SRILANKA (CEYLON)
THE NEW REPUBLICAN CONSTITUTION

By K. M. de SILVA

> "The new constitution not only marks a change in the status of our land and people but also has a foundation or root which is entirely different from the foundation or root of the constitution which will be displaced today[1]."

So, Dr. Colvin R de Silva, Minister of Constitutional Affairs, and the guiding spirit of the new constitution.

He went on to explain that

> "... the displaced constitution had its root in the power and authority of the British crown, Parliament and people over Ceylon and her people. Even if the grant of that constitution be regarded as a grant of complete independence to Ceylon — which it was not — nevertheless that grant was even at best the last and final exercise of Britain's power and authority over Ceylon. Just as the owner of a slave exercises his power of ownership of the slave even when he grants that slave his freedom so also did Great Britain by the very grant of 'independence' mark the fact that at the very point of such granting Ceylon was still a subject country and not an independent country ...".

What Dr. de Silva was thus asserting has been the standard Marxist line of critique ever since 1947 that the Soulbury Constitution granted to Ceylon was an imperialist device imposed on the country. The facts, however, rather point to the contrary. To get the legal and political standing of the Soulbury Constitution in perspective, one needs only to turn to a dispassionate and neat summary of the situation given by the Hon. H.N.G. Fernando, Chief Justice of Ceylon, also on the eve of the adoption of the new constitution:

> "Since 4 February 1948 the people of Ceylon have been independent of British rule both in law and fact, and the Parliament of Ceylon has been a sovereign legislature exercising what has been judicially described as 'the plenitude of legislative power'."
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> "Nevertheless the link with the British crown remained in strict law although with no practical significance in our lives and affairs. The existence of that link has tended to obscure the true fact of our independence from subjection to any foreign powers; and such a link unlike in the case of the people of Australia or Canada was without meaning for a people of Asia(n) origin ...[2]."

The Politics of Constitutional Reform I

One of the first tasks faced by governments of newly independent countries was to depart from an inherited system of government and to develop a political style appropriate to the conditions of their own societies. Ceylon, after over 20 years of independence, still retained intact the system it had inherited, and Ceylon's constitution approached the Westminster model nearer than most other Commonwealth Constitutions.

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1 Dr. Colvin R de Silva, "Why a New Constitution" Times of Ceylon, 22 May 1972, special supplement.
2 The Hon. H. N. G. Fernando in his Republic Day message in The Ceylon Daily News and The Times of Ceylon, 22 May 1972.

The Trotskyist, Lanka Sama Samaj Party (L.S.S.P.) and the Communist Party (C.P.) had from the inception of the Soulbury Constitution urged the establishment of a Constituent Assembly — as in India — to draft a new constitution for Ceylon. With the emergence of the Sri Lanka Freedom Party (S.L.F.P.) in 1951, the picture changed somewhat as this party did not have the same dogmatic opposition to the Soulbury Constitution. For that constitution had been unanimously adopted by the then Cabinet of which S.W.R.D. Bandaranaike, founder of the S.L.F.P. had been a member. But the S.L.F.P. under Bandaranaike expressed fears about limitations and curbs on sovereignity inherent in it and were therefore anxious to have the constitution amended to remove these. When Bandaranaike became Prime Minister in 1956, he came to realise that the constitution was not detrimental to the country's status as a free and sovereign state. During his premiership (1956-9) a Parliamentary Select Committee prepared the bases of a new constitutional structure, but the political instability of the last phase of his tenure of office as Prime Minister prevented its adoption as the country's new constitution. Among the changes envisaged was the establishment of a Republic. Between 1960 and 1965 the S.L.F.P. took the view that the Soulbury Constitution should be amended. The S.L.F.P. Manifesto of 1960 stated that these amendments would include:

> ". . . a reconsideration of the position of the Senate, the definition of democratic and economic rights, and the establishment of a democratic republic . . .".

