Asian Journal of Law and Society (2022), **9**, 1–25
doi:10.1017/als.2021.36

CAMBRIDGE UNIVERSITY PRESS

RESEARCH ARTICLE

Resilience through Synergy? The Legal Complex in Sri Lanka's Constitutional Crisis

Dinesha Samararatne[1,2]

[1]Department of Public & International Law, Faculty of Law, University of Colombo, Colombo and [2]Laureate Program in Comparative Constitutional Law, Melbourne Law School, University of Melbourne, Melbourne

E-mail: d.samararatne@unimelb.edu.au

Abstract

What types of institutional dynamics and conditions allow constitutional resilience in the face of attempts at undermining gains in a constitutional democracy? Using Sri Lanka as a case-study, I claim that the legal complex acting in synergy with independent public institutions (the Speaker of the Parliament) and civil society can produce constitutional resilience. Synergy between the legal complex and these institutions can transform constitutional vulnerability into constitutional resilience. I argue therefore that the legal complex theory must be extended to consider the ways in which it can work in synergy with other public institutions in being resilient against attempts at rolling back gains for constitutional democracy. I argue further that synergy between the legal complex and formal and informal institutions over the short term can only result in "simple" constitutional resilience. The development of "reflexive" constitutional resilience requires long-term synergy between the legal complex and other public institutions.

Keywords: constitutional resilience; constitutional vulnerability; Sri Lanka; legal complex theory; constitutional crisis

1. Introduction

Legal complex theory has been effective in explaining the collective impact that the legal profession, a Bar association, the judiciary, and other legally trained actors can have on the dynamics of political liberalism in different jurisdictions. Legal complex theory suggests that these different institutions working in tandem, rather than on their own, better advance political liberalism. Once social change has been achieved through the legal complex, how are those gains to be preserved and strengthened? What conditions enable those gains to be resistant to pushback? What is the role of the legal complex in such contexts? In this article, I claim that it is the synergy between the legal complex and other sectors (both formal and informal) that determine the response to pushback. I focus specifically on the resilience or vulnerability of constitutional governance in making this argument.

Academic debates about constitutional endurance and democratic decay are re-emerging globally today. In this article, I illustrate that the extension of legal complex theory to the study of constitutional resilience allows new insights about constitutional endurance and democratic decay. I claim that the analytical purchase of legal complex theory can be better realized if the synergy between the legal complex and other public institutions is taken into account. I illustrate my argument through developments in constitutional governance in Sri Lanka between the end of its internal armed conflict

in 2009 and the immediate aftermath of the Easter Sunday attacks in 2019. The two constitutional amendments enacted since 2009, the impeachment of the forty-third Chief Justice, recent failed attempts at enacting a new Constitution, and the constitutional crisis of October 2018 offer a rich evidence base for examining the central concern of this article—what types of institutional dynamics and conditions allow constitutional resilience in the face of attempts at undermining gains in a constitutional democracy?

This article is organized in six parts. In Section 2, I make my case for the extension of the legal complex theory to include an analysis of the synergies between the legal complex and other formal and informal public institutions. I also explain why I chose to focus on constitutional resilience in studying the synergies between the legal complex and other public institutions. In Section 3, I introduce and discuss constitutional governance as it has unfolded in Sri Lanka since the end of its armed conflict. Here, I identify five events as being critical to tracing the developments of constitutional vulnerability and resilience in Sri Lanka. In Section 4, I examine how the legal complex, working in synergy with the Speaker of Parliament and with citizens as activists, was able to resist the pushback against gains made in constitutional governance more recently. In Section 5, using the political- and security-sector failures that contributed to the Easter Sunday attacks in April 2019 as a point of departure, I argue that constitutional resilience can be "simple" or "reflexive." I conclude by reaffirming that expanding legal complex theory to account for synergies between the legal complex and the formal and informal institutions in different jurisdictions, over the long term, clarifies the conditions in which constitutional resilience (or vulnerability) develops and is sustained.

2. The legal complex and constitutional resilience

What do I mean by constitutional resilience and how is the study of constitutional resilience assisted by legal complex theory? In this section, I reflect on these questions and clarify the theoretical approach that I adopt in this article.

2.1 The legal complex

The "legal complex" is a theoretical concept proposed by Karpik and Halliday in the 1990s within the law-and-society tradition.[1] Their objective was to develop a frame of analysis that would allow them to examine the role of "legally trained" actors in social change.[2] Karpik and Halliday have studied different stakeholders (with legal training and/or from legal institutions) within the legal complex. They include legal practitioners (both private practitioners as well as public lawyers), the judiciary, law academics, and lawyers working in civil society organizations.[3] In their attempts to understand the role of lawyers in society, they perceived a collective existence and synergy between these stakeholders that was over and above the sum of individual actions. They use the term "legal complex" to explain this phenomenon. They identify five aspects this concept: (1) it is "composed by" different legally trained actors who are currently acting in legal capacities;[4] (2) it is "action-oriented and focuses on 'the collective';" (iii) it is "oriented towards specific issues;" (4) it is a "structural notion" and focuses on "systematic relationships;" and

[1] Halliday et al. (2007); Halliday et al. (2012); Karpik & Halliday (2011).

[2] Karpik & Halliday, *supra* note 1, p. 220.

[3] Halliday et al. (2007), *supra* note 1, p. 3.

[4] As pointed out by one of the anonymous reviewers, legally trained actors in legal complex theory do not include individuals with law degrees working in other capacities such as business leaders, politicians, or interest-group leaders.

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

(5) "its action orientation is specific to a period of time or historical moment."[5] Karpik and Halliday use the legal complex to study how political liberalism is advanced in different jurisdictions. They define political liberalism as comprising a moderate state, civil society, and fundamental freedoms, as it has also been historically framed by lawyers.[6] Their most recent work has examined the ways in which the legal complex in several post-colonial states has mobilized to further political liberalism.[7]

Karpik and Halliday point out that the "analytical bite" of the legal complex theory lies in the fact that it is used to study legally trained actors and legal institutions in the context of specific issues over a period of time. The concept can be used to examine any issue "where legal occupations can mobilize, usually with the weapons of law, to influence outcomes."[8] The legal complex "is not defined by an aggregation of occupational segments but by the systematic relationships among legal actors" and it "invites observers to develop the study of structural relations—the relatively stable connections among the legal actors around a specific issue."[9] Moreover, the concept "favors a certain historical perspective delineated by the slow transformations of relations."[10] This theory has been useful in accounting for the dynamics of political liberalism in a range of jurisdictions from different legal traditions and from different socioeconomic contexts.

