

Parliamentarism in Bangladesh: Lessons for Sri Lanka

Gayanthi Ranatunga¹

Peter Reid²

This article deploys a qualitative comparative analysis between Bangladesh and Sri Lanka on constitutions and parliamentarism. Both these South Asian countries began independence with a Westminster model of government. Bangladesh exhibits some successes with parliamentary design which could be replicated in Sri Lanka. Therefore, the study explores Bangladesh's key lessons in parliamentarism: The role and appointment of a ceremonial president; political accountability; floor-crossing; parliamentary committees; and Bangladesh's Technocrat Ministers. Based on John Stuart Mill's most similar cases principle well known as "method of difference", this study select case studies that control for variables as far as possible, by being as similar as possible on everything other than the factor those are researching, then that is the causal factor in any diverging outcomes. The findings suggest that Bangladesh's innovations in political accountability, parliamentary committees, and Technocrat Ministers which could be replicated in Sri Lanka. Also, Sri Lanka should design a presidential balancing mechanism. On the other hand, floor-crossing provisions in Bangladesh should probably not be a feature of the Sri Lankan system. Therefore, this comparative analysis helps Sri Lanka to avoid pitfalls and recreate successes that other countries have already experienced.

Introduction

This paper examines Bangladesh's constitutional experience since 1991 and deploys a qualitative comparative analysis to glean lessons for Sri Lanka. We begin by describing our case selection. These two countries are seldom directly compared, normally featuring only as components of wider South Asia analyses. However, affinities in Bangladesh and Sri Lanka's histories, cultures, and politics suggest an unexplored angle for researchers. The paper goes on to discuss Sri Lanka's constitutional history and its compatibility with parliamentarism. Finally,

¹ The author is an early career researcher with the Centre for Policy Alternatives in Colombo, Sri Lanka. She has an initial BA and MA in English Language and Literature from Wichita State University, Kansas, USA. She also has an MPhil in Race, Ethnicity and Conflict from Trinity College Dublin, Ireland and an LLM in International Law and International Relations from the University of Bristol, UK. The author can be reached at gayanthi.ranatunga@gmail.com

² The author is a PhD student at the University of Edinburgh. He also holds a Masters by Research from the University of Edinburgh, in which he compared the Presiding Officer of the Scottish Parliament to the Speaker of the House of Commons. The author can be reached at P.Reid@ed.ac.uk

we explore Bangladesh's key lessons in parliamentarism: The role and appointment of a ceremonial president; political accountability; floor-crossing; parliamentary committees; and Bangladesh's Technocrat Ministers. Bangladesh exhibits some successes with parliamentary design which could be replicated in Sri Lanka. There are also cautionary experiences which Sri Lanka can avoid with alternative constitutional structures.

Why Compare Bangladesh and Sri Lanka?

Hirschl urges those in Comparative Constitutional Studies to apply careful processes to their case selection. Although this is not, strictly speaking, a comparative study, nonetheless there are aspects of Hirschl's work that are helpful in understanding the *predictive* value of Bangladesh for future constitutional changes in Sri Lanka. Our selection is based on the "most similar cases" principle. It is designed to isolate structural features of parliamentarism as causal factors on constitutional operation in the contexts of Bangladesh and Sri Lanka.¹ We *forecast* how these designs would affect politics in Sri Lanka based on their effects in Bangladesh. The most similar cases principle was formulated by John Stuart Mill (originally Mill's "method of difference") and is based on the following logic: If we select case studies that control for variables as far as possible, by being as similar as possible on everything *other* than the factor we are researching, then that is the causal factor in any diverging outcomes.² In our case selection, we draw on this approach. We assume that structural designs in a parliamentary system can affect political outcomes. Because we are trying to predict the impact of different structures on Sri Lankan democracy, we look for a country (Bangladesh) which is as similar as possible apart from the fact that it operates parliamentarism. This comparison controls for constitutional history, social/political practice, and military influence in politics. We survey the existing literature on parliamentary design and political outcomes in Bangladesh and work from the assumption that there would be similar causality in the case of Sri Lanka.

Affinities with Bangladesh make it an appropriate comparator for constitutional scholars in Sri Lanka. Both these South Asian countries began independence with a Westminster model of government. This has created enduring legacies in domestic expectations of constitutionalism, particularly towards a strong executive and unitary state. Despite well-known complexities in Sri Lanka, the dominant political parties in both countries favour these constitutional norms. Furthermore, there are also cultural similarities which influence constitutions' operation.

¹ Ran Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Oxford University Press 2014) 224–281.

² John Stuart Mill, *A System of Logic*, vol 1 (Cambridge University Press 2011) 450–479.

Specifically, both countries have a history of personalized, patronage-oriented, dynastic rule.³ These are two significant variables – in constitutional history and social/political practice – for which this paper controls.

This comparison also controls for military influence in political and public life. Since the nation's birth, Bangladesh's military has been omnipotent in politics. We trust that the members of this conference are already acquainted with this history. On the other hand, Sri Lanka's military has never had such an overt political presence and, more notably still, Sri Lanka has never had a successful military coup. Nonetheless, the Sri Lankan military's role in public life and its increasing presence in politics makes Bangladesh an appropriate comparator. The military does not have an identical role in both countries, nonetheless it is sufficiently similar to merit this case selection. Although the Sri Lankan armed forces have a high profile due to the protracted civil war, their role in politics has traditionally been minimal. Aside from the failed coup attempts of 1962 and 1966, there has been no aggressive attempt to subjugate civilian power to its command.⁴ The armed forces have certainly been used by the Sinhala- Buddhist state to subdue minorities and insurrectionists,⁵ but this traditionally gave them a revered place in the nationalist narrative, only.⁶ General Sarath Fonseka, an architect of the civil war victory, made a foray into politics but was unable to translate his military accomplishments into victory in the 2010 presidential elections.⁷ Despite this traditional restraint, however, the military is increasingly invested in the client-state apparatus, as evidenced by its leading role in delivering COVID-19 response services. This is a hangover from the post-war practice of maintaining the military's size by giving it civil administrative duties.⁸ Furthermore, there has been a spate of military appointments to civilian positions by President Gotabaya Rajapakse. These appointments and Gotabaya's own use of military symbolism in politics have blurred the

³ H Kumarasingham, 'Elite Patronage over Party Democracy – High Politics in Sri Lanka Following Independence' (2014) 52 *Commonwealth & Comparative Politics* 166; Dina Mahnaz Siddiqi, 'Political Culture in Contemporary Bangladesh Histories, Ruptures and Contradictions' in Ali Riaz and C Christine Fair (eds), *Political Islam and Governance in Bangladesh* (Routledge 2011); Stanley A Kochanek, 'Governance, Patronage Politics, and Democratic Transition in Bangladesh' (2000) 40 *Asian Survey* 530; H Blair, 'Party Dysfunction and Homeostasis in Bangladesh' in Ipshita Basu, Joe Devine and Geoff Wood (eds), *Politics and Governance in Bangladesh* (Routledge 2018); Khristine Höglund and Anton Piyaarathne, 'Paying the Price for Patronage: Electoral Violence in Sri Lanka' (2009) 47 *Commonwealth & Comparative Politics* 287.

