.*: p. xiv.

²⁷ *ibid.*: p. 61.

²⁸ U. Phandis, 'The Political Order in Sri Lanka under the UNP Regime: Emerging Trends in the 1980s' (1984) *Asian Survey* 24(3): pp.279-295.

²⁹ Wilson (1980): p.154.

³⁰ A.J. Wilson notes that in 1978 "sections of the Tamil elites hoped that as an executive President he could now resist the pressures of chauvinistic Sinhalese groups". Wilson (1988): p.136.

³¹ "The system of electing a President, as constitutionally provided, ensured that support from minority ethnic groups, particularly the Tamils, was necessary". Wilson (1988): p.136.

Deconstructing Assumption 1: *A strong leader who is not subject to the whims and fancies of parliamentary opposition might be able to sail through a solution to the national question*

The assumption is historically grounded in the fact that whenever a party in government has tried to accommodate the Tamil aspirations, that the parliamentary opposition had blocked such efforts. An early example of this phenomenon is the fate that befell the pact signed between Prime Minister S.W.R.D. Bandaranaike of the SLFP and S.J.V. Chelvanayakam, leader of the Federal Party in 1957, which sought to provide for 'reasonable use' of the Tamil language in Tamil-speaking areas and for the setting up of Regional Councils. Dudley Senanayake, the leader of the UNP labelled the pact an 'act of treachery', which would result in the 'partition of Ceylon'. Senanayake had declared that he was prepared to even sacrifice his life to stop it.³² J.R. Jayewardene, then second-in-command of the UNP, organised a march from Colombo to Kandy against the pact. The monks who were a key part of Bandaranaike's ascendance to power also joined the protests. Bandaranaike later tore up the pact unilaterally. James Manor in his biography of Bandaranaike, in the context of writing about the incidents relating to the pact, noted that 'J.R. Jayewardene, like Bandaranaike and many other prominent Ceylonese leaders (including some Tamils), was not a communalist bigot. But in what has been a central facet of the island's tragedy, he found the temptation to use communalism to mobilise popular support too tempting to resist.'³³

A similar fate befell the pact signed between Prime Minister Dudley Senanayake and S.J.V. Chelvanayakam which provided for a further watered down proposal from that envisaged in the Bandaranaike-Chelvanayakam Pact. The pact provided for the establishment of District Councils. This time around the Leftist parties joined hands with the SLFP in accusing the government for selling out to the Tamils.

³² As quoted by J. Manor (1989) *The Expedient Utopian: Bandaranaike and Ceylon* (Cambridge University Press): p.269.

³³ Manor (1989): p.271.

A.J. Wilson thought that a strong institution such as the executive presidency would be able to withstand these pressures. The point was repeatedly made even in the post-war context that suggests that President Rajapaksa is the only person, given the support he has from the Sinhala community, as the person who successfully led the war against the LTTE, who be able to sail through a solution to the conflict. I have elsewhere argued that the end of the war provided for ‘a constitutional moment’ that has redefined, and reversed significantly, the mainstream discourse on the abolition of the executive presidential system and on restructuring the state through devolution of power.³⁴ President Rajapaksa utilised the politics of triumphalism built on the constitutional moment of 18th May 2009 to amass the second largest victory in the history of presidential elections in 2010. The only part of the constitution that significantly challenged the executive presidency, the Seventeenth Amendment, has been repealed through the enactment of the Eighteenth Amendment. In that piece I argued that the enactment of the Eighteenth Amendment was an act of reverting to the original constitution of 1978 and given the abolition of the term limits, the Eighteenth Amendment strengthened the presidency beyond the limits envisaged even by the drafters of the constitution. All of this has been possible owing to the defeat of the LTTE by the government led by President Rajapaksa.

However, the myth of the executive presidency being the best institution suited to deal with the national question and for the revival of the economy continues to be restated. Rauf Hakeem, leader of the Sri Lanka Muslim Congress speaking in Parliament on the eve of the passage of the Eighteenth Amendment noted:

“The Hon. Basil Rajapaksa this morning very graciously admitted that this amendment is not simply to get a third term or go beyond that but more than that, to have a second term without unnecessary convulsions and a very stable government during the second term”

³⁴ K. Guruparan, ‘18 May 2009 as a Constitutional Moment: Development and Devolution in the Post War Constitutional Discourse in Sri Lanka’ (2010) *Junior Bar Law Review*: pp.41-51.