Its Manifesto of 1965 — which had the endorsement of the L.S.S.P. and C.P. re-iterated the theme of a republic and the revision of the constitution "to suit the needs of the country".

The policy of the United National Party (U.N.P.) in government and in opposition had been the revision of the Soulbury Constitution; in particular it advocated that Ceylon should become a Republic within the Commonwealth. But when in power (1965-70) it lacked the parliamentary majority (two-thirds of all members of the House of Representatives) necessary to enact legislation for that purpose.

During their years in opposition between 1965 and 1970 the constituent parties of the present coalition in a far-reaching re-appraisal of their stand on this problem, came to the conclusion that a mere revision of the existing constitution was inadequate. They committed themselves to the new policy of forming a Constituent Assembly which would derive its "authority from the people of Sri Lanka and not from the power and authority assumed and exercised by the British Crown and Parliament in establishing the present constitution of Ceylon nor from the constitution they gave us". This was no more than the adoption by the present coalition, of the arthodox L.S.S.P. and C.P. attitude. The idea of the Constituend Assembly, Dr. Colvin R de Silva has recently reminded us, was first put forward by the L.S.S.P.

> "The contention was that an independent country or rather a country achieving independence after foreign subjection required to mark its independence by the framing of a constitution for itself — and that the proper instrument for so framing a constitution was classically the Constituent Assembly[3]."

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3 Dr. Colvin R de Silva, "Why a New Constitution", Times of Ceylon, 22 May 1972, special supplement.

The question naturally arises — how did the S.L.F.P. come to acquiesce, and indeed enthusiastically endorse, this line of action? The answer, one suspects, lies in the judgements of the Judicial Committee of the Privy Council in London, with regard to Section 29 of the Soulbury Constitution which related to minority safeguards. The Privy Council had held that this clause was an entrenched provision which could not be amended in any revision of the constitution. To the S.L.F.P. as the unabashed exponents of the Sinhala-Buddhist domination of the island, this would be ample justification for the formulation of a new constitution through a Constituent Assembly.

When the present coalition came to power in 1970 one of their first acts was the summoning of a Constituent Assembly. The intention was quite deliberately to provide for the establishment of a free, sovereign and independent republic through an autochthonous constitution. The autochthonous nature of the new constitution is evident from its preamble, which emphasises the fact that power and authority are derived solely from the people of Sri Lanka. From the freedom, the constitution-making process constituted an open assertion of the freedom, sovereignity, and independence of the people of Sri Lanka from the British Crown. And to underline the autochthonous nature of the new constitution, the Constituent Assembly consciously and consistently acted outside the framework of the Soulbury Constitution; inded its framers claimed that in "its essential procedures and entire functioning (it was) counterposed to the constitution". The process though peaceful has been revolutionary in character. What the new constitution adopted on 22 May 1972 achieves is the formal dissolution of the link with the British Crown, though the Republic of Sri Lanka remains within the Commonwealth. This was the one feature of the constitution which had an appeal extending well beyond the ranks of the parties within the present coalition government.

The main features of the new Constitution

In a broadcast talk on 10 September 1970, the Minister of Constitutional Affairs set out what the government considered were the shortcomings of the Soulbury Constitution: the existence of an entrenched clause (clause 29) which safeguarded minorities against discriminatory legislation; the right of judicial review by the Courts over the constitutionality of legislation passed by parliament; colonial oriented administration machinery; a bicameral legislature; and the inequality of the adult vote under the existing system of delimiting constituencies in the legislature with its weighted bias in favour of the rural areas and the remoter parts of the country. The new structure has eliminated all except the last of these[4] — the existing systems of delimiting constituencies which has, significantly, passed almost unchanged into the new constitutional structure. The salient feature of the new constitution is the establishment of a unicameral republican structure in which the National State Assembly is all supreme. The system may be described as a centralised democracy in which the most dominant element is the political executive which has few institutional checks on the use of its political power.