2.2 "Complementary advances" to the legal complex

In this article, I suggest three "complementary theoretical advances" to the theory of the legal complex.[11] First, I use both a focus on a "particular historical moment" (events)[12] as well as "the longer view."[13] Karpik and Halliday note that this theory, "its orientations, and its forms of mobilization ... require complementary methodologies that both elongate time and compress it."[14] Following this suggestion, I focus specifically on the constitutional crisis of October 2018 in Sri Lanka in this article. However, I later contrast that with the longer view of constitutional governance in analyzing some of the factors that contributed to the Easter Sunday attacks of April 2019 and their aftermath. I then contextualize the constitutional crisis of October 2018 through the longer view in explaining the dynamics of constitutional resilience in the Sri Lankan context. In effect, I juxtapose events that have produced (in the main) constitutional vulnerability (the Eighteenth Amendment, the purported impeachment of the Chief Justice, and the Easter Sunday bombings) with events that demonstrate constitutional resilience (the Nineteenth Amendment and the constitutional crisis of 2018).

Second, I turn away from the study of the legal complex in relation to political liberalism to the study of the legal complex in relation to constitutional resilience. I explain what I mean by constitutional resilience in the section below. As noted before, the legal complex has been used thus far to study the development of political liberalism or departures from it. For instance, in *Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex*, Halliday et al. study the legal complex in several jurisdictions to

[5] Karpik & Halliday, *supra* note 1, pp. 220–1.

[6] The fundamental freedoms that they refer to are: negative rights that protect citizens from the state and "core political rights" such as the freedom of expression, association, and movement. Karpik & Halliday, *supra* note 1, p. 219.

[7] Halliday et al. (2012), *supra* note 1.

[8] Karpik & Halliday, *supra* note 1, p. 221.

[9] *Ibid.*

[10] *Ibid.*

[11] *Ibid.*, p. 226.

[12] *Ibid.*

[13] *Ibid.*, p. 227.

[14] *Ibid.*

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

identify the way in which it functions to promote political liberalism, or illiberalism.[15] The legal complex, however, could be delinked from the concept of liberalism. It could be used to observe the ways in which the legal complex could promote different political outcomes, including authoritarianism.[16] Elsewhere, I have used this concept from the angle of gender to foreground the ways in which women lawyers are marginalized in legal institutions in Sri Lanka.[17]

It is worthwhile noting that Karpik and Halliday recognize that the "burst of constitutionalism" after World War II "provided new prospects for muscular lawyer-judge alliances within the legal complex to contest state power."[18] They recognize that the explanatory power of the theory can be used in different contexts and "should reach across the entire expanse of the sociolegal field."[19] As I explain further in the section below, the extension of the legal complex theory to constitutional sociology and more specifically to constitutional resilience highlights the "theoretical potency" of the concept.[20] It allows a nuanced understanding of how, when, and why principles of constitutionalism are resilient to pushback.

Third, I go beyond the study of structural relations within the legal complex to structural relations between the legal complex and other actors. It is in this third theoretical innovation that I move the furthest away from the legal complex theory as conceived of by Karpik and Halliday. They refer to the study of legal occupations in how they work with civil society groups but do not explain that idea further.[21] If the legal complex theory involves the study of "structural relations" *among* legal actors on a specific issue, I take the view that the theory can be extended to study the "structural relations" *between* legal actors and non-legal actors as well. From the different stakeholders within the legal complex, I focus specifically on the legal profession, the Bar Association, and the judiciary. In studying the structural relations *between* the legal complex and other public institutions, I study the Speaker of Parliament and citizens. Other significant actors associated with the legal complex in Sri Lanka, during this period, would include independent Commissions,[22] Presidential Commissions of Inquiry,[23] the media, as well as non-governmental organizations. I do not examine these actors in this article. Moreover, I do not examine or critique the role of the legal academia in these events.[24] The office of the Attorney General is a key institution in the legal complex that was prominent during this time.[25] However, due to limitations of length, I only focus on the stakeholders that I consider as being central to the development of constitutional resilience during the constitutional crisis of October 2018. A study of legal academia and the office of the Attorney General in Sri Lanka's constitutional developments is a project for a future undertaking.

In studying the relationship between the legal complex and other actors in this article, I should clarify that I do not see them as discreet. In fact, due to the professionalization of civil society activism in Sri Lanka more recently, non-governmental organizations work

[15] Halliday et al. (2012), *supra* note 1.

[16] I thank Arun Thiruvengadam and Mayur Suresh for drawing my attention to this possibility.

[17] Samararatne (2020a).

[18] Karpik & Halliday, *supra* note 1, p. 228.

[19] *Ibid.*, p. 233.

[20] *Ibid.*, p. 218.

[21] *Ibid.*, p. 233.

[22] In particular I had in mind the Human Rights Commission of Sri Lanka and the Elections Commission.

[23] Presidential Commissions of Inquiry are established under legislation. Since 2009, several such Commissions have been appointed to inquire into the following: reconciliation, enforced disappearances, and bribery and corruption.

[24] For an analysis of legal academia within the legal complex, see Mate (2012).

[25] In Sri Lanka, the Attorney General's Department is an independent institution that performs dual functions —of public prosecutor and adviser to the government.

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

with or include practising lawyers, legal academics, and those with legal training. Similarly, due to the transnational nature of law including constitutional reform, litigation, etc., practising lawyers, the judiciary, and the office of the Attorney General may in certain instances work closely with other institutions, including the UN and the World Bank. I do not consider these overlaps in this article.

2.3 Constitutional resilience

Having explained my theoretical approach in this article, I now explain the theme in relation to which I use this approach—that is to say the dynamics of "constitutional resilience."[26] Although a nascent body of scholarship on constitutional resilience is emerging in the present moment, particularly in association with the study of democracy, there is no clarity on its meaning.[27] For the purposes of this article, I explain here what I mean by "constitutional vulnerability" and "constitutional agency," as they are two concepts that are closely related to "constitutional resilience."

I adapt the definition of resilience proposed by the Intergovernmental Panel on Climate Change (IPCC) in 2007 to define "constitutional resilience." The IPCC define resilience as "[t]he ability of a social or ecological system to absorb disturbances while retaining the same basic structure and ways of functioning, the capacity for self-organisation, and the capacity to adapt to stress and change."[28] Inspired by this formulation, I propose that "constitutional resilience" be understood to mean the following:

> The ability of a constitutional democracy to absorb deliberate attempts at undermining its fundamental values, while retaining the same basic structure and ways of functioning, the capacity to limit the actions of those deriving power from it, and the capacity to adapt to respond to and deal with such deliberate attempts.

Constitutional resilience then allows a constitutional democracy to cope with any challenges that it faces and to also adapt itself in ways that would minimize the recurrence of such challenges.