“[We vote for this amendment] with the sincere belief that the passage of this bill will enable His Excellency the President to have a trouble-free second term and if possible with a large mandate, get another term to bring an end to the polarisation in this country, bring an end to the protracted political struggles which had destroyed the economy in this country and put the country in the path of prosperity.”³⁵

This assumption that has been long held however is deeply flawed at many levels. Normatively from a constitutional democratic point of view, it is close to a naive belief in a benevolent dictatorship, in which the decision-making process does not care about means but only in ends, leave alone the question of what is the right (benevolent) or wrong decision. The assumption is anti-democratic and stems from the belief that democratic processes, debate, and deliberation do not deliver solutions. The normative concern is also a practical concern because unless there is an inclusive process of participation and deliberation whatever the result that is achieved is unlikely to be sustainable. The National Question is far deeper than a democratic problem *simpliciter* – it is a pre-democratic problem and by extension a pre-constitutional question.³⁶ The question relates to the political composition and character of the state. It is about the place of the different constituent nations and peoples in the island of Sri Lanka in relation to the state. An answer to the question cannot be found by an expedient, adventurist individual actor, in whom unbridled powers are vested, without support from the social and political forces that produced the question in the first place.

³⁵ Speech by the Hon. Rauf Hakeem, Parliament of the Democratic Socialist Republic of Sri Lanka- Debate during the Second reading of the Eighteenth Amendment to the Constitution Bill, *Hansard* (8th August 2010):Col. 278-179.

³⁶ I have elsewhere characterised this as a ‘pre-constitutional question’, a question that has to be answered before embarking on negotiations for institutional/ constitutional arrangements:
Tamil Civil Society Written Submission made at the ‘*Exploring Peaceful Options in Sri Lanka: Part II*’ conference organised by Berghof Foundation, Berlin, 26th- 27th January 2013
<http://www.tamilnet.com/img/publish/2013/02/Civil_Society_Submission_Berlin.pdf> accessed 01st August 2014.

The assumption is also flawed because it does not show an adequate appreciation of the complex social and political factors that inhibit the resolution of the national question. More particularly, the assumption displays a lack of adequate understanding of the politics of the Sinhala polity – an understanding that will help understand the impossibility of any Sinhala leader pushing through a solution that even seeks to meet the minimum political demands of the Tamil political leadership. I will now address this problem in more detail.

Tamil politics since 1949 has steadfastly refused to accept a solution within the confines of a unitary state. The unitary character of the state is deeply embedded in the Sinhala-Buddhist nationalist consciousness. The narrative is that without a unitary state the existence of the Sinhala nation would be fundamentally threatened. As Asanga Welikala explains,

“Sinhala Buddhist nationalism employ[s] a powerful idiom of centralisation of state power. That is to say, it interpolated the glorious historical paradigm of the ancient Sinhalese monarchy, patron of the people and protector of the faith, onto the new institutions of political independence. The greatest characteristic of a truly heroic occupier of the Sinhala monarchical paradigm was the overthrow of foreign domination (usually Dravidian invasions but subsequently Western powers as well) and subsequent ‘unification of the country’ under a single, central authority. This is the imperative pre-condition of the good life: peace, stability, economic progress and cultural renaissance, and is the subject matter of popular historical myth. On the other hand, dilution of central authority, often derisively attributed to vapid leadership in Sinhala historiography, was seen to produce anarchy, pestilence, moral decadence and cultural degradation. Therefore centralised unity related to territorial integrity is axiomatic in the traditional Sinhala ontology of the state and exercise of sovereignty, and explains its resonance in the modern nationalist hostility to any sort of political decentralisation. Decentralisation, devolution, federalism, power sharing and autonomy, in the Sinhala

nationalist view, are mere precursors of an unthinkable certainty: the territorial division of the island.”³⁷

David Rampton stresses the point that Sinhala Buddhist nationalism is not merely an elitist project.³⁸ Far from being an elitist project, according to Rampton it is a manifestation of a ‘deep hegemony’. Sinhala nationalism has in Rampton’s terms, ‘a gradual discursive and ideological diffusion into wider social strata’ which has cemented the idea of Sri Lanka as a Sinhala Buddhist state. He emphasises that Sinhala Buddhist nationalism must be understood as ‘a socio-political representation of Sri Lanka, in which the territory, state and nation of the island compose a bounded unity revolving around a majoritarian axis of Sinhala Buddhist religion, language, culture and people’. This social representation, Rampton argues reproduces a hierarchy placing the Sinhala nation at the apex with Sri Lanka’s minority communities in a position of subordination.