It could be argued that this, after all, is the British pattern. But the British analogy seems inappropriate in an analysis of the new constitution of Sri Lanka since few of the built-in checks on the abuse of power which exist in Britain have

4 For discussion of this point, see "Ceylon: A Review of the First Year of the United Front Government in Office" in Verfassung und Recht in Übersee, 4 Heft, 4 Quartal 1971, p. 419.

their equivalents in Sri Lanka. Indeed it is much more illuminating to read what the framers of the constitution, in particular its guiding spirit the Trotskyist Minister of Constitutional Affairs have to say about the basic principles that helped fashion the new structure. Central to the constitution, Dr. Colvin R de Silva insisted, and informing its every aspect is that in the Republic of Sri Lanka sovereignity is in the people and is inalienable. The unicameral National State Assembly is the instrument for the exercise of their sovereignity by the people. The National State Assembly is the supreme instrument of the state power of the Republic:

> "It constitutes the legislature; the executive is drawn from it, and made responsible and answerable to it; and the courts are of its creation.
>
> . . . The legislative, the executive and the judicial functions are only three aspects of the single power of the people and that organic unity of three aspects of power is carried into the organisation of the state[5]."

The conception of the National State Assembly as the vehicle of sovereignty by the people finds final expression in the provision which denies to the courts the power or jurisdiction to pronounce upon the validity of the laws enacted by the Assembly. The functions of the courts are confined to the interpretation of the laws. Though it was not the intention of the framers of the Soulbury Constitution to provide for judicial review of the constitutionality of enacted legislation, the courts have assumed the power of judicial review as implied in a rigid constitution. Under the new constitution, a Constitutional Court will be established whose duty would be to participate in the process of legislation as the adviser to the National State Assembly on the question of whether any provision of a bill offends the constitution in any way. Its advice is made binding on the National State Assembly which has to provide a special majority of two-thirds of its nembers if the Constitutional Court advises that the provisions of a bill offend the constitution. The Speaker of the National State Assembly is bound by the decision of the Constitutional Court, and this decision is conclusive for all purposes. The framers of the Constitution claim that this device of a Constitutional Court is "perhaps the novel feature of the constitution[6]". But it has a striking similarity to the Constitutional Court under the Fifth Republic in France.

The new constitution brings the entire administrative structure of the country under the control of the Council of Ministers. The United Front government's two year tenure of office so far has been notable for a politicisation of the civil service both at the level of the higher bureaucracy and in the lower ranks. The politicisation of appointments in the more sensitive and influential positions in the higher bureaucracy stems from the government's belief that committed men at the top are essential for the purposeful implementation of socialist policies. This process of politicisation has been accompanied by the establishment of institutional checks on the bureaucracy at a popular level both within the bureaucracy and outside it. The provisions of the new constitution relating to the bureaucracy are the logical extension of this trend; they give legal and constitutional form to a fundamental departure from the British concept of an independent public service and the introduction of a version of the American spoils system.

Under the Soulbury system the Public Service Commission (P.S.C.) and the Judi-

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5 Dr. Colvin R de Silva, in an interview with the Editor-in-Chief, Ceylon Observer (Sunday Magazine) 21 May 1972.

6 Dr. Colvin R de Silva, interview with Editor-in-Chief, Ceylon Observer (Sunday Magazine) 21 May 1972.

cial Service Commission (J.S.C.) served as buffers between the bureaucracy and the judiciary on the one hand, and the political leadership on the other. Of these two, the P.S.C. was intended to serve two potentially contradictory purposes: to give effect to the principle of ministerial responsibility to parliament for the public service, and at the same time to guarantee the independence of the public service from ministerial control in the matter of appointments, transfers, dismissals and disciplinary control. Neither purpose was satisfactorily served. For instance, a Cabinet Minister could, while using pressure on the Public Service Commission on behalf of, or against, a candidate, plead in Parliament that he could not be held responsible for decisions taken by the Commission. The Judicial Service Commission on the other hand worked much more efficiently. But then the judiciary has been a field in which interference by outsiders was difficult and carried the danger that public opinion sensitive to the need to protect the independence of the judiciary, was bound to be hostile if such interference was made known or exposed. Under the new constitution, the Public Service Commission and the Judicial Service Commission are abolished, and in their place there will be boards which are independent bodies appointed by the President, or consisting of the highest judges of the land. As regards the bureaucracy, it is claimed that these boards would serve as controlling or regulating bodies "without entrenching upon the Cabinet's task of governing the country".

