

Lessons from Sri Lanka's Constitutional Reform

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Has a new opportunity for democratic renewal opened in Sri Lanka? Starting in April, mass anti-government protests, spurred by an economic crisis and the country's near bankruptcy, have brought the authoritarian-leaning government to its knees. An opposition party has seized the opportunity to present constitutional reforms which would limit the powers of the presidency—a response to President Gotabaya Rajapaksa's attempts to amass power and limit the rights of ethnic and religious minorities.¹ These changes would strengthen Sri Lanka's democracy, at least on paper.

For all the attention that constitutional reform has received from those looking to reverse democratic backsliding,² well-intentioned reform is not a democratic cure-all, and can even yield negative outcomes for democracy. Regardless of the outcome of Sri Lanka's current crisis, democratic reformers worldwide should consider the country's recent constitutional history before embarking on constitutional amendments.

In Sri Lanka, constitutional amendments have “ping-ponged,” as once promising constitutional reform was reversed by Rajapaksa.³ More specifically, the “Good Government” opposition coalition, elected on the platform of correcting the excesses of then-President Mahinda Rajapaksa (Gotabaya's brother), passed the 19th amendment in 2015, which limited executive authority and represented a victory for democracy in Sri Lanka. But five years later, Mahinda's brother, Gotabaya Rajapaksa, captured the presidency and passed the 20th amendment to expand executive power anew.⁴

This constitutional dynamic—of democratic reform quickly overtaken by executive aggrandizement—resembles Dan Slater's “democratic careening” model.⁵ Democracies careen when two key democratic components conflict: vertical and horizontal accountability.⁶ The first concerns voters' ability to check executives via the ballot box, while the second refers to the checks that other institutions of government, such as the legislature and judiciary, can impose.

Slater warns that the accountability conflicts driving democratic careening are often protracted, as each side can claim to be upholding a core tenet of democracy. Supporters of the 19th amendment expressed a classic democratic fear—that of the unrestrained power of one man, a tyrant. While Gotabaya Rajapaksa's claims to defend democracy are self-serving and cynical, his campaign did respond to a legitimate popular desire for vertical accountability in the wake of the “Good Governance” coalition's governance failures.

While careening might not cause a democracy to collapse, it can degrade its quality. Rajapaksa's majoritarian appeals

and contempt for horizontal checks resemble the populism that has rotted democracies worldwide. But strongmen who blame democracy for their country's problems will remain popular as long as democratic institutions prove dysfunctional.

As such, Sri Lanka's constitutional developments provide two lessons for pro-democratic oppositions. First, reformers must balance demands for vertical and horizontal accountability. The democratic opposition's 19th amendment saw initial success because it restrained the executive *and* had a wide popular backing representative of Sri Lanka's ethnic and religious diversity. Second, oppositions must behave democratically while in government—even when a populist authoritarian may not—lest their failings tar their democratic reforms.

In the January 2015 presidential race, voters elected Maithripala Sirisena, whose “Good Governance” coalition promised to correct the corrupt and anti-democratic policies of Mahinda Rajapaksa's presidency (2005–15). These included the 18th amendment of 2010—which abolished presidential term limits, among other things—and a move to remove a Supreme Court justice for investigating Rajapaksa's relatives, many of whom were in government during his presidency. In the wake of Sri Lanka's devastating twenty year civil war with Tamil separatists, Rajapaksa, a Sinhalese Buddhist nationalist, pushed policies that antagonized ethnic and religious minorities.

The “Good Governance” coalition, meanwhile, was far more inclusive: a multiethnic coalition of more than fifty civil society groups and political parties (including substantial support from Sinhalese Buddhists), the coalition's victory in the 2015 elections embodied vertical accountability. Its efforts to reform the constitution had wide backing, as over 90 percent of parliament (including many legislators from Rajapaksa's party) voted for the 19th amendment.

This wide support was a reflection of both the scale of Mahinda Rajapaksa's excesses in office and the compromise needed to secure the amendment's passage. Many in Sirisena's coalition wanted to abolish the presidential system entirely, replacing it with a Westminster-style system led by the prime minister, but Sinhalese Buddhist nationalists viewed a strong presidency as essential to protecting their interests.⁷ The 19th amendment split the difference by keeping the presidency but reimposing term limits and barring the president from firing the prime minister without consulting parliament.⁸ These changes turned Sri Lanka's presidential system into a semi-presidential one. Overall, this reform represented a major, united effort to renew the country's

democracy. But for the “Good Governance” coalition, who had popular backing and moved to limit executive power by balancing vertical and horizontal accountability, why did the amendment fail?

Horizontal checks alone cannot ensure democratic resilience if not accompanied by sustained popular support. As such, when the coalition lost the people’s confidence, the amendment was quickly called antidemocratic and an obstacle to effective governance. Despite the coalition’s successes, its time in office was marked by failures and incomplete reform. For instance, the government implemented, then stalled transitional justice efforts which might have created greater tolerance for ethnic and political pluralism in the wake of the civil war. But two dramatic crises stand out in dooming the 19th amendment.