Liberal constitution-building efforts in the past have assumed that Sinhala Buddhist politics is an elitist project that gets reproduced through competitive party politics. This liberal peace approach has assumed that if the ‘ethnic outbidding’ problem is resolved and an agreement between both major Sinhala parties (the UNP and SLFP) is produced, that a resolution to the National Question could be found. If Sinhala Buddhist nationalism is not just elite politics, as I have argued relying on Rampton, then ethnic outbidding is not the reason why a political solution to the National Question has been impossible. The hegemonic force of Sinhala Buddhist nationalism has a direct influence on the praxis of legal norms, and acts as a constraint on the usefulness of liberal constitution building efforts.³⁹

³⁷A. Welikala, ‘*Theorising the Unitary State: Why the United Kingdom is Not a Model for Sri Lanka*’, paper presented at the 60th Anniversary Academic Sessions of the Faculty of Law, University of Colombo, Sri Lanka, 25th October 2008 (paper in file with author).

³⁸D. Rampton, ‘*Deeper hegemony: the politics of Sinhala nationalist authenticity and the failures of power-sharing in Sri Lanka*’ (2011) *Commonwealth & Comparative Politics* 49(2): pp.245-273 at pp.255-256.

³⁹Also see D. Rampton, ‘*A Game of Mirrors: Constitutionalism and Exceptionalism in a Context of Nationalist Hegemony*’ in A. Welikala (Ed) (2012) *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Colombo: Centre for Policy Alternatives): Ch.9.

From the preceding the following conclusions emerge: a) Sinhala Buddhist Nationalism is incapable of conceiving of a solution that goes beyond the contours of the unitary state; (b) the reason for a political solution not materialising is not the lack of a ‘Southern Consensus’, understood as an agreement between the two important political parties amongst the Sinhalese;⁴⁰ and (c) the reason for a political solution not materialising is, because the ‘Southern Consensus’ is in fact ideologically wedded to Sinhala Buddhist unitary nationalism.

A.J. Wilson and those who subscribe to his view that the executive presidency will help resolve the ethnic outbidding problem fail to appreciate the deep hegemonistic character of Sinhala Buddhist nationalism as the underlying problem in resolving the national question. The reason why experiments at a political solution failed is not as Wilson identifies the problem of ‘ethnic out bidding’ – which can then be fixed by designing an institution (like the Executive Presidency) – but the democratic assertiveness of the political manifestation of Sinhala Buddhist nationalism which clings on to the unitary state. There is abundance of evidence of the working of the Executive Presidency which suggests that the institution itself promoted the ethnic outbidding that it was supposed to eliminate. Two instances are provided by way of illustration.

The first case study involves President J.R. Jayewardene himself on whom Wilson personally pinned this hopeful assumption. Soon after the July 1983 pogrom, Prime Minister Indira Gandhi sent a special envoy to discuss a possible political solution to the conflict. Negotiations were held for four months at the conclusion of which Prime Minister Gandhi invited the parties to New Delhi. President Jayewardene in his separate meeting with Mrs Gandhi on 30th November 1983 is reported to have promised her that he was prepared to put forward the solution agreed to between him and the TULF leadership to the All Party Conference (APC) that

⁴⁰ See further A. Welikala & D. Rampton, ‘*Politics of the South*’ (2005) *Segment of the Sri Lanka Strategic Conflict Assessment 2000 – 2005* 3 <<http://asiafoundation.org/resources/pdfs/SLPoliticsoftheSouth.pdf>> accessed 1st November 2013.

had set been up for the purpose, except for the TULF demand seeking a merged North and East. He however suggested to Mrs Gandhi that the TULF put forward their proposals including for a united Tamil province at APC and that he would ensure that the proposals are accepted by the APC. Mrs Gandhi conveyed this guarantee to the TULF leadership in her meeting with them on 1st December 1983,⁴¹ who promptly joined the APC wherein they made the case for a united Tamil province. President Jayewardene went back on his word. His party, the UNP, objected to the merger. Subsequently President Jayewardene packed the APC with non-parties including organisations represented by Buddhist monks who opposed the TULF proposals. The TULF walked out soon after and the APC was called off in a year's time.