Drawing from the work of BonB, I distinguish between "simple" constitutional resilience and "reflexive" constitutional resilience.[29] Whereas simple constitutional resilience is about facing, coping with, and adapting to challenges posed to constitutional governance, reflexive constitutional resilience goes a step further. In adapting to cope with challenges faced, reflexive constitutional resilience innovates proactively to consolidate its capacity to resist challenges in the future. Simple resilience therefore is more reactive while reflexive resilience is more anticipatory. BonB points out that "uncertainty is no longer seen as a decreasing, controllable, problem" but rather as a "much more of a permanent companion of humanity."[30] The contemporary discourse on democratic backsliding and/or decay points to the ways in which "uncertainties" play out in the political arena and are often effected through "constitutional means."[31] Whereas "simple" resilience is about responding to, coping with, and recovering from an immediate crisis/disaster, "reflexive" resilience is "a power of resistance, which does not fear change and offers

[26] Contiades & Fotiadou (2019); Contiades & Fotiadou (2015); Grabenwarter (2018); Choudhry (2018).
[27] See literature on constitutional resilience cited above.
[28] Intergovernmental Panel on Climate Change (2007), p. 86.
[29] Bonß (2016), pp. 20ff.
[30] *Ibid.*, pp. 21–2.
[31] Daly (2019).

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

reflexive justifiable innovations. Such flexible innovations hold the potential of resistance especially for unavoidable crisis situations."[32]

The social sciences highlight a nexus between vulnerability and resilience. Therefore, an understanding of resilience requires the acknowledgement of "vulnerability" as well as of "agency." Disturbances, trauma, crises, and disasters occur due to "vulnerabilities"—whether economic, environmental, or political. "Vulnerability" can be described as the likelihood of experiencing harm due to internal or external factors.[33] Vulnerability has often been understood as a state of powerlessness or weakness. Drawing from these accounts, for the purposes of this article, I describe "constitutional vulnerability" as the "structural features or specific provisions of a constitution which enable processes, bearers of office, or other actors to undermine the fundamental values of a constitutional democracy."

Increasingly, attention is being drawn to how vulnerability can generate resilience. Victims of natural disasters or violence, for instance, have developed resilience through the exercise of their "agency" as individuals or as communities. It is now recognized that agency can and often changes the experience of vulnerability and leads to the development of resilience. Resilience is often a result of the exercise of agency in developing coping mechanisms and forms of adaptation. Lorenz and Dittmer describe agency as "a relational perspective; i.e. the interconnectedness of subject and society; the notion that individuals in their formations of how they act are produced by their discourses and that they can then produce these discourses in turn."[34] Through the exercise of agency, systems and/or individuals made vulnerable by disaster or crises develop resilience. In this context, "constitutional agency" can be described as "the internal or external perception that public institutions, civil society organizations, experts, or citizens hold of their capacity to engage with and influence constitutional governance." Constitutional resilience and constitutional vulnerability are generally characteristics of systems and institutions whereas constitutional agency draws upon human agency more directly.[35]

Using the above-explained working definitions of constitutional resilience, constitutional vulnerability, and constitutional agency, I consider the dynamics of constitutional governance and the role played by the legal complex in this regard in synergy with other public institutions. In the next section, I introduce my case-study, Sri Lanka, and the five critical events in its recent history of constitutional governance.

3. Constitutional governance in Sri Lanka, 2009–19

Recent developments in Sri Lanka offer a rich evidence base for studying the dynamics of constitutional governance. It offers a study of contrasts in the advance and retreat in constitutional governance as evidenced in two constitutional amendments: the impeachment of the Chief Justice, in the constitutional crisis of October 2018 and the Easter Sunday attacks of 2019. In this section, I present the Sri Lankan case-study first by offering a broader historical context and then a more specific explanation of what I describe as five recent critical events.

3.1 Intractability of unconstitutional governance

Mal-governance or governance that is contrary to principles of constitutionalism has been a golden thread running through Sri Lanka's modern history. Ceylon, as Sri Lanka was then

[32] Bonß, *supra* note 29, p. 21.
[33] Lorenz and Dittmer (2016), p. 32.
[34] *Ibid.*, p. 36.
[35] I thank Mayur Suresh for suggesting this distinction to me.

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

known, was described as a model colony that transitioned peacefully to an independent state (dominion) in 1947.[36] However, signs of political contestation along ethnic lines were evident even before the enactment of Ceylon's first written Constitution in 1931 and have continued through to its post-independence period.[37] Sri Lanka's post-independence period is marked by experiences of ethnic riots and two youth insurrections.[38] Political representation of Sri Lankan Tamils, citizenship of *Malayaha* Tamils (Tamils of recent Indian origin), and language rights of Tamil-speaking people are examples of issues that arose, among other things, due to lack of respect for principles of constitutionalism. Some of these unresolved contestations were a root cause of a horrific internal armed conflict in which an armed group, the Liberation Tigers of Tamil Ealam (LTTE), claimed a right to a separate state. The armed conflict lasted for approximately three decades until May 2009.

Since 1931, Sri Lanka has been governed under four different Constitutions.[39] The present Constitution was adopted in 1978 and has, since then, been amended 20 times. Each of the written Constitutions is known for certain fundamental changes that it effected in constitutional governance. The 1931 Donoughmore Constitution introduced universal franchise. The Independence Constitution (also known as the Soulbury Constitution) introduced Westminster-style parliamentary government. The "autochthonous" Constitution of 1972 established a republic with revisions to the Westminster form of government.[40] Soon after the general elections in 1977, the executive presidency was introduced as an amendment to the Constitution of 1972. The Constitution of 1978, which continues to be in effect today, continued with an executive presidency.[41] Of the 20 amendments to this Constitution, arguably, the most significant reforms were made through the Thirteenth, Seventeenth, Eighteenth, Nineteenth, and Twentieth Amendments. The Thirteenth Amendment, among other things, devolved executive and legislative power to a certain extent through the establishment of nine provincial councils.[42] The Seventeenth Amendment introduced the Constitutional Council, which was designed to depoliticize the power of the executive president to make appointments to high offices and to independent Commissions.[43] One of the most significant reforms affected by the Nineteenth Amendment is the reform of the executive presidency. It introduced a premier-presidential form of semi-presidentialism by transferring some of the powers of the president to the prime minister.[44] Most of the amendments introduced by the Nineteenth Amendment were replaced by the Twentieth Amendment.[45]

Scholarship on constitutional governance in Sri Lanka identify several challenges that have endured throughout this period. These challenges include ethnonationalism, majoritarianism (rights of minorities, fundamental-rights guarantees), power-sharing, institutional design, and economic development.[46] More recent scholarship with a critical approach highlights economic inequality, gender discrimination, foreign debt, and

[36] Kumarasingham (2015).
[37] Jayawardena (2003); Wickramasinghe (2006).
[38] Wickramasinghe, *supra* note 37.
[39] Edrisinha & Selvakkumaran (1990).
[40] Coomaraswamy (2012).
[41] Welikala (2016).
[42] The Thirteenth Amendment to the Constitution was enacted under strained political circumstances. The amendment was enacted pursuant to an agreement reached between India and Sri Lanka on the devolution of power in Sri Lanka under the Indo-Lanka Accord of 1987.
[43] Samararatne (2016).
[44] Welikala (2019b), pp. 10–1; Sedelium & Linde (2018).
[45] Samararatne (2020b); Samararatne (2021).
[46] Loganathan (1996).