⁴ KM de Silva, 'Sri Lanka: Political-Military Relations' (Netherlands Institute for International Relations 2001) <https://www.clingendael.org/sites/default/files/pdfs/20011100_cru_working_paper_3.pdf> accessed 16 November 2021.

⁵ Ayesha Siddiqi, 'Sri Lanka's Military: From Ceremonial to Professional' (*Oxford Research Encyclopedia of Politics*, 25 March 2021) <<http://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1854>> accessed 16 November 2021.

⁶ However, in the north and the east of Sri Lanka, populated mainly by Tamils and Muslims, the military has already been inserted into civilian life in a manner not traditionally seen elsewhere in the country. Darini Rajasingham-Senanayake, 'Dysfunctional Democracy and the Dirty War in Sri Lanka' (East-West Center 2001) <<https://www.files.ethz.ch/isn/28203/api052.pdf>> accessed 16 November 2021.

⁷ Agence France-Presse, 'Ex-Army Chief Sarath Fonseka, Jailed for Treason, Made Field Marshal in Sri Lanka' *The Guardian* (23 March 2015) <<https://www.theguardian.com/world/2015/mar/23/ex-army-chief-sarath-fonseka-jailed-for-treason-made-field-marshal-in-sri-lanka>> accessed 27 November 2021.

⁸ Asanga Welikala, 'Yahapalanaya as Republicanism' in Asanga Welikala (ed), *The Nineteenth Amendment to the Constitution: Content and Context* (Centre for Policy Alternatives 2016) 96.

traditional distinction between the two spheres.⁹ Therefore, the Sri Lankan military is an increasingly important force in political and public life and, despite important differences with Bangladesh, can be considered a controlled variable within this study.

Varying political tactics in Sri Lanka and Bangladesh should not affect this study's findings. While boycott-politics does not exist in Sri Lanka, this politics' effect is well-documented in the Bangladesh literature, and we can still predict how parliamentarism would function if it were not present. This paper argues that Sri Lanka is particularly suited to parliamentary democracy, and the custom of boycott-politics was the most significant factor in causing parliamentarism's failures in Bangladesh. Street agitation and hartals as they appear in Bangladesh are also not a fixture of the Sri Lankan political landscape. As discussed below, Sri Lankan opposition parties are unable to call *hartals* and disrupt the day to day running of the country. The existing literature sufficiently investigates the contours of this practice in Bangladesh and its interactions with parliamentary democracy in creating certain outcomes. Therefore, we can still envisage the effects of parliamentary procedures on Sri Lankan politics as long as we are sensitive to the impact of boycott-politics.

This paper fails to control for the nature of the political divide in Sri Lanka and Bangladesh. No cognate exists in Sri Lanka for the searing Awami League (AL)/Bangladesh Nationalist Party (BNP) animosity. Here, the AL present themselves as the keepers of a "secular Bengali cultural identity and values" valorising Mujib. On the other side, the BNP claim to uphold an Islamized Bangladeshi nationalist identity heroizing General Zia.¹⁰ The founding politics of Bangladesh under Sheikh Mujibur Rahman created tensions that led to his assassination and set in motion the divisive politics that continue to this day. The AL represents a secular Bengali pride that claims to uphold the values of independence and its freedom fighters. The BNP have oriented towards a unique mix of economic liberalism, opportunistic Islamization and a Bangladeshi nationalism that downplays the mythos of independence.¹¹ In Sri Lanka, on the other hand, the animating political force has been a preoccupation with Sinhala-

Buddhist nationalism and its conception of non-Sinhala, non-Buddhists. While Bangladeshi society is "widely unmarked by the rigidities of ethnic, caste or other forms of social distinction,"¹² Sri Lanka has long languished in ethnic demarcations. The ideology of Buddhism espoused by the majority of the Sinhala-Buddhists on the island has little congruence with scriptural Buddhism. Nonetheless, it cements the image of Sri Lanka as the home of its

⁹ Laxmanan Sanjeev, 'Is Sri Lanka Becoming a De Facto Junta?' (*Foreign Policy*)<<https://foreignpolicy.com/2020/07/17/sri-lanka-junta-gotabaya-rajabaksa-military/>>accessed 16 November 2021.

¹⁰ Siddiqi (n 3).

¹¹ Ayesha Jalal, *Democracy and Authoritarianism in South Asia: A Comparative and Historical Perspective* (Cambridge University Press 1995) 116.

¹² Naomi Hossain, 'Rude Accountability: Informal Pressures on Frontline Bureaucrats in Bangladesh' (2010) 41 *Development and Change* 907, 924.

Sinhala-Buddhist majority, or *dharmadwipa*.¹³ The near thirty-year civil war was a direct result of this ethno-nationalist divide. Although hierarchies exist, ethnicity has determined political outcomes. A significant weakness of this paper is that it fails to control for the different political divides in Sri Lanka and Bangladesh. It is possible that non-Sinhalese minority parties would have a different attitude to parliamentary procedures than any political group in Bangladesh. However, Sinhalese dominance in politics and Sri Lankan minority parties' preoccupation with decentralised government suggest that there is still scope to compare the two countries.¹⁴ Certainly, this comparison controls *as far as possible* for differences between systems in a qualitative analysis.

Why Parliamentarism for Sri Lanka?

This section briefly recounts Sri Lanka's constitutional history and the cultural factors that make parliamentarism an appealing choice of government.

Constitutional History

To understand the different constitutions that have been operated throughout Sri Lanka's history, we must first understand the categories of constitutionalism available to democratic governments. Over time, Sri Lanka has shifted between these categories. This discussion also helps us envisage the role of the head of state in a future parliamentary system.

Presidentialism, parliamentarism, and semi-presidentialism are normally defined by head of government, cabinet, and head of state selection and removal processes.

Some would also include assembly dissolution procedures.¹⁵ Starting with Linz's account of the *Perils of Presidentialism* in 1990, political theorists have extensively debated the political repercussions of a country's choice of system. A by-product of this debate is a detailed classification matrix for presidential, parliamentary, and various semi-presidential structures.¹⁶ While some would include assembly dissolution procedures as a defining characteristic,

¹³ Tessa J Bartholomeusz, *In Defense of Dharma: Just-War Ideology in Buddhist Sri Lanka* (Routledge 2002).

¹⁴ *ibid* 32–67.