The second case study is that of President Mahinda Rajapaksa's All Party Representatives Conference (APRC) constituted in 2006. The principal Tamil party, the Tamil National Alliance (TNA) was not invited to this conference. The president appointed an expert committee to advice the APRC which split into two and produced separate reports. The majority report recommended a weak federal model whereas the minority report recommended a solution that would have further weakened the already weak provincial council system, preferring the district as the unit of decentralisation or a solution based on a local government system based on the Panchayat Raj system found in India. In an act comparable to President Jayewardene's handling of the APC, President Rajapaksa's SLFP put forward proposals that sought to abolish the provincial council system and replace it with the district as the unit of devolution thereby undermining the APRC Expert Committee majority report. The final APRC report was never officially released but two members of the committee launched it unofficially in 2010.⁴² At the launch of the report it was revealed that President Rajapaksa had himself

⁴¹ Tamil United Liberation Front (1988) *Towards Devolution of Power in Sri Lanka: Main Documents: August 1983 to October 1987* (Chennai: Jeevan Press): pp.iv-v.

⁴² R. Yogarajan, MP & N. Kariapper (Eds.) '*Proposals made by the APRC to form the basis for a new Constitution*' <<http://www.satp.org/satporgtp/countries/shrilanka/document/papers/images/APRC%20Report.pdf>> accessed 1st August 2014.

insisted to the APRC membership, that the proposals had to explicitly retain a reference to a 'unitary state'.⁴³

A possible exception to the Executive Presidency stepping out of the unitary state conundrum was President Chandrika Bandaranaike Kumaratunga's efforts in the mid-1990s to put forward proposals based on the federal idea. The proposals met with stiff resistance from the Sinhala Buddhist civil society who organised themselves into a 'National Joint Committee' chaired by a retired Supreme Court judge, who then set up a 'Sinhala Commission'. The commission found that the President Kumaratunga's constitutional package 'will not only destroy the unitary character of Sri Lanka, which has been preserved for over 2500 years, but will also spell disaster for the country as a whole'.⁴⁴ The commission further asserted that the proposals 'will further impoverish the Sri Lankan people, in particular the Sinhala people, who are already a disadvantaged section of the population despite their comprising three fourths of it'. This groundswell of Sinhala Buddhist nationalism that started directing itself against President Kumaratunga gave opportunities for parties like the Janatha Vimukthi Peramuna (JVP) and the Jathika Hela Urumaya (JHU) which openly espoused Sinhala Buddhist nationalist politics to become popular. President Kumaratunga had to later align herself with the JVP with to keep herself in power. But it is not clear as to whether President Kumaratunga herself genuinely was committed to a federal project. D. Sivaram's writings point to the instrumentalist and strategic purpose of President Kumaratunga's federalist project which he asserts were solely aimed at discrediting the separatist project of the LTTE.⁴⁵ President Kumaratunga's alliance with the JVP in 2001 and 2004, the manner in which she disrupted the 2001-2004 Norwegian-facilitated peace process initiated by the Ranil Wickremesinghe government, and her silence with regard to a political solution after the military defeat of the LTTE in 2009, provide credence to

⁴³ Personal notes of the author present at the launch of the report, July 2010.

⁴⁴ Sinhala Commission, *Interim report of the Sinhala Commission dated 17.09.1997*

<http://www.satp.org/satporgtp/countries/shrilanka/document/papers/sinhala_commission.htm> accessed 1st November 2013.

⁴⁵ M. Whitaker (2007) *Learning Politics from Sivaram: The Life and Death of a Tamil Revolutionary Journalist* (New York: Pluto Press): p.126.

Sivaram's scepticism. Prime Minister Wickremesinghe's peace initiative and particularly the Oslo Communiqué of December 2002 (which proposed that a solution be explored along federal lines) were no doubt bold initiatives. But this track record on the National Question also has not been consistent. Prime Minister Wickremesinghe when he was the Leader of the Opposition in 2000 watched silently as his fellow parliamentarians burnt President Kumaratunga's (by-now watered down) proposals for constitutional reform in Parliament. The UNP under the same leadership, post-war has reiterated its commitment to not only a unitary state but also to retaining the Executive Presidency, although it is as yet unclear what form of executive power will emerge with the proposed constitutional changes of the Sirisena-Wickremesinghe administration elected in January 2015.⁴⁶

In summary, the two important conclusions that may be drawn from the above discussion are as follows: Firstly, the Executive Presidency did not help deal with the 'ethnic outbidding problem', even if the problem were assumed to be one of ethnic outbidding. In fact the Executive Presidency also successfully used 'ethnic outbidding' as a tool to block the emergence of a solution. Secondly, the Executive Presidency even if the individual holder of the office wished to, could not transcend the processes of 'deep hegemony' of Sinhala Buddhist nationalism. The latter point will be further substantiated in the section that follows.