The first crisis occurred in October 2018 when Sirisena attempted to unilaterally fire the prime minister, Ranil Wickremesinghe, with whom he had frequently clashed. From the start, the Sirisena-Wickremesinghe pairing had been a marriage of convenience to unite the coalition: Sirisena was seen as more provincial, while Wickremesinghe was a member of the urban elite. Sirisena opted to unilaterally replace him with Mahinda Rajapaksa, a move that was clearly unconstitutional and perhaps surprising. Even though Sirisena had abandoned Rajapaksa’s party to create the “Good Governance” coalition, the two had remained in communication, and Rajapaksa remained popular after his defeat, holding massive allies around the country. But citing the constitution, Wickremesinghe refused to accept his dismissal, and parliament would not approve Rajapaksa’s appointment. Sirisena responded by brazenly ordering the proroguing of parliament before demanding new elections. For several weeks, both Rajapaksa and Wickremesinghe claimed to be prime minister. The constitutional crisis ended only when the Supreme Court accepted the parliament’s petition and confirmed Wickremesinghe remained premier. Wickremesinghe’s dismissal contravened the constitution and illustrated the very sort of executive aggrandizement that the 19th amendment aimed to prevent.⁹

Like the first, the second crisis was an offshoot of the Sirisena-Wickremesinghe rivalry. During the 2019 Easter Sunday attacks, Islamic terrorists targeted several churches and hotels around the country, killing 290 people. Muslim leaders had warned of the extremist leanings of the lead attacker, and Indian authorities had provided the Sri Lankan government detailed intelligence on the attacks in advance, but the divisions between Sirisena and Wickremesinghe prevented a coordinated government response.¹⁰ In the minds of many Sri Lankans, the Easter attacks brought to light the tragic human costs of the Sirisena-Wickremesinghe government’s failures.

These two crises illustrated in painful terms the failings not only of the Sirisena-Wickremesinghe administration, but also those of the semi-presidential system that the 19th amendment created. The divided executive seemed to only yield conflict as neither the president nor prime minister

was willing to show deference toward the other. As popular favor swung away from the government, it froze a nascent effort to rewrite the constitution, preventing further reform. It also presented an opportunity for new leadership.

In the 2019 and 2020 elections, voters handed Sirisena and his coalition devastating defeats, underscoring the need for oppositions to respect democratic norms for their reforms to last beyond their time in office. Sirisena’s failure to respect the constitution opened the 19th amendment to criticism. On the presidential campaign trail, Gotabaya Rajapaksa claimed that it was a “disruption to the smooth functioning of government” and designed in the interests of “certain individuals and political parties.”¹¹ He also ran on his record helping to end the civil war as defense minister during his brother’s presidency. This had particular resonance in the wake of the Easter attacks. These arguments proved persuasive: elections in 2019 and 2020 sent Gotabaya Rajapaksa to the presidency and Mahinda to the prime minister’s office. The two brothers also won a parliamentary supermajority. This underscores the lesson that democracies must deliver to survive.

But it is also true that democracy *did* respond to these failings of government. Sirisena’s dismissal of the prime minister was met with popular protest, civil society action, and ultimately legislative and judicial oversight. In this case, horizontal accountability worked to check the executive. Regarding the Easter attacks, the government admitted to its failure to act on intelligence warnings, and Sirisena launched a presidential commission that recommended prosecution charges for him and other high-level officials.¹²

While this response is probably far from adequate, it is hard to imagine something similar occurring in an authoritarian regime. Or under the Rajapaksas: they have gone to great lengths to suppress investigations into their financial dealings and potential human rights abuses. But these horizontal accountability responses may have been too removed from voters; intergovernmental procedures can be unintuitive and inadequate. Vertical accountability can offer a clearer result: new leaders. Thus not only must democratic reformers deliver, but the *way* in which they deliver matters too. Despite successful efforts to check Sirisena and the government, Gotabaya Rajapaksa was still able to portray the 19th amendment as ineffective.

Gotabaya Rajapaksa promised to deliver better governance once the 19th amendment’s checks on the presidency were removed. In 2020, he passed the 20th amendment, which frees the president to dismiss the prime minister at a whim (returning Sri Lanka to a presidential system) and to make political appointments with little oversight. And at the last minute, Rajapaksa squeezed in a court-packing measure as well.¹³ These changes make the presidency much stronger by weakening horizontal checks from other branches of government.