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

corruption to this list of challenges.[47] The dominant narrative in constitutional discourse on Sri Lanka presents its experience of constitutional governance as weakening over time, as being a root cause of the internal armed conflict, and as failing to provide a sustainable solution to the ethnic conflict, among other things.

Sri Lanka's democratization project has been challenged from the outset. It was a project partly driven by different actors of the British Empire, partly driven by Anglicized local elites, significantly influenced by the development of "Sinhala-Buddhist" and Tamil nationalism, and to some extent influenced by a left movement. These strands of influence continue to determine the particular flavour of Sri Lanka's democratization process.[48] Recently, Chandrasekeram has argued that in Sri Lanka, "feudal practices have coexisted with its post-colonial democratic institutions."[49] This analysis is affirmed by the even more recent work by Welikala in which he argues that "post-colonial constitutional development" took the form of "hegemonic ethnocracy, not plural democracy."[50] These observations have caused scholars to take the view that in Sri Lanka, democracy is "thin" and essentially procedural. Welikala, for instance, argues that even if liberalism is not the dominant source of normative values in governance in Sri Lanka and "the threshold of acceptance for authoritarian leadership combined with majoritarian nationalism may be high," "the long tradition of unbroken procedural democracy has deeply entrenched certain essential expectations of accountability in the collective psyche."[51] This is an ironic feature of Sri Lanka's democracy given the resistance to the introduction of universal franchise by the Donoughmore Commission in 1931.[52] Welikala points to the manner in which the constitutional crisis of 2018 was resolved to suggest that "any regime" that ignores the entrenched nature of Sri Lanka's procedural democracy does so "at its peril."[53] The means of achieving a similar commitment and/or expectation among the polity for substantive democracy have remained elusive to political actors, activists, and students of constitutional democracy in Sri Lanka. Welikala aptly observes that "the key to breaking the cycle of reform failure" points to "the need for a more defined and nuanced apprehension of the internal dynamics of political culture as it operates at both elite and mass levels."[54]

3.2 *Five critical events*

It is in this context that I make claims about the development of constitutional resilience, more recently, in Sri Lanka. In this section, I offer a brief account of the critical events that I rely on to study evidence of constitutional vulnerability and resilience in postwar Sri Lanka. The five events are (1) the enactment of the Eighteenth Amendment to the Constitution in 2010; (2) the purported impeachment of the Chief Justice in 2013; (3) the enactment of the Nineteenth Amendment to the Constitution in 2015; (4) the constitutional crisis of 2018; and (5) the Easter Sunday bombings of April 2019 and the immediate aftermath.

[47] Kodikara (2017); Orjuela et al. (2016).
[48] Spencer (1990); Coomaraswamy (1997); Edrisinha (2008); deVotta (2004).
[49] Chandrasekeram (2017), p. 31.
[50] Welikala, *supra* note 44, p. 323.
[51] *Ibid.*, p. 319.
[52] Jayawardene (1983).
[53] Welikala, *supra* note 50, p. 319.
[54] *Ibid.*, p. 320.

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

3.2.1 Eighteenth Amendment (2010)

In 2010, the incumbent president called for early presidential elections and was re-elected to office.[55] In the same year, his government proposed and enacted a constitutional amendment that effected two changes. One was that it removed the two-term limit on the executive president.[56] The other was that it replaced the Constitutional Council with the Parliamentary Council.[57] The Constitutional Council was introduced in 2001 through the Seventeenth Amendment to depoliticize the power of appointment to high office and to independent Commissions that was vested with the president. Since 2006, however, the Constitutional Council was not constituted and appointments were made by the president at his discretion. In effect, the Eighteenth Amendment reversed the progress achieved through the Seventeenth Amendment and removed the only safeguard against the office of the executive president being occupied by the same individual long-term. The president had to only "seek the observations" of the Parliamentary Council in making appointments to high office and to independent Commissions, and was therefore to make all appointments at his discretion.[58] The two-term limit was the only effective safeguard in the text of the Constitution against the office of the executive president being abused for long-term authoritarianism.

Despite the serious implications of the Bill, not many opposed it.[59] When the Eighteenth Amendment Bill was challenged before the Supreme Court, the court upheld its constitutionality in the case of *In re the Eighteenth Amendment Bill* (2010).[60] The court held that removal of the term limit promoted democracy in that it gave the elector a "wider" choice. The incumbent could re-enter the pool of potential candidates. According to the court, this affirmed the sovereignty of the people as it permitted the people and not the Constitution to determine whether an incumbent could stand for re-election.[61]

3.2.2 Impeachment of the Chief Justice (2012–13)

The Chief Justice who authored the judgment in the Special Determination on the Eighteenth Amendment was purportedly impeached in January 2013.[62] According to the Constitution, judges of the Supreme Court and Court Appeal can be removed on grounds of "proved misbehaviour or incapacity."[63] Proved misbehaviour or incapacity is to be determined according to a procedure established "by law or by Standing Orders."[64] In 1984, when the then government sought to impeach the Chief Justice, it adopted

[55] According to Art. 31(3A) of the Constitution, the president may call for an early election after the completion of four years in office.

[56] Amendment to Art. 31 of the Constitution.

[57] Art. 41 A of the Eighteenth Amendment. The council comprised the following: the prime minister, the Speaker, the leader of the Opposition, an Member of Parliament (MP) nominated by the prime minister, and an MP nominated by the leader of the Opposition.

[58] The Commissions were: the Elections Commission, the Public Service Commission, the National Police Commission, the Human Rights Commission, the Commission to Investigate Allegations of Bribery or Corruption, the Finance Commission, and the Delimitation Commission. The high offices were: the Chief Justice and judges of the Supreme Court, the president and judges of the Court of Appeal, members of the Judicial Service Commission (other than the chairman), the Attorney General, the Auditor-General, the Ombudsman, and the Secretary-General of Parliament.

[59] Three political parties represented in Parliament opposed the Bill, the United National Party (UNP), the Janatha Vimukthi Peramuna (JVP), and the Tamil National Alliance (TNA). In addition, some civil society organizations challenged the Bill before the court. See further Saravanamuttu (2011), pp. 17–8.

[60] Eighteenth Amendment Bill, SC (Special Determination) No. 01/2010, decided on 31 August 2010.