The President is the head of State in the new republic. He is not elected, directly or indirectly, but nominated by the Prime Minister. There is no change, in this respect, from the Governor General under the Soulbury Constitution who was also nominated by the Prime Minister except that with regard to the President it is clearly laid down in the constitution that he is appointed for a period of four years. The process of election undoubtedly confers dignity and authority on the office of President; conversely nomination by the Prime Minister detracts both from the dignity and authority of the President. In two respects, both of crucial significance, the powers of the President under the new constitution are inferior to those of the Governor-General under the Soulbury system: first, the removal of the residuary powers which were vested in the Head of State by the Public Security Act, and the investment of almost all these powers in the head of the political executive; and secondly, the new constitution has incorporated as law some of the constitutional conventions relating to the powers and functions of the Head of State. Under the Soulbury Constitution these powers and functions were to be exercised, as far as may be, in accordance with the constitutional conventions applicable in the exercise of similar powers in the United Kingdom by Her Majesty the Queen. These British conventions have nowhere been authoritatively laid down, and constitutional lawyers sometimes hold contradictory views as regards these. In Ceylon difficulties and doubts have arisen in the past especially with regard to the obligation of the Governor-General as Head of State to accede to the request by a Prime Minister for a dissolution of Parliament. The new constitution spells out the circumstances in which such a dissolution may be granted or refused. The initiative and discretionary authority of the Head of State are thus substantially reduced.

The new constitution, unlike its predecessor, incorporates a chapter on Fundamental Rights and Freedoms including; the equality of all persons before the law; the prohibition of discrimination in public employment on the grounds of religion, race, caste or sex; freedom of thought, conscience and religion; pro-

tection of life and personal liberty; freedom of speech, of peaceful assembly and of association and freedom of movement and residence. The framers of the constitution claim that as a result of the incorporation of these Fundamental Rights and Freedoms in the Constitution, any bill or provision in a Bill may be challenged in the Constitutional Court, and any administrative act or order may also be challenged in the ordinary courts on the grounds that they infringe the provisions of the constitution relating to fundamental rights and freedoms. As against this there is the fact that the chapter on Fundamental Rights and Freedoms is not sufficiently comprehensive. Besides their effect is practically nullified by the wide-ranging scope of the restrictions on these rights and freedoms incorporated in Section 18(2) of the constitution. This section reads as follows:

> "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 freedoms of others or giving effect to the Principles of State Policy set out in Section 16."

Section 16 of the constitution sets out certain Principles of State Policy which bear a strong imprint of the government's political outlook and commitments — the realisation of the objectives of a socialist democracy. These principles are not justiciable and the constitution in fact states that they do not confer legal rights and are not enforceable in any court of law. The principles are set out, as in some constitutions, in order to guide the making of laws and the governance of the country. The Indian Courts have held that such Principles are in the nature of instructions which the National Legislature and Government are expected to follow in terms of the constitution. Opposition parties have singled out Section 2(c) of the chapter on Principles of State Policy for criticism. This section refers to

> "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".

Even if one dismisses as exaggerated the charge that this makes a particular economic ideology a constitutional principle and thereby deprives the sovereign people of their undoubted democratic right to determine economic policies from time to time at periodic elections, there is considerable validity in the argument that principles of state policy set out in a constitution should be broad enough to receive the endorsement of all major parties.