Deconstructing Assumption 2: *Presidential candidates have to appeal to a cross-community vote to be able to win*

In 1990, political scientists Juan Linz and Donald Horowitz debated the merits and demerits of the presidential system in the *Journal of Democracy*, wherein Juan Linz⁴⁷ took the position that a parliamentary system will benefit deeply divided societies,

⁴⁶ Full text available here: UNP, '*Principles for a New Constitution*' <<https://www.colombotelegraph.com/index.php/full-text-of-the-principles-unps-new-draft-constitution-to-submit-people-within-6-months-after-the-formation-of-a-government/>> accessed 1st November 2013.

⁴⁷ J.J. Linz, '*The Perils of Presidentialism*' (1990) *Journal of Democracy*: pp.51-59.

particularly in view of the ‘winner takes all’ nature of presidential elections. Horowitz⁴⁸ having – rightly in my opinion – pointed out that parliamentary elections are susceptible to the same by contrast, referred to the Sri Lankan example of presidential elections as a presidential system which did not provide for a ‘winner takes all’ situation. His argument is worthy of a lengthy quote:

“In 1978, Sri Lanka also moved to a presidential system. Its principal purpose was to create a political executive with a fixed term that would permit the incumbent to make unpopular decisions, particularly those concerning the reduction of ethnic conflict. A majority requirement was instituted. Since most candidates were unlikely to gain a majority in Sri Lanka’s multiparty system, a method of alternative voting was adopted. Each voter could vote for several candidates, ranking them in order of preference. If no candidate attained a majority of first preferences, the top two candidates would be put into what amounted to an instant runoff. The second preferences of voters for all other candidates would then be counted (and likewise for third preferences) until one of the top two gained a majority. It was expected that presidential candidates would build their majority on the second and third choices of voters whose preferred candidate was not among the top two. This would put ethnic minorities (especially the Sri Lankan Tamils) in a position to require compromise as the price for their second preferences. So, again, the presidential system would rule out extremists, provide incentives to moderation, and encourage compromise in a fragmented society”.

Having made the above claim, Horowitz then extends its reach further by arguing that, had the Sri Lankans adopted their presidential electoral system earlier, their conflict would have

⁴⁸ D. Horowitz, ‘*Comparing Democratic Systems*’ (1990) *Journal of Democracy* 1(4): pp.73 -79. Linz response to Horowitz can be found here: J.J. Linz, ‘*The Virtues of Parliamentarism*’ (1990) *Journal of Democracy* 1(4): pp.84 -91.

been moderated by that system. He argued that the conflict in Sri Lanka worsened because of the winner-take-all rules that governed its parliamentary systems that excluded minorities from power. Horowitz's claim, though made in 1990, even for that time, constituted a very broad sweep that was not corroborated by experience. With hindsight, more than three decades after the introduction of the executive presidency, one can definitely say that Horowitz was anything but wrong in making that claim: The presidential elections experience suggests a negative relationship between the presidential electoral system and the Tamils.

Horowitz's assumption that the Tamils would play a significant role in electing a President is based on two assumptions. Firstly, that the need for counting the second preferences would arise, i.e., that there would be a need for a runoff, and secondly, that the Tamils would not have cast their vote for one of the two candidates as first preference. There is also the further assumption (not mentioned by Horowitz) that generally both the main political parties in the south (the SLFP and the UNP) have a vote share of 38% and hence that for them to pass the 50% plus mark that they need to earn the votes of the parties that represent the other communities. A detailed psephological study would be necessary to ascertain the validity of these assumptions.⁴⁹ However the following general observations may be made.