[61] Art. 3 of the Constitution declares that sovereignty lies in the people and is inalienable.

[62] See Bandaranayake (2019) for an account by Chief Justice Bandaranayake of the events surrounding the purported impeachment.

[63] Art. 107(2) of the Constitution.

[64] Art. 107 (3) of the Constitution.

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

Standing Order 78A to set out the procedure. According to this Standing Order, a Parliamentary Select Committee (PSC) has to inquire into and determine the charges against the judge. This procedure was followed in 2012.

The determination of the Supreme Court that the "Divineguma" Bill had to be referred to the provincial councils is said to have motivated the government to initiate impeachment proceedings.[65] The "Divineguma" Bill sought to establish a new department under the Ministry of Economic Development, which had the effect of undermining the mandate of several ministries and the subjects allocated to the provincial councils. The Constitution provides that Parliament must seek the views of all provincial councils on any Bill proposed by Parliament that involves a devolved subject.[66]

The motion to impeach the Chief Justice listed out 14 charges of misconduct. Four of them were inquired into and deemed to have been proved against her by the PSC.[67] The impeachment proceedings sparked a debate on the suitability of a PSC to inquire into the allegations against the Chief Justice. This debate was complicated by the relevant constitutional text which stated that impeachment proceedings may be carried out by way of "standing orders" of Parliament *or* "by law."[68] The Chief Justice filed a petition before the Court of Appeal seeking to quash the report of the PSC. The Chief Justice claimed that the proceedings were a violation of, among other things, the rules of natural justice. The Court of Appeal referred the interpretation of Article 107(3) to the Supreme Court as the interpretation of the Constitution is vested exclusively with that court.[69] The Supreme Court declared that Article 107(3) must be interpreted to mean that the procedure for impeachment of judges can only be provided for by law.[70] Relying on this interpretation, the Court of Appeal quashed the report of the PSC.[71] The court held that the relevant constitutional text must be interpreted to mean that impeachment proceedings must be provided for "by law and law alone."[72] Disregarding the court ruling, the government continued with the impeachment proceedings. Instead of submitting a fresh motion requesting the president to impeach the Chief Justice, the government retabled its original motion pursuant to which the president signed the warrant for impeachment. Later, the failure to table and adopt a fresh and specific motion was relied upon in claiming that the impeachment process was flawed in law.

The story, however, does not end there and is followed by two other developments. A few months later, the Supreme Court issued judgment on several fundamental-rights petitions that had been filed in relation to the impeachment of the Chief Justice.[73] The court upheld the preliminary objections against the petitions and dismissed the applications. The Supreme Court took the view that Parliament was sovereign and therefore its actions could not be subjected to judicial review.

In 2015, soon after the presidential elections and the appointment of another prime minister by the newly elected president, two letters were issued from the office of the prime minister. One letter was issued to the Chief Justice who was purportedly impeached. The letter advised her that there were no impediments to her continuing to hold office. The other letter was sent to the Chief Justice in office declaring that his appointment was null and void. On the same day, the purportedly impeached Chief Justice resumed office only to retire the very next day.

[65] International Bar Association (2013), pp. 20ff.
[66] Art. 154(G) of the Constitution.
[67] International Bar Association, *supra* note 65, pp. 22ff.
[68] Art. 107 of the Constitution.
[69] Art. 120 of the Constitution.
[70] *Jayarathne v. Yapa*, SC Reference No. 3 of 2012, SC Minutes, 1 January 2013.
[71] *Bandaranayake v. Speaker of Parliament*, CA (Writ) Application No. 411/2012, CA Minutes, 21 December 2012.
[72] *Ibid.*
[73] *Thenuwara v. Speaker of Parliament*, SC (FR) 665, 666, 667, and 672 of 2012, SC Minutes, 24 March 2014.

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

3.2.3 Nineteenth Amendment (2015)

The political campaign of the common presidential candidate (Maithripala Sirisena) for the presidential election of 2015 promised constitutional reform in the short term as well as the adoption of a new Constitution in the long term. Short-term constitutional reform was introduced by way of the Nineteenth Amendment soon after his election into office. This amendment introduced several changes, including the following: the expansion of the powers of the prime minister and the strengthening of the office,[74] providing for fundamental-rights petitions to challenge the actions/inactions of the president;[75] the reintroduction of the Constitutional Council;[76] and the introduction of the right to information.[77] The more wide-sweeping proposals included in the Bill to shift executive power from the executive president to the prime minister were declared by the court as requiring approval of the people at a referendum.[78] The re-enactment of the Constitutional Council, the establishment of new Commissions, and the restoration of the independence of several institutions were signs of improvement in constitutional governance.

The Nineteenth Amendment was followed by a series of legislative and policy reforms including the adoption of the Right to Information Act 2016 and the Office of the Missing Persons Act 2016. In 2016, the government initiated a process for the introduction of a new Constitution. However, this initiative gradually lost its momentum largely due to the government's inability or indifference to mobilizing political or public support for it.

3.2.4 Constitutional crisis (2018)

This crisis was initiated by the president who purported to remove the prime minister, Ranil Wickremesinghe, and appoint a Member of Parliament (MP) in the Opposition and former president, Mahinda Rajapakse, in his place.[79] A new Cabinet was appointed soon thereafter.[80] But the new purported prime minister could not demonstrate his majority in Parliament. Parliament was initially prorogued and thereafter purportedly dissolved by the president.[81] During this time, Ranil Wickremesinghe maintained that he was the lawfully appointed prime minister and would remain so.

The civil society response to this crisis was, as Welikala points out, "spontaneous."[82] Mainstream media were partial in their reporting while discussion on social media was much more dynamic.[83] The public, in the capital Colombo, mobilized on a daily basis to protest against the actions of the president. Certain meetings were held in Colombo in support of the purported government as well. Meanwhile, the dissolution of Parliament was challenged by way of a fundamental-rights petition before the Supreme Court. Additionally, all 122 MPs who supported Ranil Wickremesinghe sought a writ of *quo warranto* from the Court of Appeal.[84] In both petitions, the courts granted the interim relief sought by the petitioners. The gazette declaring the dissolution of Parliament was suspended by the Supreme Court, and MP and former President Mahinda Rajapakse

[74] For instance, appointments to the Cabinet were to be made by the president on the advice of the prime minister (Art. 42 s. 2 of the Constitution).

[75] Art. 35 as amended by the Nineteenth Amendment to the Constitution.

[76] Art. 41A as amended by the Nineteenth Amendment to the Constitution.

[77] Art. 14A of the Constitution of the Constitution.

[78] *In re the Nineteenth Amendment Bill*, SC(SD) 4–19/2015 SC Minutes, 6 April 2015.

[79] Gazette of the Democratic Socialist Republic of Sri Lanka (2094/43), (2094/43A), and (20194/44) of 26 October 2018.