The Politics of Constitutional Reform II

The new constitution was promulgated on 22 May 1972 in the name of the people. The fundamental principle of the constitution, the government has so often proclaimed, is that sovereignty lies in and with the people. There is thus considerable irony in the fact that the constitution was discussed with a State of Emergency in force under which the right to hold public meetings and organise demonstrations was severely restricted, and the censorhip of the press placed curbs on free expression. Public participation in the process of constitutional reform

"has been minimal, not because the public did not want to participate, but because the procedures were such as to make participation minimal[7]".

A referendum on the new constitution might have been some compensation for the lack of opportunities of free discussion on the constitution, and public participation in the constitution making. Instead the government was satisfied with the adoption of the constitution by a majority (a twothirds majority) of the Constituent Assembly, a process which could by no stretch of the imagination be interpreted as the assent of the sovereign people to the constitution as promulgated. There was one other line of action: the government may have held a general election for the National State Assembly immediately after the inauguration of the new constitution. The country was given no such opportunity. Instead the ruling coalition has given itself a term up to 1977, i. e. two years beyond the five year term for which it was elected in May 1970.

In June 1971 the Constituent Assembly resolved that the National State Assembly under the new constitution would go on for a period of six years after the Constituent Assembly adopted the new constitution. Since the present Constituent Assembly (which was no more and no less than the House of Representatives elected in May 1970) would be the first National State Assembly under the new constitution this would have meant that the Parliament elected in May 1970 would probably have a life span of eight years. This, the opposition urged was a breach of faith with the people who had not been given any indication in May 1970 that they were electing a Parliament for anything more than the normal five year term provided for by the existing constitution. They argued that the government had no mandate from the people for this extending the life of Parliament. Under strong pressure from opposition groups in the Constituent Assembly the government decided, in 1972, to reduce the term of the first National State Assembly to five years (All future National State Assemblies would go on for a term of six years). This revision which was announced in the Constituent Assembly on 8 May 1972 did not satisfy the opposition.

In defence of its position on this issue the government advanced two lines of argument. There was first the purely legalistic one from the Minister of Constitutional Affairs, that:

"it is a mistaken notion that the provision in the Constitution is a device to extend the life of the House of Representatives. With the new Constitution the House of Representatives simply fades out of the picture. The members of the first National (State) Assembly are appointees of the Constitution and like the first Prime Minister are the key to initiation of the functioning of the Constitution . . .".

The second line of argument was the rather more pragmatic approach adopted by the Prime Minister, Mrs. Sirimavo Dias Bandaranaike. She informed the Constituent Assembly on 12 May 1972 that the reduction of the term of life of the first National State Assembly to five years had been made at her suggestion and had been decided upon after careful thought. She argued that the government needed time to implement its Five Year Plan. Because of the insurrection of 1971 one whole year had gone by without any time to devote to development. While Dr. Colvin R de Silva saw in this the Prime Minister's "characteristic responsiveness to public opinion", opposition critics could not help asking what the

7 Seneka, "The Restless Ecstasy of Power", in The Times of Ceylon, 22 May 1972, special supplement.

situation would have been if instead of a Five Year Plan, it had been a Six, Seven or even Ten Year Plan that the government had introduced in 1971. The Prime Minister also claimed that the people had given the government a clear mandate to adopt and operate a new constitution, and in so doing they had left the Constituent Assembly completely free in respect of such matters as the first National (State) Assembly. The Prime Minister's pragmatism was no more convincing than the legalistic arguments of the Minister of Constitutional Affairs. The Government has used its overwhelming majority in the Constitutent Assembly to give itself an extended term of life. The oppostion maintained that the government had no legal or moral right to use the process of constitution-making to extend its term of office, especially because when it went to the polls in 1970 it did not tell the people that this would be done.

The government's action in this regard was unprecedented in the annals of the constitution-making in democratic societies, and was also wholly without justification. It was the low point of the whole process of constitution-making, where the government demonstrated scant regard for any considerations of its own sense of public intergrity. It had the immediate effect of giving the constitution itself a grossly partisan outlook and ensuring thereby a further erosion of any national consensus on the constitution. Mr. Dudley Senanayake, former Prime Minister and leader of the United National Party stated that this unilateral extension of the government's normal term of office was one of the main reasons for his party's decision to vote against the adoption of the new constitution.