¹⁵ John M Carey, 'Presidential versus Parliamentary Government' in Claude Ménard and Mary M Shirley (eds), *Handbook of New Institutional Economics* (Springer 2008).

¹⁶ Juan J Linz, 'The Perils of Presidentialism' (1990) 1 *Journal of Democracy* 51; Juan J Linz and Arturo Valenzuela (eds), *The Failure of Presidential Democracy* (Johns Hopkins University Press 1994); Alfred Stepan and Cindy Skach, 'Constitutional Frameworks and Democratic Consolidation: Parliamentarianism versus Presidentialism' (1993) 46 *World politics* 1; Matthew Soberg Shugart and John M Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (Cambridge University Press 1992); Maurice Duverger, 'A New Political System Model: Semi- Presidential Government' (1997) 31 *European Journal of Political Research* 125; Robert Elgie, 'Presidentialism, Parliamentarism and Semi-Presidentialism: Bringing Parties Back In' (2011) 46 *Government and Opposition* 392.

parliamentary and presidential systems are generally distinguished on the sole ground of whether the head of the executive is dependent upon the legislature for origin and survival.¹⁷ Semi-presidentialism was first discussed by Duverger, who emphasised the sharing of executive responsibility between the president and the legislature.¹⁸ However, the most-used definition is that proposed by Elgie, who wanted a classification easily utilised with any given Constitution rather than Duverger's more vague description. In this definition, a system is semi-presidential merely if "there is a directly elected president and a prime minister and cabinet that can be dismissed by the legislature."¹⁹ Although some would argue that semi-presidentialism is a sub-category of parliamentary or presidential systems in most situations,²⁰ the debate is usually now addressed through the trichotomy lens.²¹ Semi-presidential systems can further be defined as premier-presidential or president-parliamentary, depending on the balance of legislative/presidential cabinet control.²² As dominant as these categories are, they also overlook important nuances. Particularly, by flipping the perspective to better address the powers of the head of state, Siaroff has helped to theorise "parliamentary systems with a presidential corrective".²³ As discussed below, this approach is particularly useful for designing a Sri Lankan parliamentary system, where the President of Sri Lanka should balance the powers of the Prime Minister without becoming an overbearing feature in the political landscape.

The roots of the Sri Lankan parliament lie in 1833, when the colonial proto-legislature was first established. Although the then Legislative Council's powers were very limited, it was always intended as the first move towards full self-government in the future. Changes to the Council's membership and powers eventually resulted in the State Council of 1931 under the Donoughmore Constitution. This was an executive-legislative body comprising multiple committees. Finally, Sri Lanka's independence Constitution, the Soulbury Constitution, was passed in 1948. The Parliament consisted of two chambers – the House of Representatives and the Senate – operating under a Westminster model Constitution. Sri Lanka became a republic in

¹⁷ José Antonio Cheibub, Zachary Elkins and Tom Ginsburg, 'Beyond Presidentialism and Parliamentarism' (2014) 44 *British Journal of Political Science* 515, 518–519.

¹⁸ Duverger (n 16).

¹⁹ Elgie (n 16) 396.

²⁰ Arend Lijphart, 'Trichotomy or Dichotomy?' (1997) 31 *European Journal of Political Research* 125.

²¹ Cindy Skach, 'The "Newest" Separation of Powers: Semipresidentialism' (2007) 5 *International journal of constitutional law* 93.

²² Shugart and Carey (n 16).

²³ Alan Siaroff, 'Comparative Presidencies: The Inadequacy of the Presidential, Semi-Presidential and Parliamentary Distinction' (2003) 42 *European Journal of Political Research* 287.

1972 and the new Constitution removed many of the safeguards of the Soulbury structure. The cornerstone of the first republican Constitution was parliamentary sovereignty and it established a unicameral legislature known as the National State Assembly. This was then replaced with the current Constitution in 1978. This document consciously incorporated many aspects of the Fifth French Republic into Sri Lanka's institutions. The semi-presidential system was originally president-parliamentary, changing to premier-presidential in 2015 under the 19th Amendment, and then back to president-parliamentary under the 20th Amendment.²⁴

Return to Parliamentarism

There are strong arguments for a return to parliamentarism in Sri Lanka. The 2014/5 reform campaign was one of the most significant political processes in Sri Lanka's history. Politicians from polar-ends of the divide came together in calls for yahapalanaya, or good governance. These included some members of the ruling Rajapaksa's own party, the Sri Lanka Freedom Party (SLFP). The reformists campaigned to abolish the executive presidency and were elected on that mandate, a

mandate that had been gained by multiple Presidents without ever being fulfilled.²⁵ Maithripala Sirisena won the presidency in January 2015 and the coalition, led by Prime Minister Ranil Wickremesinghe, won the parliamentary elections in August of that year. The ultimate reforms, inter alia, only weakened the presidency and restored some of Parliament's executive control. However, the campaign process crystallised context-specific interactions between Sri Lankan society and constitutional design.²⁶ The strong presidency vs parliamentary control has become a facet of a much deeper ideological divide "about the very nature of the Sri Lankan state".²⁷ Welikala shows that there is a deep compatibility between Sri Lankan democratic, republican values and parliamentarism on one hand, and hierarchical ethnocracy and presidentialism on the other hand. Far from representing the values of French constitutionalism or America's founding fathers, monarchical symbolism was used to synergise Sri Lankan presidentialism with an alternative to constitutional democracy. This was not a programme to remove the electoral character of the state, however it was hostile to minority rights and scrutiny of the ruling elite.²⁸

²⁴ Pasan Jayasinghe, Peter Reid and Asanga Welikala, *Parliament: Law, History and Practice* (Centre for Policy Alternatives 2019).

²⁵ Welikala (n 8) 91.

²⁶ Aruni Jayakody, 'The Process of Constitutional Reform, January to May 2015' in Asanga Welikala (ed), *The Nineteenth Amendment to the Constitution: Content and Context* (Centre for Policy Alternatives 2016); Kalana Senaratne, 'Constitutional Reform in a Multi-Polar Setting: The Negotiation of Competing Party Political Interests in the Promulgation of the Nineteenth and Twentieth Amendments' in Asanga Welikala (ed), *The Nineteenth Amendment to the Constitution: Content and Context* (Centre for Policy Alternatives 2016).

²⁷ Welikala (n 8) 94.

²⁸ Welikala (n 8).