[80] Gazette of the Democratic Socialist Republic of Sri Lanka (2094/4) of 29 October 2018.

[81] Gazette of the Democratic Socialist Republic of Sri Lanka (2094/45) of 27 October 2018.

[82] Welikala, *supra* note 44, p. 16.

[83] Hattotuwa (2019), pp. 179–239.

[84] *Wickremesinghe v. Rajapakse*, CA (Writ) Application No. 363/2018, CA Minutes, 3 December 2018.

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

was restrained from acting as the prime minister by the Court of Appeal.[85] Matters were ultimately resolved by the Supreme Court when it delivered its unanimous judgment on 12 December determining that the dissolution of Parliament by the president was null and void.[86] Respecting the decision, Mahinda Rajapakse stepped down and Ranil Wickremesinghe was "reappointed" as the prime minister by the president.

3.2.5 Easter Sunday attacks and the immediate aftermath (2019)

On 21 April 2019, seven bomb blasts carried out by suicide bombers in Sri Lanka claimed more than 250 lives and caused serious injuries to many.[87] The blasts were carried out in three churches, two hotels, and one inn. An extremist local organization with links to ISIS (Islamic State in Iraq and Syria) has been identified as responsible for these acts. It was revealed on the day of the attacks that state intelligence forces had warned relevant authorities about the possibility of such attacks. At this point, it was brought to light that since the constitutional crisis, the prime minister nor the state minister for defence had participated in the meetings of the National Security Council.[88] The prime minister and the state minister for defence stated that they had not been invited to these meetings. A state of emergency was declared and new emergency regulations, including a regulation banning full face covering, was issued.[89] In the security operations that followed, ammunition, bombs, and other materials were detected, indicating an established network of operations focusing on causing more harm and destruction in the country. A few weeks later, despite a continued state of emergency, mobs carried out riots against Muslims in several towns, killing one person and causing damage to property. Since then, a PSC has inquired into accountability for failures in national security that took place during this time.[90] The president rejected the findings of this report and appointed a presidential Commission of Inquiry into the same matter. Its inquiry has been concluded and the report has recently been tabled in Parliament.

I argued in Section 2.3 that constitutional vulnerability is the "structural features or specific provisions of a Constitution which enable processes, bearers of office, or other actors to undermine the fundamental values of a constitutional democracy." The overview of the critical events post 2009 suggests that the Eighteenth Amendment, the impeachment of the Chief Justice, and the failures of governance that contributed to the Easter Sunday attacks provide evidence of constitutional vulnerability. The Nineteenth Amendment and the resolution of the constitutional crisis of October 2018, it would seem, are evidence of constitutional resilience.

In the next section, I illustrate how the legal complex working in synergy with other public institutions was able to exercise constitutional agency and bring about constitutional resilience.

4. The constitutional crisis and the legal complex in synergy

The mobilization of the legal complex was evident during the critical events of constitutional governance in Sri Lanka that I discussed in Section 3. In this part, I illustrate and argue that wherever the mobilization of the legal complex was not met with similar

[85] Interim Order, *Wickremesinghe v. Rajapakse*, CA (Writ) Application No. 363/2018, CA Minutes, 3 December 2018.

[86] *Sampanthan v Attorney General*, SC (FR) 351, 352, 353, 354, 355, 356, 358, 359, 360, and 361 of 2018, SC Minutes, 13 December 2018.

[87] Gunasingham (2019), p. 8.

[88] The National Security Council is an executive body convened by the president.

[89] Gazette (Extraordinary) of the Democratic Socialist Republic of Sri Lanka of 22 April 2019; Gazette (Extraordinary) of the Democratic Socialist Republic of Sri Lanka of 29 April 2019.

[90] Eighth Parliament of the Democratic Socialist Republic of Sri Lanka (2019).

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

mobilization of other public institutions or civil society actors, constitutional vulnerability prevailed. The exercise of constitutional agency by the legal complex was not effective in addressing the constitutional vulnerability. Where mobilization of the legal complex was met with a similar response from other public institutions, constitutional resilience was evident. Constitutional agency exercised by the legal complex in synergy with other public institutions and civil society actors yielded constitutional resilience. These experiences suggest that the mobilization of a legal complex by itself is not adequate in dealing with constitutional vulnerability. It further suggests that the mobilization of the legal complex for constitutional resilience may be a necessary but not sufficient condition of effectiveness.[91] I argue in this section that Sri Lanka's experience also demonstrates that unless constitutional resilience involves innovation, such resilience remains "simple" or as a response that is primarily reactive. I use the failures of governance exposed by the Easter Sunday attacks to illustrate this argument.

4.1 The legal complex

4.1.1 The Bar and lawyers

The postwar period has been one of high engagement for members of Sri Lanka's legal profession and to some degree for the Bar Association of Sri Lanka (BASL).[92] Writing about the Sri Lankan Bar Association in 2012, Udagama observed that

> [a]side from ... two periods of activism, one is hard pressed to identify active championing of liberal causes by the bar ... the bar has not actively intervened in public issues unless the legal profession and the bench were directly affected adversely.[93]

However, in the postwar period, it can be argued that the Bar Association has been engaged in public issues and has mobilized the legal profession towards that end. It has furthermore been a catalyst for the mobilization of other formal and informal public institutions.

Several developments can be cited to justify this claim. The Eighteenth Amendment Bill was tabled as an "urgent Bill"—that is to say, a Bill on which the Supreme Court determination has to be issued within 24 hours (this provision Article 85, section 2 was repealed by the Nineteenth Amendment in 2015 and reintroduced by the Twentieth Amendment in 2020 in the interest of national security or disaster management).[94] The Bar Association issued a statement at this time, announcing that "the Bar Council resolved that Constitutional Amendment should not be presented as 'Urgent Bills'" and urged the government to desist from proposing constitutional amendments in that form.[95] A similar statement was issued by the BASL against another controversial Bill proposed by the government.[96] However, each of these Bills was enacted despite these interventions.

The more significant mobilization of the Bar Association took place in response to the impeachment proceedings against Chief Justice Bandaranayake in 2012–13. The Bar Association undertook several protests during this time in the capital city Colombo as well

[91] I thank the anonymous reviewer for suggesting this perspective.

[92] Sri Lanka's Bar Association was established in 1974 after the profession was unified and all lawyers were designated as Attorneys-at-Law.

[93] Udagama (2012), p. 239.

[94] Edrisinha & Jayakody (2011).

[95] Statement issued by the president, BASL, in September 2010.

[96] Statement issued by the president, BASL, on the Revival of Underperforming Enterprises and Underutilised Assets Bill November 2011.