On 19 July 1970 when the Prime Minister moved that the Members of Parliament proclaim themselves the Constituent Assembly of the people of Sri Lanka for the purpose of adopting and enacting a Constitution for Sri Lanka, her resolution was accepted unanimously, and there was the appearance of a national consensus on the basic elements of constitutional reform. But the consensus was more apparent than real. A demoralised opposition confronting a government at the height of its very real popularity and prestige was too weak to do more than follow where the government led, even though they had very real doubts and reservations about the process of constitution-making adopted by the government, and the proclaimed aims of the new constitution. One of the most striking developments since then has been the withdrawal of support by opposition parties to the new constitution. What began as a national endeavour with popular support, ended as a party affair with lukewarm public support. In May 1971 the U.N.P. members of the Constituent Assembly staged a well-publicised walk-out in protest against the continuation of the process of constitution-making against the background of an insurrection and national emergency. But this was a mere token walk-out for they returned to the Assembly after a day's absence. By the end of June 1971 the Federal Party the major Tamil party in the country had made the crucial decision to boycott the Constituent Assembly as a protest against the failure to provide adequate protection for minority rights. The Federal Party never returned to the Constituent Assembly thereafter.

The rift between the Federal Party and the government had emerged over the question of language rights. As against the proposal that: "All laws shall be enacted in Sinhala. There shall be a Tamil translation of every law so enacted", the Federal Party moved an amendment to the effect that Sinhala and Tamil should be the languages in which all laws should be enacted and that Sinhala and Tamil should be the official languages of Sri Lanka, the languages of the courts, and the langu-

ages in which all laws shall be published. This amendment led to an acrimonious debate. The government argued that the amendment was tantamount to a total rejection of the existing position — a consensus achieved through the years — with regard to the national language, a position which the Federal Party itself had accepted. It added that this amendment would be totally unacceptable to the people. On 28 June 1971 the Federal Party amendment was defeated by a vote of 87 to 13 upon which its Members walked out of the Constituent Assembly and declared their intention not to participate further in its deliberations.

That there was a consensus on language to which the Federal Party too had given its tacit acceptance is incontrovertible. At the same time it is important to remember that section 29 of the Soulbury Constitution — the clause relating to minority rights — was an integral element in this consensus.Though the protection it afforded the minorities was less comprehensive than the framers of the constitution intended, the fact that it was regarded as an entrenched clause which could not be amended acted as a deterrent against patently discriminatory legislation. The government resorted to the device of a new constitution partly at least because it afforded the means of eliminating Clause 29. Once this vital clause had been removed a significant element in the consensus on language had been unilaterally discarded to the detriment of the minorities. The substitution of a chapter on Fundamental Rights and Freedom in the new constitution was far from being adequate compensation for this. Thus it was no longer possible to speak of a consensus on language which the Federal Party itself had come to accept, tacitly or otherwise.

Had the government treated the Federal Party amendment on language as a bargaining point through which a viable compromise on language could have been evolved, and incorporated in the constitution, it would have been not merely a magnanimous gesture but an act of statesmanship which would have contributed to the stability of the country. Indeed Mrs. Bandaranaike herself in her formal opening address to the Constituent Assembly on 19 July 1970 asserted that the new constitution must set the seal on the country's freedom, sovereignty and independence, and must be acceptable for the twofold task of enabling the nation to complete its advance to the socialist democracy to which the people had pledged themselves, and in a multi-religious and multi-racial country, serving to build a nation "ever more conscious of its one-ness amidst diversity". The government's attitude on the language rights of the Tamils is evidence that this latter objective never received very high priority in formulating the new constitution.