The current political and economic crisis underscores not only the Rajapaksas’ fiscally irresponsible governance,¹⁴ but also the dubiety of the claim that authoritarian strongmen

outperform democracy. By contrast, the protests highlight the continued appeal of a key feature of democracy: the ability to remove bad government. But for the country to not only implement democratic reform, but to sustain it, Sri Lankans will have to address the deeper issues persisting across their 70-year constitutional history. Among these are the divides between supporters of Sinhalese Buddhist nationalism and those who embrace a pluralist vision that includes ethnic and religious minorities. To resolve these differences peacefully will mean doing so democratically.

Thus, the near-term danger is that, after the failures of both the Rajapaksas and the “Good Governance” coalition, Sri Lankans will grow disaffected or reject democracy. Before they do, will the divided opposition rise to the occasion?

Unfortunately, Sri Lanka’s constitutional dynamics are not entirely unique. In 2021, barely decade-old prodemocratic reforms in Kyrgyzstan and Tunisia were swept away by elected presidents-turned-autocrats in the name of removing impediments to good governance.¹⁵ Kyrgyzstan’s Sadyr Japarov held several extralegal referendums to replace a parliamentary-style system with a strong presidential one, and Tunisia’s Kais Saied invoked the emergency-powers clause of the 2014 Constitution to close parliament indefinitely. Like Sri Lanka, both cases reflect democracy’s failure to deliver. Kyrgyzstan’s parliament was a cesspool of corruption, and Tunisia’s population is suffering a severe economic and social crisis on top of the COVID-19 pandemic.

Both of these cases can take away from the Sri Lankan case: pro-democratic oppositions will need to look beyond constitutional reforms and seek to engage broad sectors of society and must ensure that, if elected to power, their behavior models the very values they claim to represent. While democracy is on the back foot in all these countries and around the world,¹⁶ there is cause for hope. Their citizens have tasted freedom and have delivered oppositions the legitimacy needed to rebuild their countries’ democracies in the past. It is up to oppositions to not only seize the opportunity for reform, but also to ensure their reforms outlast their time in government.

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ENDNOTES

- 1 Neil Devotta, “A Win for Democracy in Sri Lanka,” *Journal of Democracy* 27, no. 1 (January 2016): 152–66.
- 2 See Nancy Bermeo, “On Democratic Backsliding,” *Journal of Democracy* 27, no. 1 (January 2016): 5–19.
- 3 This term is taken from Dinesha Samararatne, “Sri Lanka’s Constitutional Ping-Pong,” *Himal Southasian*, 25 September 2020.
- 4 Following a similar pattern, the 17th amendment (2001), which constrained executive power, was succeeded by the 18th amendment (2010), which expanded it.

- 5 Dan Slater, “Democratic Careening,” *World Politics* 65, no. 4 (October 2013): 729–63.
- 6 Anna Lührmann, Kyle L. Marquardt, and Valeriya Mechkova, “Constraining Governments: New Indices of Vertical, Horizontal, and Diagonal Accountability,” *American Political Science Review* 114, no. 3 (August 2020): 811–20.
- 7 Devotta, “A Win for Democracy,” 160.
- 8 Neil Devotta, “Sri Lanka: The Return to Ethnocracy,” *Journal of Democracy* (January 2021): 96–110.
- 9 Jaelyn L. Neo, “Constitutional Chaos in Sri Lanka: Constitutional Retrogression or Working Out of Its Constitutional Salvation?,” Internet <http://www.iconnectblog.com/2018/11/constitutional-chaos-in-sri-lanka-constitutional-retrogression-or-working-out-of-its-constitutional-salvation/> (date accessed: 7 April 2022).
- 10 Devotta, “A Win for Democracy,” 101.
- 11 From Gotabaya Rajapaksa’s campaign manifesto. Gotabaya Rajapaksa, *Gotabaya Presents to You a Reconstructed Country with a Future: Vistas of Prosperity and Splendour* (2019), 9, 3.
- 12 Iqbal Athas and Helen Regan, “Sri Lanka Easter Bombings Investigation Calls for Former President to be Prosecuted,” Internet, <https://www.cnn.com/2021/02/24/asia/sri-lanka-easter-attack-report-sirisena-intl-hnk/index.html> (date accessed: 7 April 2022).
- 13 Centre for Policy Alternatives, *A Brief Guide to the Twentieth Amendment to the Constitution* (Colombo, 2021), 9.
- 14 Devotta, “Sri Lanka,” 109; Seema Guha, “Sri Lanka’s Financial Meltdown Could Be the End of the Road for Rajapaksa Family,” *Outlook* (New Delhi), 23 March 2022.
- 15 See Johan Engvall, “Kyrgyzstan’s Poison Parliament,” *Journal of Democracy* 33, no. 1 (January 2022): 55–69 and the “Coup in Tunisia” set of articles in that *Journal* issue.
- 16 Larry Diamond, “Democratic Regression in Comparative Perspective: Scope, Methods, and Causes,” *Democratization* 28, no. 1 (January 2021): 22–41.