In the six presidential elections that the country has voted for between 1982 and 2010 none have required the need for an 'instant runoff', i.e., the counting of second preferential votes contrary to Horowitz's expectations for the minorities through the instant runoff. Barring Kumar Ponnambalam's candidature in 1982, and M.K. Shivajilingam's candidature in 2010, no other Tamil candidates have contested Sri Lanka's presidential elections. Hence whenever Tamils have voted, they have cast their first preference for a Sinhala candidate. In the elections that were held in 1982, 1994, 2000 and 2010, the Tamil vote did not make a significant difference to the outcome of the election. The

⁴⁹ This is an area that is very much understudied in Sri Lankan politics. The only one that I was able to find was: Y. Warnapala & Z. Yehiya, (2008) *Polarization of the Sri Lankan Polity: An Analysis of Presidential Elections (1982 – 2005)* (Feinstein College of Arts & Sciences Faculty Papers-Paper 8) <http://docs.rwu.edu/fcas_fp/8/> accessed 1st August 2014.

Muslim and Upcountry Tamil vote did make a difference in these elections, but unlike the Tamils, the Muslims and Up Country Tamils for a variety of reasons do not pose a fundamental challenge to Sinhala Buddhist nationalist politics. The choice was particularly clear in 1994 and 2010 (President Kumaratunga's first term and President Rajapaksa's second term) in which the Tamil vote made no real difference to the outcome. In 1994 in response to the anti-incumbency mood sweeping the country against a 17-year-UNP rule and owing to Chandrika Bandaranaike Kumaratunga's liberal peace credentials, Kumaratunga received cross-community support. The main Tamil political party the TULF called for a vote in favour of Kumaratunga (noteworthy that the LTTE did not call for a boycott of this elections). However, Jaffna and Vanni registered less than 4% voter turn out at these elections.⁵⁰ The Tamil vote did not count at these elections because Kumaratunga enjoyed strong support from the majority. The Tamil community's – or even other numerically smaller communities' vote – does not have an impact in a presidential election if a candidate has clear support (more than two-thirds of the vote) from the majority community. In 1982, J.R. Jayewardene won the Eastern Province Tamil vote but lost in Jaffna and received overwhelming support from the Muslims and the Up Country Tamils. In 1999 President Kumaratunga won with overwhelming support from the Sinhala community and Ranil Wickremesinghe lost, despite winning handsomely in the North and East provinces with less than 4% vote being registered in the Vanni. In the election campaign, both President Kumaratunga and Mr Wickremesinghe accused each other of trying to hold secretive talks with the LTTE.⁵¹ Mr Wickremesinghe's suggestion of a two-year interim council for the North and East with LTTE participation is said to have resulted in his losing the election.⁵² The LTTE supremo in a speech

⁵⁰ All election related statistical reference is from the 'Official Website of the Elections Commission of Sri Lanka' <www.slections.gov.lk> accessed 1st November 2013.

⁵¹ 'Opposition seeks letters to LTTE', *Tamilnet*, (2009) <<http://tamilnet.com/art.html?catid=13&artid=4266>>; Also see 'World Socialist World Web Site' <<https://www.wsws.org/en/articles/1999/12/sri-d09.html>> accessed 1st November 2013.

⁵² P. Saravanamuttu, 'Sri Lanka in 1999: The Challenge of Peace, Governance, and Development' (Jan. - Feb., 2000) *Asian Survey* 40(1): pp.219-225 at p.221.

delivered just before the election had noted that ‘Tamil people know what to do at the elections’ which was read as a suggestion that he was indicating that the Tamils should vote for Mr Wickremesinghe.⁵³

In the 2005 elections the strategy of earning the Sinhala Buddhist vote by ‘othering’ the opponent as a ‘Tamil sell out’ was taken to a new height. In 2005 presidential candidate Rajapaksa signed agreements with the JVP and the JHU which, *inter alia*, called for a complete renegotiation of the cease-fire agreement (CFA), a re-examination of the role of the Norwegian facilitators, insisted on retaining a unitary state, and trashed the Post-Tsunami Operational Management Structure (P-TOMS). Ranil Wickremesinghe lost the elections by a margin of 180,786. The boycott of the polls called for by the LTTE is widely considered to have resulted in Mr Wickremesinghe’s defeat. But this contradicts the explanation of the outcome in the 1999 presidential elections that Wickremesinghe lost because of the implicit support from the LTTE. Indeed if the LTTE had implicitly supported Ranil Wickremesinghe, it is a plausible theory that he would have lost more votes in the Sinhala heartland making it very difficult for him to have won the election even if the Tamils had voted for him.⁵⁴ The presidential elections of 2010 provides further evidence as to the negative correlation between Tamil support for a presidential candidate and his or her ability to win an election. The TNA at the 2010 elections openly supported the opposition’s common candidate, Sarath Fonseka. General Sarath Fonseka was the army commander who led the Sri Lankan army against the final war against the LTTE. The support given by the TNA to Sarath Fonseka provided the opportunity for Rajapaksa to portray Fonseka as a ‘traitor’ to the Sinhala nation, which arguably contributed to the weakening of Fonseka’s chances of winning the presidency. That the army commander who led the armed forces of the Sri Lankan state to defeating the LTTE could be branded as a ‘traitor’ of the Sinhala nation, and later stripped

⁵³ Ibid: p.223.