The government could perhaps plead that it was politically inexpedient to accept the Federal Party's amendment on language introduced in the Constituent Assembly in late June 1971. But the categorical assertion by the Minister of Constitutional Affairs on 9 May 1972 that the regulations enacted by the Senanayake Government in 1966 under the Tamil Language (Special Provisions) Act, would not be valid in law under the new constitution, was both intransigent and short-sighted. It is true that the present government had been opposed to these regulations and pledged themselves to remove them, but then nobody expects a government to honour every pledge it gives to the electrorate. And besides the present government had left many other pledges unhonoured.

Indeed opposition to the constitution brought the two main Tamil parties, the Federal Party and the Tamil Congress together for the first time since 1948. They

joined forces in May 1972 to convene a meeting of Tamil leaders to discuss the new constitution, and this meeting (held at Trincomalee on 14 May 1972) unanimously endorsed a resolution to boycott the ceremonial meeting of the National State Assembly on 22 May 1972. Significantly too, among the participants at this conference were representatives of the Ceylon Workers Congress which is not merely the largest trade union in the country, but also the main representatives of the Tamil speaking Indian plantation workers in the island. Hitherto the Ceylon Tamils and the Tamil speaking Indian plantation workers in the island have seldom co-cordinated their political activities. One of the resolutions adopted at the Trincomalee conference explained why it was decided to reject the constitution:

> "The Constitution has completely failed to meet the legitimate aspirations of the Tamil speaking people by refusing to grant constitutional status to the Tamil language in the fields of education, administration and justice, and thereby reduces them to the position of second class citizens in their own country."

The Tamil minority was thus decisively alienated. The sensibilities of opposition groups among the Sinhalese were offended by the manner in which the government approached the question of constitution-making. It was inevitable that the constitution would come to bear the ideological stamp of the political groups which formed the government and every realistic opposition politician would have anticipated such an outcome, but they had reason to hope that the government would treat this as a national and nationbuilding enterprise. Instead almost inexorably the process of constitution-making took on a partisan outlook, and the state's propaganda machinery sought to make political capital out of this enterprise and to identify it with the government parties to the exclusion of others.

Thus the grant of Dominion Status on 4 February 1948 was down-graded, and the celebration of national independence on 4 February ostentatiously rejected for the future in favour of 22 May which is to be termed Republic Day. Briefly the assumption of Republican status was identified with the attainment of independence. Moreover, official news coverage of the establishment of the republic focussed all attention on the political careers of the Bandaranaikes, husband and wife, and endeavoured to give the impression that the credit for the attainment of independence was theirs alone. Indeed one senior Cabinet Minister succeeded in writing and article in which the transfer of power from the British to the Ceylonese in 1948 was discussed without mentioning the name of the island's first Prime Minister after independence, Mr. D. S. Senanayake[8]. It became more amusing when the same article referred to the contribution of F. R. Senanayake (the elder brother of D. S. Senanayake) to the movement for national independence though F. R. Senanayake had died in late 1925 after a brief career in politics which could not be compared with that of his younger brother. A national endeavour became a partisan affair, and the new constitution far from bringing the people together, ensured the perpetuation of communal disharmony, and aggravated political rivalries.

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8 Mr. Maithripala Senanayake "A People's Constitution for Sri Lanka" in The Times of Ceylon 22 May 1972, special supplement. Mr. M. Senanayake, is a Vice President of the S. L. F. P., Minister of Irrigation, Power and Highways, Leader of the National State Assembly.

In the final phase of the Constituent Assembly's life it became clear that the United National Party would vote against the adoption of the new constitution. On 22 May at the final sessions of the Constituent Assembly Mr. Dudley Senanayake (the son of D. S. Senanayake) the Leader of the United National Party explained at length why his party (which had won 37.8% of the vote at the last elections) was voting against the new constitution. While they were "clearly and unequivocally . . . in full accord with the government that the new Constitution should declare Ceylon a free sovereign and independent Republic", the constitution contained too many obnoxious and potentially dangerous features to merit their support.

Thus the establishment of the Republic of Sri Lanka was the one feature of the new constitution which attracted support extending beyond the ranks of the government. It was the most constructive achievement of the Constituent Assembly. In every other respect it is doubtful if the new constitution is in any way a distinct improvement on its predecessor.