The Parliament of Sri Lanka continues to function with Westminster-style procedures, and this form of parliamentarism is particularly suited to intense political scrutiny.²⁹ Norton notes that, in parliamentary democracies:

The Opposition and individual opposition parties are significant actors in exposing Government to public challenge and oversight, but least effective in affecting outcomes of public policy.³⁰

Under the Westminster tradition, opposition MPs are free to conduct intense scrutiny that is both adversarial and restrained by the proper limits of rugged political debate.³¹

This environment discourages reification of the head of government and gives minority MPs an important role in the political process. Although parliamentarism is not a silver-bullet against the cult of personality (as is shown by Bangladesh),³² it is nonetheless an institutional step forward. These benefits are especially pertinent when we consider Sri Lanka's current arrangement, which adopts the executive strengths of presidentialism without the key restraints. General elections are synchronised with presidential elections to reduce the chance of cohabitation. Cohabitation has only happened twice in Sri Lanka and both periods were tumultuous. Coincidentally, France has also synchronised elections since 2003 and this has been proposed as a method of stabilising presidential democracy.³³ However, this also brings Sri Lanka's system increasingly close to Bagehot's "efficient secret" without the balance of political accountability.³⁴ Strong party control, synchronised elections, relatively unchanged Budget procedures, and presidential dissolution and reserve powers also combine to weaken MPs' hand in bargaining for public finances. This is neither a traditional Washington model, where the Budget is a process of give and take, nor is it similar to the Westminster model, which is associated with "highly developed ex post capacity".³⁵ The Sri Lankan president is free to have his cake and eat it.

²⁹ Jayasinghe, Reid and Welikala (n 24).

³⁰ Philip Norton, "Making Sense of Opposition" (2008) 14 *The Journal of Legislative Studies* 236.

³¹ *ibid* 425; Rosa Malley, "Feeling at Home: Inclusion at Westminster and the Scottish Parliament" (2012) 83 *The Political Quarterly* 714; Sandra Harris, 'Being Politically Impolite: Extending Politeness

Theory to Adversarial Political Discourse' (2001) 12 *Discourse & Society* 451; Peter Bull and Pam Wells, 'Adversarial Discourse in Prime Minister's Questions' (2012) 31 *Journal of Language and Social Psychology* 30.

³² M Moniruzzaman, 'Parliamentary Democracy in Bangladesh: An Evaluation of the Parliament during 1991–2006' (2009) 47 *Commonwealth & Comparative Politics* 100, 113–114.

³³ Mark P Jones, *Electoral Laws and the Survival of Presidential Democracies* (University of Notre Dame Press 1996).

³⁴ Walter Bagehot, *The English Constitution* (Paul Smith ed, Cambridge University Press 2001) 8–9.

³⁵ Joachim Wehner, 'Legislative Arrangements for Financial Scrutiny: Explaining Cross-National Variation' in Riccardo Pelizzo, David M Olson and Rick Staphenurst (eds), *The Role of Parliaments in the Budget Process* (The International Bank for Reconstruction and Development/The World Bank 2005) 12–13.

Therefore, there is a strong case for a return to parliamentarism in Sri Lanka. It could engage minority leaders more in political life while accepting Sri Lankans' desire for a stable executive. Combined with our proposals for the committee system (below), minority leaders would still have an important role in the law-making process without a heightened risk of gridlock. Parliamentarism would also help combat the cult of personality and introduce balances that are absent from the current system.

Lessons from Bangladesh

We now discuss specific experiences in Bangladesh that are important for Sri Lankan constitutional design. These experiences concern the head of state, political accountability, floor-crossing, parliamentary committees, and Bangladesh's Technocrat Ministers. We give primacy to the design of a constitutional head of state simply because, in this case, it presents the most interesting lessons. The Bangladesh system lacks the political balance of a high-status president with limited corrective powers. Also, the Prime Minister wields powers through the President that would be better trusted to a depoliticised authority.

Head of State

Bangladesh presents a range of lessons on a ceremonial, republican head of state. The broad lesson that Sri Lanka should take from Bangladesh is that, while the powers of the President ought to be limited, he should not be constitutionally deprived of all discretion. Also, an indirectly elected President ought to command a support base that goes beyond the governing party.

Siaroff's categorisation of regime types raises interesting questions about the possibility for otherwise ceremonial presidents to act as a restraint on executive power in parliamentary democracies. Instead of following the orthodox categorisations described in the previous section, Siaroff proposes "presidential systems, parliamentary systems with presidential dominance, parliamentary systems with a presidential corrective and parliamentary systems with figurehead presidents".³⁶ "Parliamentary systems with a presidential corrective" builds on studies of previous European systems, which were often seen as semi-presidential but with particularly weak presidents. Examples include the two earliest European instances of semi-presidentialism: Finland and the Weimar Republic. Instead of semi-presidential systems, Siaroff sees these as parliamentary systems with a presidential balancing mechanism.³⁷ He grades presidential power with binary scores for nine dichotomous propositions (for example, whether the president has government formation powers) and calculates the total from the scores' aggregate. While this is useful for broad-stroke purposes, in this paper we consider the relative

³⁶ Siaroff (n 23).

³⁷ *ibid* 308.

weight of these powers and their potential for politicisation. We propose that powers such as the right to return a Bill for reconsideration and to ask the Prime Minister to reconsider advice to the President, or to question that advice, are appropriate powers for a president in Sri Lanka. In Bangladesh, there have been calls for the President to have more formal power in this area. Article 148 requires the President to take an oath, which includes a promise to protect the Constitution. Chowdhury notes that whether the President did in fact comply with the Prime Minister's advice cannot be investigated by any court.³⁸ Also, there is a precedent of the President returning a Bill for reconsideration against the wishes of the Prime Minister.³⁹ However, whether the President ought to use a lack of judicial oversight to avoid a probable constitutional duty in order, again, to uphold the Constitution as a whole is a convoluted hypothetical that the drafters should avoid with alternative structures in Sri Lanka. These should include the explicit right to question ministerial advice and return a Bill for reconsideration. While this would bring the President into the political arena, it is envisaged that this power would only be used occasionally and in the most serious circumstances. The President's election would draw legitimacy from groups other than simply the governing party. Therefore, he could balance constitutional principles (including the democratic will of the legislature) without fear of being removed.⁴⁰

Siaroff sees a possible correlation between this kind of parliamentary democracy and instability if a president is not popularly elected. However, all of the examples he provides contain powers we view to be too political for a non-popularly elected president: discretionary appointment powers over key officials, broad emergency powers, and chairing formal cabinet meetings.⁴¹ It is not one of Siaroff's main arguments, but if there is a link between this and instability, then this may lie in the type of powers rather than the structure itself. If a president is to be a corrective, then he should act as a backstop rather than a constant political player (as would be the case in appointing officials or chairing cabinet meetings). The President of Sri Lanka could also have discretionary powers over whether to dissolve Parliament after a vote of no-confidence if he thought a new government could be formed within a reasonable time. This, or a variation thereof, was often found in

³⁸ M Jashim Ali Chowdhury, 'In Search of a President with Power' *The Daily Star* (11 August 2011) <<https://www.thedailystar.net/law/2007/08/02/analysis.htm>> accessed 7 August 2021.