⁵⁴ Ranil Wickremesinghe performed badly in Sinhala strongholds in the 2005 elections. For example he received only 35% of the vote in Hambantota and 36% of the vote in Matara. I am grateful to Mr Gajendrakumar Ponnambalam, Member of Parliament for Jaffna (2001-2010) and President, Tamil National People’s Front, for drawing my attention to this point.

off his title and sent to prison is evidence of the exuberant power of Sinhala Buddhist nationalism's 'othering' capability. In the 2015 presidential elections the two main candidates (Maithripala Sirisena and Mahinda Rajapaksa) split the Sinhala vote base equally amongst themselves (with Rajapaksa getting a slight edge over Sirisena) and this created the space for the Tamil and Muslim vote to play a significant role in the election. Maithripala Sirisena seemed to have learnt from the experience of 2005, and beyond general promises of restoring the rule of law and good governance, did not promise anything substantive to the Tamils during the election campaign.⁵⁵ The support of the Tamil National Alliance was deliberately kept secret until the last few days of the campaign so as to not give Rajapaksa the opportunity to use it against Sirisena. To summarise, all four presidential elections after 1994 show that an appeal for cross community votes (more particularly an attempt to woo the votes of the Tamil community) worked or was understood to be a disadvantage to a presidential candidate's chance of winning elections. The evidence from elections before do not contradict this conclusion.

One final point needs to be made with regard to the general nature of the political understanding of the Tamils *vis-a-vis* their engagement with presidential elections. Over the years particularly under the influence of the LTTE, Tamil political leaders started interpreting presidential elections as merely providing for an election of the leader for the Sinhala nation. But there is evidence that this position was taken even before the LTTE came to dominate Tamil politics in its entirety. Kumar Ponnambalam justified contesting the 1982 presidential elections on the basis that it would perform the function of a referendum through which Tamils could democratically express their rejection of the 1978 Constitution.⁵⁶ The TULF in 1999 refused to support a presidential candidate arguing that both the majority Sinhala

⁵⁵ For my detailed analysis of this, see: K. Guruparan, 'Why Sirisena's victory is not a victory for Sri Lanka's Tamils', *The Caravan*, 13th January 2015: <<http://www.caravanmagazine.in/vantage/why-sirisena's-victory-not-victory-sri-lanka's-tamils>>

⁵⁶ See S.S. Kantha, (2008) *The 1982 Presidential Candidacy of G.G. (Kumar) Ponnambalam, Jr. Revisited* <http://www.sangam.org/2008/08/Ponnambalam_Candidacy.php> accessed 1st November 2013.

parties were not be trusted.⁵⁷ The 2005 decision was also justified in similar lines by the TNA.⁵⁸ Mr Gajendrakumar Ponnambalam and three other Members of Parliament justified their decision to boycott the 2005 elections on the same basis that the Tamils have no real choice between the two parties and that they should not take part in the Sinhala nation's choice of its leader. Mr Shivajilingam who contested separately took a similar position to justify his participation.⁵⁹

The preceding analysis makes clear that the *modus operandi* of the presidential elections did not contribute much to drawing Tamils into a national constituency. In fact since the mid-1990s it appears that any presidential candidate seeking to attract votes from the Tamil constituency can only do so at a very serious risk of alienating the Sinhala Buddhist voting block. It needs mentioning that the electoral strategy of portraying the other candidate as a 'sell out' to the Tamils was not an electoral strategy exclusive to presidential elections. It was also used when the country had a parliamentary form of government. Michael Roberts writing in 1978, before the introduction of the Second Republican Constitution identified the bi-polar demographic structure of Sri Lanka and 'an electoral framework which accentuates the majoritarian status of the Sinhalese and places any political party which co-operates with the Tamil sectionalist associations in a vulnerable position'⁶⁰ as one of the factors that perpetuates the non-resolution of the ethnic conflict. (Interestingly Roberts relies on Wilson's study of elections in making this observation⁶¹). The above leads to the conclusion that the form of government and the mode of elections to it ostensibly had no or very little impact on resolving the National Question.