Conclusion

Constitution-making, as the Minister of Constitutional Affairs so often emphasised, is first and last an exercise in political power. Public support is the indispensable guarantee of the endurance and viability of a constitution. Had the new constitution been introduced in 1970 when the government enjoyed unparalleled popularity, and prestige, there would have been an enthusiastic endorsement of the new constitution by the nation. But 1972 is a different proposition. The remorseless pressure of economic decline — inflation, unemployment and falling output in every sphere of activity — combined with the near civil war of 1971, have drastically eroded the popularity of the government, and shattered its self-confidence. The insurrection had been a challenge to its credibility as a genuinely socialist government. A new constitution at this point did not evoke any positive support from the people. It is significant that in a country where public holidays are declared with gay abandon, 22 May 1972 when the new constitution was inaugurated, and 24 May 1972 when a formal religio-political ceremony in honour of the new Republic was held, were working days. The official reason given was that the government prefered austere ceremonies which did not interfere with the work of the community: the emphais was on restraint, moderation and good sense. But the celebrations evoked no genuine enthusiasm, and indeed few public events in the island's recent history attracted less public interest than the inauguration of a constitution which was trumpeted to mark the transition to a "genuine" independent status for the island. It was political expediency and not practical good sense which prompted the government to impose restraints on the official celebrations.

Sri Lanka (Ceylon) — The New Republican Constitution

By K. M. de Silva

The new constitution of Sri Lanka, replacing the former British-sponsored Soulbury system, was promulgated on 22 May, 1972. It ought to be the proper manifestation of people's sovereignty, but it was written with a minimum of public participation. By promulgating the constitution the ruling coalition has given itself a term up to 1977, i. e. two years beyond the five year term for which it was elected in May 1970! Indeed few public events in the island's recent history attracted less public interest than the inauguration of a constitution which was trumpeted to mark the transition from British Dominion Status to a "genuine" independence which in the very end however came out as a mere partyaffair.
There are some new features in the 1972 constitution, which are to remove the "shortcomings" of the old Soulbury-Constitution:

1. One achievement is the formal dissolution of the link with the British crown.
2. Elimination of all clauses which safeguarded minorities against discriminatory legislation, e. g. Tamil will be excluded as an official language of Sri Lanka.
3. No more right of judicial review by the Courts over the constitutionality of legislation passed by parliament.
4. Replacement of the former bicameral legislature by the unicameral National State Assembly as an instrument of people's sovereignty.

The system now may be described as a centralised democracy in which the most dominant element is the political executive which in comparison with the former constitution has fewer built-in checks on the abuse of political power.

Dutch Colonial and Indonesian Nationalist Policies toward the Chinese Minority in Indonesia

By Mary F. Somers Heidhues

The paper explores the political organization (Kapitan system) and social role of the non-assimilated Chinese within Indonesian society (Peranakans) under colonial rule and the reasons for their resistance to assimilation. Faced with many new immigrants from China early in this century the colonial government made certain concessions (e. g. Dutch language schools) to the Chinese minority, in order to win over at least the Peranakan element. Chinese born in the Indies were recognized as Dutch subjects in 1910, in an effort to limit China's influence over that group. But the colonial authorities also restricted certain activities of the Chinese in order to protect the natives from economic "exploitation" by Chinese traders or moneylenders. The governments of independent Indonesia followed the same general line and attempted to control the economic activities of the Chinese, to restrict their access to Indonesian citizenship, and to promote indigenous businesses. Although resistance to assimilation still persists, such possibilities for Chinese with Indonesian citizenship have opened in recent years. At the same time, the alien Chinese, who have been subjected to discrimination and countless hardships, have been given limited opportunity to acquire Indonesian citizenship. Although eventual assimilation is a matter of decades, if not of generations, such changes may contribute to the erosion of the Chinese minority in Indonesia in the future.