³⁹ Nizam Ahmed, 'The Parliament' in Ali Riaz and Mohammad Sajjadur Rahman (eds), *The Routledge Handbook of Contemporary Bangladesh* (Taylor & Francis Group 2016) 86.

⁴⁰ A comparable example is the President of India returning the Parliament (Prevention of Disqualification) Amendment Bill, 2006 for reconsideration. The President was concerned with the Bill's use of the term 'Office of Profit' (and associated exemptions) and thereby its selective application of rules. He gave his consent to the Bill when it was returned a second time, however a Joint Committee of the Parliament was established to determine the meaning of an "Office of Profit". V Venkatesan, 'A Rare Return' *Frontline (The Hindu)* (30 June 2006) <<https://frontline.thehindu.com/the-nation/article30209953.ece>> accessed 10 November 2021; Ruchi Tyagi, 'The President of India: The Constitutional Head with Discretionary Powers' (2017) 63 *Indian Journal of Public Administration* 330, 345.

⁴¹ Siaroff (n 23) 308.

traditional Westminster constitutions.⁴² Additionally, the President could perhaps have a role in foreign policy, which would give the office more prestige. However, this would have to be designed in such a way as to minimise political output from the President's office.

There are also presidential powers in Sri Lanka and Bangladesh which would be better exercised by other authorities. The President of Bangladesh exercises important powers, including the power to appoint the Attorney General, senior judges, and commission members. Subject to restrictions, the President may also prorogue and dissolve parliament.⁴³ In all of his functions apart from the appointment of a Prime Minister and the Chief Justice, the President must act on the advice of the Prime Minister.⁴⁴ The Prime Minister therefore exercises, by proxy, some of the most important state powers which are normally entrusted to impartial authorities. Particularly, successive Governments have used the President's powers to politicise civil service appointments.⁴⁵ This is also an issue in Sri Lanka, and the previous 19th Amendment framework went a long way towards building an impartial public service. These are powers which modern Constitutions should trust to independent commissions rather than cabinet through a figurehead president.⁴⁶ In both Sri Lanka and Bangladesh, there is a further difficulty with extensive presidential powers over the parliaments' sessions. These are known as "reserve powers" in the UK and they are a feature of most Westminster model constitutions. In Sri Lanka, prorogation was used as a political tool by the President in both 2001 and 2018 in order to escape a vote of no-confidence in the Parliament. In 2018, there was also an unconstitutional attempt at dissolution. These powers appear to be particularly open to abuse when the President is a political, rather than a ceremonial, figure. Prorogation powers in Westminster democracies tend to be stronger than in European constitutions, where there is often a minority veto.⁴⁷ In a Sri Lankan parliamentary republic, dissolution powers would inevitably be held by the President, and there could be a discretionary element. However, this is

⁴² The Constitution of The Gambia 1965, Art 60(4)(a). However, for slightly different arrangements, whereby the Governor General could only allow for the formation of a new government if the Prime Minister's office was vacant, see The Constitution of Guyana 1966, Art 82(2) and The Constitution of Barbados 1966, Art 61(2).

⁴³ Article 72.

⁴⁴ Article 48(3).

⁴⁵ Habib Zafarullah, 'Public Administration and Bureaucracy' in Ali Riaz and Mohammad Sajjadur Rahman (eds), *The Routledge Handbook of Contemporary Bangladesh* (Taylor & Francis Group 2016) 98–100.

⁴⁶ Jayasinghe, Reid and Welikala (n 24).

⁴⁷ In Guyana (which is a parliamentary democracy with an executive president), the President also used prorogation to escape a no-confidence motion. Nonetheless, these powers have also been politically utilised in Canada and the UK. Anne Twomey, *The Veiled Sceptre: Reserve Powers of Heads of State in Westminster Systems* (Cambridge University Press 2018) 593; Darisha Bastinas, 'The Siege: Inside 52 Days of Constitutional Crisis in Sri Lanka' in Asanga Welikala (ed), *Constitutional Reform and Crisis in Sri Lanka* (Centre for Policy Alternatives 2019) 28; Petra Schleiter and Thomas G Fleming, 'Parliamentary Prorogation in Comparative Context' (2020) 91 *The Political Quarterly* 641; Asanga Welikala, 'The Dismissal of Prime Ministers in the Asian Commonwealth: Comparing Democratic Deconsolidation in Malaysia and Sri Lanka' (2020) 91 *Political Quarterly* 790–791.

added impetus to design a President that stands above daily politics and is not simply the Prime Minister's puppet. Prorogation powers appear increasingly like an unnecessary hangover from the independence Constitutions, and they should be weakened or abolished.

Bangladesh demonstrates that the corrective President ought to have cross-party support. The President of Bangladesh is indirectly elected by the Parliament (a unicameral body known as the Jatiya Sangsad, or 'House of the Nation').⁴⁸ Calls for reform have often included the need to diversify the appointment process, particularly to include local governments and a mandatory level of Opposition support.⁴⁹ It should be noted that although the President's appointment does little to separate the officeholder from Cabinet in Bangladesh, for the President's removal a 2/3 majority is required in the Jitaya Sangsad.⁵⁰ In the case of Sri Lanka, it is especially important that the President functions with the trust of religious and ethnic minorities as well as whatever party is in power. A good President should exercise powers in a way that is above reproach and function as a subtle restraint on excessive Cabinet control. For example, Sri Lanka would not have to be bound by the unicameral status quo. A second chamber with territorial components (such as appointments or delegations from the Provincial Councils) would give political discourse and legislative scrutiny an added dimension and diversify the presidential electoral college. Alternatively, or perhaps in addition to this, including Provincial Councils directly in the electoral college is another way to ensure the President is a unifying rather than divisive figure. These design features would also raise other questions. For example, if a second chamber was part of the electoral college, then would votes be mixed with those of the lower house or would the second chamber stand alone in a layered approach? Upper houses tend to be less numerous than lower houses, so an upper house has much more influence if 50% of its members' support is required to appoint a president compared to 50% of a mixed upper and lower house electoral college.⁵¹ Direct presidential elections would probably be unwise in Sri Lanka. Direct elections could not guarantee a broad support base and there would be the risk of Presidents using their independent mandate to accrue additional powers. Therefore, whichever model is chosen, an indirect election designed to produce a unifying figure is the best approach for Sri Lanka.

⁴⁸ Art 48(1).

⁴⁹ M Jashim Ali Chowdhury, "Constitutional Reform in Bangladesh: Exploring the Agenda" (2010) 1 *The Northern University Journal of Law* 39. See also the Shujan recommendations here <<http://www.shujan.org/>> accessed 09 August 2021.