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

as regionally and issued statements as well.[97] For instance, the Kegalle Lawyer's Association issued a statement on 20 July 2012 condemning the attacks on the courts in Mannar, which was an incident that eventually related to the impeachment proceedings. The Bar Association of Jaffna issued a statement on 28 November 2012 calling on MPs to withdraw the motion of impeachment against the Chief Justice.[98] In a statement issued by the Secretary to the Bar Association on 9 January 2013, it called "all its members (in 78 Branch Associations) to refrain from attending to any Professional duties in protest on the 10th and 11th of January 2013 to express our deplorable condemnation."[99]

Additionally, lawyers formed other groups such as the Lawyers Collective and Lawyers for Democracy in voicing their protest against the impeachment proceedings.[100] As noted by the International Bar Association, this was a challenging time for lawyers who sought to resist the government's attempts to impeach the Chief Justice.[101] It is noteworthy that several other Bar Associations from other jurisdictions also condemned the impeachment proceedings against the Chief Justice.[102] However, the BASL and the mobilized lawyers were unable to prevent the impeachment. They were also unsuccessful in their initial demands that the subsequent Chief Justice should step down. Among other things, constitutional vulnerabilities inherent to the constitutional text arguably prevented their efforts from being successful. As explained in the previous section, where the executive president commands two-thirds of the Parliament within the political context of triumphalism (of ending the internal armed conflict), any resistance to the impeachment was difficult.

Nevertheless, the BASL and lawyers continued to exercise their constitutional agency. In the aftermath of the impeachment, the Bar Association continued to issue statements on matters concerning law enforcement. For instance, it called upon law-enforcement authorities to take action against persons and organizations contributing to "religious disharmony between communities." This was in the wake of anti-Muslim riots that took place for a few days in *Aluthgama* in the Southern Province of Sri Lanka in 2012.[103] The Bar Association established a standing committee on the rule of law that issued a statement when the army used live bullets to control a protest in *Weliweriya*, resulting in three deaths.[104] This was a protest by residents against the pollution of groundwater by a multinational corporation. This committee issued another statement subsequently condemning the eviction of families by the Urban Development Authority in what the committee described as "a continuation of the militarization of civil society."[105] The president of the BASL responded specifically to the issue of designing mechanisms for addressing accountability for human rights violations that took place in the last phase of the armed conflict. When the Nineteenth Amendment Bill was proposed by the government, the BASL

[97] For instance, the Kegalle Lawyer's Association issued a statement on 20 July 2012 condemning the attacks on the courts in Mannar, which was an incident that eventually related to the impeachment proceedings. The Bar Association of Jaffna issued a statement on 28 November 2012, calling on MPs to withdraw the motion of impeachment against the Chief Justice. Statement issued by the Secretary to the Bar Association on 9 January 2013 in which it called "all its members (in 78 Branch Associations) to refrain from attending to any Professional duties in protest on the 10th and 11th of January 2013 to express our deplorable condemnation."

[98] Colombo Telegraph (2012).

[99] Colombo Telegraph (2013).

[100] Daily FT (2013).

[101] The report takes note of death threats and threatening letters issued to some of the senior lawyers who were involved in the legal proceedings on the impeachment of the Chief Justice at p. 11. International Bar Association, *supra* note 65, p. 11.

[102] Statements were issued by the Malaysian Bar Council, the Law Council of Australia, the Human Rights Committee of the Bar of England and Wales, the Canadian Bar Association, and the American Bar Association. *Ibid.*, p. 34.

[103] Statement issued by the president pursuant to a decision arrived at by the Bar Council, 28 June 2012.

[104] Statement issued by the Chairman of the BASL Standing Committee on the Rule of Law, August 2013.

[105] Statement published in Colombo Telegraph (2014).

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

issued a statement noting that it views the amendment "as a necessary and essential step" in ensuring independence of the judiciary, the public service, and in upholding the rule of law.[106] The BASL responded to the report of the Office of the High Commissioner for Human Rights (OHCHR) Investigation on Sri Lanka in 2015 stating that

> if any mechanism is to be established it must be one which inspires the confidence of all the relevant stakeholders. While there may be a need to obtain necessary assistance and expertise, including international assistance and expertise, the BASL stresses that the mechanism that must be put in place should be within the framework of Sri Lanka's Constitution.[107]

During the constitutional crisis of 2018, lawyers mobilized early on. What was evident at that point, however, was that members of the legal profession were divided on the applicable constitutional interpretation. As a result, the Bar Council of the BASL was unable to issue official statements. The mobilization of lawyers therefore was more in the form of contestations in court but also outside of court (speaking at public discussions, press statements, etc).[108] The divisions in the Bar weakened its impact at this time. It reflected but also compounded the political tensions that were playing out. In the aftermath of the Easter Sunday attacks of 2019, in terms of the mobilization of the Bar, a noteworthy development is that the Bar is one of the 12 petitioners who have filed a fundamental-rights petition against the secretary to the Ministry of Defence and the Inspector General of Police for their failure to have taken reasonable measures to prevent the attacks, in light of the intelligence information that was available at the time. This matter is pending before court. Furthermore, when the president pardoned a Buddhist monk who had been convicted of contempt of court, the BASL issued a statement "expressing grave concern" that the president exercised his powers of pardon without consulting the court and the Attorney General.[109]

The above-discussed accounts reveal that at times of constitutional vulnerability, such as the impeachment of the Chief Justice, the exercise of constitutional agency by the Bar Association and lawyers was not successful in their resistance to it. It is also evident, however, that the constitutional agency of the Bar was very high during the constitutional crisis and that the BASL was divided as a result. In the next section, I examine some of the decisions of the appellate judiciary during this same time to illustrate the dynamics of the legal complex more broadly.

4.1.2 Judiciary

The jurisprudence of the Sri Lankan appellate courts in the postwar period reflect the pattern of constitutional vulnerability and the gradual development of constitutional resilience that was evident in the analysis undertaken so far.

When the Eighteenth Amendment Bill was challenged before the Supreme Court, the court held that the removal of a limit to the number of terms for which an individual can be appointed to the office of executive president did not require approval at a referendum.[110] The Eighteenth Amendment proposed to replace the Constitutional Council with a Parliamentary Council that could only make recommendations to the president. At this time, the president also enjoyed immunity from suit during office. Nevertheless, the court held that removing the term limit to this office reinforced the sovereignty of the people. The argument

[106] Statement issued by the Secretary of the Bar Association, April 2015.
[107] Statement issued by the president of the BASL, 28 November 2015.
[108] Groundviews (2018a).
[109] Statement as published in the Colombo Telegraph (2019).
[110] *In re the Eighteenth Amendment Bill*, 2010 SC (Special Determination) No. 01/2010, 31 August 2010.

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

of the court was that allowing the incumbent to contest elections would enhance the people's right to franchise.