⁵⁷ 'TULF urges Tamils to shun UNP, PA', *Tamilnet*, (1999), <<http://www.tamilnet.com/art.html?catid=13&artid=4293>>.

⁵⁸ 'LTTE-TNA conference concludes: "Tamil people have no interest in SL Presidential elections"' <<http://www.tamilnet.com/art.html?catid=13&artid=16298>>.

⁵⁹ Author's personal communication with Mr Gajendrakumar Ponnambalam and Mr Shivajilingam, April 2013.

⁶⁰ Roberts (1978): p.376.

⁶¹ Ibid: at fn.72 citing A.J. Wilson (1975) *Electoral Politics in an Emergent state: The Ceylon General Election of May 1970* (Cambridge: Cambridge University Press).

One final question remains as to the relationship between the choice of form of government question and the National Question. The question is as follows: in the event that there is a settlement of the National Question within the current parameters of the state, would not such a settlement, influenced presumably by the federal idea, be better served by a parliamentary form of government at the centre? It will be extremely hypothetical without knowing the detailed workings of such a solution to attempt to answer this question. A general comment would suffice. Given the experience with the existing Provincial Council system under the Thirteenth Amendment to the Constitution,⁶² it might be desirable to have the same form of government both at the centre and periphery. To have an elected executive president at the centre and a parliamentary form of government at the periphery would likely lead to competitive politics between the executive at the centre, his representative in the periphery and the elected executive at the periphery. Even such a system may be theoretically workable if there is a clear division of powers and an honest arbitrator of the constitutionally designed solution in the form of an independent judiciary.

Conclusion

I have in this chapter sought to demystify certain myths that have been constructed about the relationship between the executive presidency, the resolution of the national question and Tamils. I have tried to demonstrate that the notion that the Executive Presidency would be able to resolve the 'ethnic out bidding' problem has turned out to be false in practice. I have gone further and argued that in fact ethnic out bidding is the wrong diagnosis of the problem and pointed to the deep hegemonic nature of Sinhala Buddhist nationalism as the reason for a non-resolution of the National Question, which cannot be resolved by experimenting with different forms of government. I have also tried to demonstrate that presidential elections do not necessarily

⁶² Cf. K. Guruparan, 'The Irrelevancy of the 13th Amendment in finding a political solution to the National Question: A Critical note on the Post-War Constitutional Discourse in Sri Lanka' (2013) *Junior Bar Law Review* 3: pp.30-42.

require a candidate to appeal to votes cutting across ethnic communities and that the 1999, 2005, 2010 and 2015 presidential elections in particular show an emerging practice of such a cross-community appeal operating against the prospects of a candidate winning the elections. This I have tried to show is a result of the same deeply divided nature of the Sri Lankan polity along ethnic nationalist lines. Anything that I have argued in this piece however does not lead necessarily to the conclusion that abolishing the Executive Presidency benefits the prospects of resolving the National Question.⁶³ I have in fact argued in this chapter that the choice of form of government has no direct relevance to solving the National Question. The conclusions of this chapter put forward a broader, even more troubling question: as to whether the national question in Sri Lanka in fact can be resolved through a constitutional reform process within the current framework of the state. Goodin makes the important point that there is no constitutional solution to be found to the case of radical social diversity.⁶⁴ This might be just true for Sri Lanka.

⁶³ For a more detailed exposition on this see: K. Guruparan, 'Understanding the National Question as a Pre-Democratic Problem: A Skeptical Note on the Southern Reform Agenda', *Groundviews* <<http://groundviews.org/2014/05/24/understanding-the-national-question-as-a-pre-democratic-problem-a-skeptical-note-on-the-southern-reform-agenda/>> accessed on 1st August 2014.

⁶⁴ R.E. Goodin, 'Designing Constitutions: The Political Constitution of a Mixed Commonwealth' *Political Studies* 44(3): pp.635-636 at p.643. Kauffman makes the point direct when he says that for groups that are not territorially inter-mixed secession should be looked upon with much favour than it has habitually received. C. Kauffman, 'Possible and Impossible Solutions to Ethnic Wars' (1996) *International Security* 20: pp.136-175.