⁵⁰ Arts 52 and 53

⁵¹ The mixed approach has by far the strongest precedent in other Constitutions. For example, in India the President is elected by a single electoral college consisting of the elected Members of both Houses of Parliament and also the elected Members of the Legislative Assemblies of the States (Article 54). A similar situation exists in Pakistan (Article 41) and Italy also gives some representation to regional councils (Article 83). Alternatively, in Germany the President is elected by the Federal Convention, which consists of 'Members of the Bundestag and an equal number of members elected by the parliaments of the Länder on the basis of proportional representation' (Art 54(3)).

Bangladesh is also a warning against presidential ordinances. Article 93(1) provides, with some restrictions, that:

At any time when Parliament stands dissolved or is not in session, if the President is satisfied that circumstances exist which render immediate action necessary, he may make and promulgate such Ordinances as the circumstances appear to him to require, and any Ordinance so made shall, as from its promulgation have the like force of law as an Act of Parliament.

These ordinances may also draw on the consolidated fund (Art 93(3)). Although this Article guides Bangladesh towards a situation where ordinances cease to have effect after a new session of Parliament begins, this is not the way that things have operated in practice. MPs, including Government backbenchers, have been irritated by Governments' proclivity to introduce laws as ordinances and then expect Parliament to pass a corresponding Act.⁵² Worse still, these ordinances are sometimes flagship laws and – when turning them into ordinary legislation – the proper procedures are not always followed.⁵³ Such practice is clearly designed to undermine the supremacy of Parliament as the legislative forum. The unconvincing scenario where ordinances may be useful – where it is not urgent enough for Parliament to be recalled but still so important that new legislation is needed – is outweighed by their actual abuse.

Political accountability

One of parliamentary democracy's key benefits is enhanced political accountability. Bangladesh has introduced accountability mechanisms that would export well to Sri Lanka. Because, Sri Lanka does not suffer from boycott-politics, these mechanisms could have more success than in Bangladesh. In Bangladesh, the PM and Cabinet are now more accessible to MPs, allowing for more effective scrutiny and institutionally engaged politics. Both the total number of parliamentary questions and those questions answered by the PM witnessed a jump between the Sixth and Ninth Parliaments.⁵⁴ The traditional view of Westminster parliaments as institutions dominated by the executive has not proved to be unequivocally true. Even in a centralised and authoritarian political climate, backbenchers and Opposition MPs have been able to exercise some influence over legislation. Furthermore, in early Parliaments after democratisation, the Speaker was diplomatic in accommodating unscheduled debates tabled by the Opposition which encouraged parliamentary rather than protest politics. Ad hoc time-allocation tempts legislative logjam, however formalising procedures can nurture political scrutiny. These debates proved instrumental in bringing awareness to the Government's

⁵² Nizam Ahmed, "Parliament-executive Relations in Bangladesh" (1997) 3 *The Journal of Legislative Studies* 70, 76–77.

⁵³ Moniruzzaman (n 32) 104.

⁵⁴ Ahmed, 'The Parliament' (n 39) 87–88.

weaknesses.⁵⁵ The introduction of PMQs was also an important step forward for Bangladesh. Although it represents a preferable alternative to an absence of scrutiny, other factors around parliamentary practice have prevented PMQs from being used to full effect.⁵⁶ A weakness in accountability identified by Bangladesh commentators is the Government's tendency to announce important policy decisions away from the dispatch box and deliberately avoid engagement with MPs.⁵⁷ Such conduct goes totally against the grain of parliamentary democracy, and there is a strong argument for codifying rules around policy announcements in the Constitution.⁵⁸

Bangladesh also demonstrates the importance of MPs being properly informed of the Government's legislative agenda if they are to function effectively. An overview of the legislative agenda is provided in the President's annual speech to Parliament, however it is not customary to distribute Explanatory Notes or White Papers. This curtails effective scrutiny by MPs and also diminishes public awareness of legislative affairs.⁵⁹ In addition, MPs must also have access to research facilities. Like many countries in recent years, Bangladesh has worked to develop the independence and quality of the Parliamentary Secretariat. The Parliament Library furnishes MPs with the information needed to discuss different policy areas and the Secretariat ensures that parliamentary business can be conducted in the interest of the legislature rather than simply the executive.⁶⁰

The absence of boycott-politics in Sri Lanka means that parliamentarism would function more effectively than in Bangladesh. When a parliament operates under Westminster model procedures, the key role and power of opposition MPs is to scrutinise government policy and practice.⁶¹ Opposition MPs should have the right to be heard (including special protections for backbenchers), the right to call on ministers to answer questions in a combative environment, and significant parliamentary resources to keep them properly informed. Clearly, if opposition MPs are not present, then none of this is relevant and the government can effectively run the

⁵⁵ Ahmed, 'Parliament-executive Relations in Bangladesh' (n 52) 80.

⁵⁶ Moniruzzaman (n 32) 121.

⁵⁷ Ahmed, 'Parliament-executive Relations in Bangladesh' (n 52) 77.

⁵⁸ Even in the UK, where this principle is long-established, recent PMs have been sternly instructed by the Speaker against announcing policy to the media instead of the Commons. Betty Boothroyd, 'The Role of the Speaker in the 20th Century' (2010) 29 *Parliamentary History* 136, 141–142; Jessica Elgot, 'Speaker Lindsay Hoyle Berates Rishi Sunak for Briefing on Budget Details' *The Guardian* (25 October 2021) <<https://www.theguardian.com/uk-news/2021/oct/25/lindsay-hoyle-berates-rishi-sunak-leaking-budget-details>> accessed 10 November 2021.

⁵⁹ M Jashim Ali Chowdhury, 'The Parliament of Bangladesh: A Critique' (2019) 2 *SCLS Law Review* 13, 15.

⁶⁰ ATM Obaidullah, *Institutionalization of the Parliament in Bangladesh: A Study of Donor Intervention for Reorganization and Development* (Springer Singapore 2019) 81–106.

⁶¹ Norton (n 30).

country without political scrutiny. Sri Lanka is no stranger to egregious parliamentary behaviour which sometimes makes the international news rounds.⁶² However, boycotts have not been institutionalised as they have been in Bangladesh. Boycott discourse during presidential elections is a feature of Tamil politics in Sri Lanka.⁶³ In 2005, for instance, the LTTE orchestrated a boycott of the presidential elections in the north and east of the country, in territory that was then under their control.⁶⁴ Despite this, the Tamil population is not monolithic and voting patterns cannot easily be directed by its leaders. These leaders head small parties that depend on allegiance to larger coalitions for their political power. In Bangladesh, on the other hand, the statistics are remarkable, and days where the Opposition boycott Parliament often outnumber their days in attendance.⁶⁵ Therefore, although boycott-politics has been a significant hindrance to healthy parliamentary democracy in Bangladesh, it is unlikely that any similar pitfalls would be faced by Sri Lanka.

Floor-crossing

Sri Lankan party leaders exercise severe control over MPs' independence. Debate over floor-crossing rules in Bangladesh can help us to frame similar rules in Sri Lanka, which would become particularly important in a move to parliamentarism. The 1978 Constitution, which introduced proportional representation, eroded MPs' independence through Article 99(13)(a), which provides that:

Where a Member of Parliament ceases, by resignation, expulsion or otherwise, to be a member of a recognized political party or independent group on whose nomination paper (hereinafter referred to as the "relevant nomination paper") his name appeared at the time of his becoming such Member of Parliament, his

seat shall become vacant upon the expiration of a period of one month from the date of his ceasing to be such member.

There is an exception to this that allows the MP to challenge the validity of his expulsion before the Supreme Court.⁶⁶ The texture of this provision was also somewhat altered by the 14th

⁶² Mallawarachi Bharatha, 'Sri Lankan Lawmakers Fight in Parliament over PM Dispute' AP NEWS (2 May 2021) <<https://apnews.com/article/mahinda-rajapaksa-ranil-wickremesinghe-sri-lanka-international-news-asia-pacific-064afec647f8415a82c5e8e8e35cb468>> accessed 16 November 2021.

⁶³ SI Keethaponcalan, 'Presidential Election and Tamil Politics: A Bundle of Blunders' (Colombo Telegraph, 27 November 2019) <<https://www.colombotelegraph.com/index.php/presidential-election-tamil-politics-a-bundle-of-blunders/>> accessed 16 November 2021.

⁶⁴ M Vasantha and S Jayanth, 'Behind the LTTE's Boycott of the Sri Lankan Election' (World Socialist Web Site) <<https://www.wsws.org/en/articles/2005/11/sril-n26.html>> accessed 16 November 2021.

⁶⁵ Moniruzzaman (n 32) 106.

⁶⁶ Art 99(13)(b).

Amendment, which introduced preferential list votes. Judicial decisions have also balanced the severity of these provisions with exacting standards of natural justice for the internal party proceedings. As seen in *Rambukwella v UNP and Others*, these tend to follow Lord Diplock's requirements from the *Civil Services Union Case*.⁶⁷ Significantly, these cases often revolve around procedural impropriety. While this is important for ensuring due process, it does not tackle the underlying weaknesses in a system where (1) an MP may be removed from Parliament simply because they have been removed from their party and (2) the reasons for such an expulsion from a political party are largely unregulated. This has diminished the status of Parliament in Sri Lanka and the MPs who serve it.⁶⁸

The discussion of similar provisions in Bangladesh can guide reform of floor-crossing rules in Sri Lanka. At Bangladesh's independence, some wanted total party control over MPs' status. It was originally proposed that MPs would lose their seats if they were excluded from their party. As a compromise with those who feared this curtailed their independence, it was agreed that an MP would only lose their seat if they voted against their own party. This restriction, which was perhaps the most fraught in the constitutional drafting process, is still contained in Article 70.⁶⁹ While this has clearly maintained party loyalty, most commentators consider it to be a hindrance to better democratic practice. Specifically, it is argued that Article 70 encourages 'irresponsible and unaccountable' Governments that would otherwise be restrained by MPs, including Government backbenchers.⁷⁰ Commentators have recommended either limiting Article 70 to only motions of confidence or abolishing the provision entirely.⁷¹ While there are clearly strong arguments against anti-defection laws, we cannot escape the need for stability. Bangladesh demonstrates that while some floor-crossing constraints can be too severe, there are also alternatives that could be considered in the case of Sri Lanka such as anti-defection rules around confidence and supply. This would allow MPs to restrain the Government and vote according to their conscience while also ensuring stability.

Parliamentary Committees

Commentators in Bangladesh have emphasised the importance of a strong committee system in balancing the perceived weakness of Parliament over legislative outcomes.⁷² A well-structured

⁶⁷ *Rambukwella v United National Party and others* [2007] 2 Sri L.R. 341.

⁶⁸ Rohan Edrisinha and Naganathan Selvakumaran, 'The Constitutional Evaluation of Ceylon/Sri Lanka 1948-98' in WD Lakshman and Clement Allan Tisdell (eds), *Sri Lanka's Development Since Independence: Socio-economic Perspectives and Angles* (Nova Science Publishers 2000).

⁶⁹ Abul Fazl Huq, 'Constitution-Making in Bangladesh' (1973) 46 *Pacific Affairs* 59, 61-62.

⁷⁰ Sheikh Mohammad Towhidul Karim, 'Is Anti-Floor Crossing Law in Bangladesh Contrary to the Spirit of the Constitution of Bangladesh? An Inquiry' (2014) 4 *Kathmandu School of Law Review* 123, 126; Moniruzzaman (n 32) 120. For a mixed account, see Nizam Ahmed, 'Including the Excluded: Government Backbenchers and Opposition in the Parliamentary Process in Bangladesh' in Nizam

committee system is an effective tool to allow bi-partisan discussion of legislative detail and encourage opposition and backbench influence over government legislation. They allow governments to pass the legislation they need while opening the door to opposition expertise, which other parliamentary proceedings are normally uncondusive. Article 76 of the Constitution makes special provision for a Public Accounts Committee and a Committee on Privileges, two of the most important bodies for preserving Parliament's independence. Bangladesh's Fifth and Seventh Parliaments made efforts to enhance the role of committees. Although the overall picture is not necessarily a positive one,⁷³ there have been tangible successes that offer hope for the future. Particularly, committees have, at times, allowed for more cross-party cooperation than is possible elsewhere. Also, the Government has been willing to accept amendments proposed in committee and these were sometimes significant changes to the Bill. Ahmed describes the PAC as "hyper-active", holding a meeting every week.⁷⁴

Bangladesh also shows two key failures that Sri Lanka could navigate around in a change to parliamentarism. Firstly, committee composition must guarantee significant input for Sri Lanka's Opposition MPs and Government backbenchers. Particularly, the Chairs of some key committees should be allocated to opposition MPs.⁷⁵ Also, the composition of some committees, for example the Privileges Committee, can be altered to give more weight to backbenchers, opposition MPs, and minority parties.⁷⁶ Secondly, there must be appropriate gaps between the different readings of a Bill to allow committees to thoroughly discuss it and furnish Parliament with reports. This could include specially allotted plenary time to discuss committee reports and recommendations.⁷⁷ The legislative timetable should be agreed well in advance and committees must be recognised as a central part of the process.⁷⁸ In addition to these recommendations, commentators in Bangladesh have also recommended enhanced Secretariat support for committee work⁷⁹ and public proceedings.⁸⁰

Technocrat Ministers

An interesting dimension to the Parliament of Bangladesh is the inclusion of so-called

⁷¹ Karim (n 70); Rounaq Jahan and Inge Amundsen, *The Parliament of Bangladesh: Representation and Accountability* (Centre for Policy Dialogue 2012) 62.

⁷² Ahmed, 'The Parliament' (n 39) 88–89; Obaidullah (n 60) 107–138.

⁷³ Quamrul Alam and Julian Teicher, 'The State of Governance in Bangladesh: The Capture of State Institutions' (2012) 35 *South Asia: Journal of South Asian Studies* 858, 876–880.

⁷⁴ Ahmed, 'Including the Excluded' (n 70) 50–52. For more on the mixed successes of committees, see Moniruzzaman (n 32) 120; Muhammad Mustafizur Rahaman, 'Origins and Pitfalls of Confrontational Politics

⁷⁵ Jahan and Amundsen (n 71) 255.

⁷⁶ Ahmed, 'The Parliament' (n 39) 88–89.

⁷⁷ 'Bangladesh, Country Assistance Strategy 2006-2009' (World Bank Office Dhaka 2006) 54.

⁷⁸ Ahmed, 'Parliament-executive Relations in Bangladesh' (n 52) 77.

⁷⁹ Obaidullah (n 60) 118–121.

⁸⁰ Jahan and Amundsen (n 71) 52.

“Technocrat Ministers”, who are unelected members of Cabinet appointed under Article 56(2). Technocrat Ministers are limited to 1/10 of the overall Cabinet membership. Under Article 73A(1), these Ministers may take part in proceedings, including votes, in so far as they relate to their respective ministries. This is an innovation which is uncommon (though not unheard of) in Westminster model democracies.⁸¹ The Sri Lankan electoral system also allows for a number of MPs to be appointed by each party, post-election, in proportion to their share of the vote.⁸²

However, there is no evidence that this has been used to bring new expertise into the legislature.

Hazell and Yong conducted a comparative study in 2011 which found that these appointments are more common in European systems than Westminster model democracies.⁸³ Although not dismissive of the idea, the authors demonstrated that appointees are not always the best expert simply nominated by the head of government and there are often other considerations at play. Particularly, experts with both political and real-world experience were found to function more effectively. They also reiterated the counter position of America, where Cabinet members do not come from the legislature:

US Cabinet Secretaries are subordinate, not coordinate to the President.⁸⁴

It goes without saying that an MP with a secure seat and independent power base will exercise more autonomy than a mere appointee. This provides an important balance to cabinet politics, particularly in countries with a culture of personalised rule. Therefore, technocrat appointments do not necessarily remedy the key complaint they claim to address – a lack of expertise in the legislature. Nonetheless, it is not uncommon for parliamentary democracies to make allowances for outsider appointments, and particularly in a shift from presidentialism to parliamentarism this may be a good concession to pacify any concerns about a lack of expertise. However, Some restrictions ought to be considered. As in Bangladesh, appointees should at least be qualified to be MPs and there should be a cap on their proportion in the Cabinet (1/10 seems like a reasonable number). Furthermore, the great offices of state (Chancellor, Foreign Secretary, Home Secretary) should be drawn from elected Cabinet members. This is to ensure that these

⁸¹ See the Constitution of South Africa 1996, Art 91(3)(c). In the UK, previous Prime Ministers have appointed individuals to the House of Lords with the sole aim of making them Cabinet members (most notably Gordon Brown in 2007) Robert Hazell and Ben Yong, ‘Putting Goats amongst the Wolves: Appointing Ministers from Outside Parliament’ (The Constitution Unit, Dept of Political Science, UCL 2011) 7 <<http://pintrabp.parl.gc.ca/lopimages2/bibparlcat/29000/Ba464595.pdf>> accessed 9 August 2021.

⁸² Constitution of Sri Lanka 1978, Art 99A. The Gambia’s independence Constitution also allowed for prime ministerial appointees to Parliament, and the number of appointees grew over the years until a military coup in 1994. Gambia’s independence leader, Sir Dawda Jawara, used this provision to enhance female representation in Parliament. The Constitution of The Gambia 1965, Art 33(c); The Constitution of The Gambia 1970, Art 57(d); by 1987 the number stood at 8 nominated Members.

⁸³ Hazell and Yong (n 81).

⁸⁴ *ibid* 82

Ministers balance the influence of the Prime Minister in Cabinet.⁸⁵ There could also be provision for what good these appointments are designed to achieve – expertise not otherwise available and perhaps also diversity.

Conclusion

Bangladesh offers multiple points of guidance for any future change to parliamentarism in Sri Lanka. Affinities in the countries' histories, cultures, and politics make them appropriate case studies for comparativists. However it is not possible to control for everything – particularly the nature of the political divide. This Article has focused on the head of state's design. Although this is often an overlooked feature of parliamentary systems, distinctions between a purely ceremonial head of state and one with corrective powers are important in the South Asian context. The President of Bangladesh has almost no discretionary powers and has also become a front for the very significant power held by the Prime Minister. Sri Lanka should design a presidential balancing mechanism. A presidential corrective is another layer of constitutional and political protection within the system. Appointment powers, on the other hand, should be divested to impartial commissions. Bangladesh has also had innovations in political accountability, parliamentary committees, and Technocrat Ministers which could be replicated in Sri Lanka. Bangladesh's experience emphasises the need to make space for the Opposition and minority MPs in Sri Lankan parliamentary committees. It is also a reminder of how Westminster-style debates can demystify the head of government when they are conducted properly. Bangladesh's innovation in Technocrat Ministers could also be recreated in Sri Lanka. On the other hand, floor-crossing provisions in Bangladesh should probably not be a feature of the Sri Lankan system. However, the ongoing debate in both countries could help to inform each other. Bangladesh presents strong lessons for Sri Lanka because, despite many failures in its transition to parliamentary democracy, it has also developed institutions that are designed to perform well in a tough climate. The comparison between Sri Lanka and Bangladesh has, in this case, proved fruitful and it should be explored further in the future. A comparison with Bangladesh helps to guide our thinking about what kind of parliamentarism would suit Sri Lanka, even if not all Bangladesh's innovation should be transplanted. Even though Sri Lanka must engage in constitutional reform in a difficult climate, this does not mean it is isolated. Comparative analysis helps to avoid pitfalls and recreate successes that other countries have already experienced.

⁸⁵ It may also be prudent to allow some version of the original Gambian system, whereby the PM nominates a small number of MPs in either the first or second chamber and these can be technocrat ministers. This gives the ministers a more secure tenure, because the PM will only nominate a set cohort at the beginning of each parliament and cannot simply appoint new technocrats halfway through an election cycle.