The impeachment of the Chief Justice in early 2013 had a debilitating impact on the Supreme Court. The study of the jurisprudence of the court on fundamental rights during this period is revealing.[111] The number of petitions that were adjudicated upon was low. The weak jurisprudence on fundamental rights suggested a low interest and a weak exercise of constitutional agency. The re-establishment of the Constitutional Council through the Nineteenth Amendment in 2015 seems to have had a positive impact on the court and strengthened its constitutional agency. This is most evident in the response of the court to the writ petition and fundamental-rights petition that were filed in the Court of Appeal and Supreme Court, respectively, during the constitutional crisis. Both courts exercised their constitutional agency, drawing upon principles of constitutionalism in issuing interim orders and, in the case of the Supreme Court, its determinations.

A petition seeking the writ of *quo warranto* was filed by 122 MPs before the Court of Appeal against MP Mahinda Rajapakse and the purported Cabinet of Ministers.[112] The court granted the interim relief sought by the petitioners and restrained the respondents from functioning as prime minister and ministers, respectively.[113] The respondents appealed against this interim order to the Supreme Court soon after, with no success. In March 2019, this writ petition was withdrawn by the petitioners.

As discussed in more detail below in the assessment of the Speaker, the interim order issued by the Supreme Court on the fundamental-rights petition cleared the way for Parliament to meet. The motion of no-confidence against MP Mahinda Rajapakse made it clear that he did not command the support of the majority in Parliament. In December, the Supreme Court issued its determination declaring that the president's decision to dissolve Parliament was a violation of the right to equality.

This judgment relies upon previous jurisprudence of the Supreme Court in which the court had applied the "new doctrine" of equality as developed by the Indian Supreme Court.[114] The Supreme Court held accordingly that any arbitrary exercise of power by the president was a violation of the right to equality as guaranteed under the Constitution. This was the first case in which the Supreme Court had the occasion to hold the president accountable since the immunity of the office was qualified by the Nineteenth Amendment. The Constitution describes the fundamental-rights jurisdiction of the Supreme Court as "just and equitable."[115] In exercising this jurisdiction, the court has granted a diverse range of remedies including compensation and has struck down emergency regulations. Declaring the decision of the president to dissolve Parliament to be null and void therefore was well within the jurisdiction of the court. The determination upholds the supremacy of the Constitution and affirms that all bearers of office can only derive their powers from the Constitution.

Alongside the Supreme Court determination on the dissolution of Parliament, the court has also handed down several other decisions that reflect the exercise of constitutional agency of the court. Examples include the recognition of the right to be free from arbitrary action causing environmental degradation, an interim order preventing the enactment of the death penalty, and issuing guidelines on the arrest and detention of any person.[116]

[111] Samararatne (2017); Samararatne, *supra* note 43.

[112] Interim Order, *Wickremesinghe v Rajapakse*, CA (Writ) Application No. 363/2018, CA Minutes, 3 December 2018.

[113] *Ibid.*

[114] For a discussion of this, see Samararatne (2018).

[115] Art. 126 of the Constitution.

[116] See e.g. *Kariyawasam v. Central Environment Authority*, SC(FR) 141/2015, SC Minutes, 4 April 2019.

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

Moreover, the court has increased its workload and issued a significantly higher number of judgments on fundamental-rights petitions per year since 2015.[117]

As with the other stakeholders that I have examined in this part, the judiciary was not particularly strong in the immediate aftermath of the end of the armed conflict. The impeachment of the Chief Justice arguably weakened the institution further. However, along with the re-establishment of the Constitutional Council in 2015, a remarkable improvement was discernible in the exercise of constitutional agency by the court.

4.2 Mobilization of public institutions: citizen activists

Of the several formal and informal public institutions that mobilized in Sri Lanka's recent experiences of constitutional governance, I focus here on the Speaker of Parliament and citizen activists. In studying the constitutional crisis of October 2018, I consider them deserving of study, for the following reasons. The Speaker of Parliament played a critical role along with the judiciary and litigants in resisting attempts to prevent Parliament from convening and functioning during the constitutional crisis. The citizen activists who mobilized during this time deserve study because they represent an organic response from the public, which, for the duration of the constitutional crisis, maintained an institutionalized form. I elaborate further below.

4.2.1 The Speaker

The office of the Speaker of Parliament came into the limelight in postwar Sri Lanka during the constitutional crisis.[118] The exemplary leadership and independence demonstrated by the Speaker during that time were determinative of how the constitutional crisis was resolved. Although not highlighted as much, the office of the Speaker had a similar opportunity to uphold the rule of law during the impeachment of the Chief Justice. In the resolution adopted by the Bar Association at its special general meeting on 10 November 2012, it adopted a resolution in which it made specific requests of the Speaker. Their requests included the following: (1) to "adopt a transparent and accountable procedure" in the proceedings of the PSC; (2) to recognize and permit the presence of the Bar at the proceedings; and (3) to permit retired Chief Justices and Justices of the Supreme Court, who are not holding any public office, to participate as observers in the proceedings. The Speaker at the time did not respond to these requests. Furthermore, the PSC proceedings were conducted in violation of the rules of natural justice. The PSC report was subsequently quashed by the Court of Appeal on the basis that it was null and void. Finally, it has been pointed out that the motion to impeach the Chief Justice that was adopted in Parliament was in fact the same motion as had been passed in Parliament proposing that proceedings to impeach the Chief Justice be initiated. These are issues that could have been resolved differently if the Speaker had given effect to his mandate more fully.

In contrast, during the constitutional crisis, the Speaker was one of the most significant actors. A series of decisions taken by the Speaker during this time allowed the supremacy of the Constitution to be upheld. Soon after the president had purportedly removed the prime minister and appointed another MP as the prime minister, the president prorogued Parliament.[119] The Speaker wrote a letter to the president soon after declaring that it is the

[117] Samararatne (2017), *supra* note 111, p. 35.

[118] According to the Constitution and parliamentary convention in Sri Lanka, the Speaker, a member who is elected by Parliament, along with a Deputy Speaker and Chairman of Committees (Art. 64). The Speaker is vested with discretion in determining the conduct of parliamentary affairs. The Speaker's actions, rulings, etc. are not subject to judicial review.

[119] Gazette of the Democratic Socialist Republic of Sri Lanka (2094/45) of 27 October 2018.

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

Speaker's duty to protect the rights and privileges of all MPs. The Speaker noted that, until "any other person emerges from within Parliament as having secured the confidence of Parliament," he has been requested to protect the rights and privileges of the prime minister. The Speaker added that it is "a democratic and fair request." The Speaker ends this letter by observing that it is his "duty" to draw attention "to the convention that a prorogation should be done in consultation with the Speaker."[120] Several days later, the Speaker issued another letter declaring that, until "the new political alliance prove their majority in Parliament," he is "compelled to accept the status that existed previously." He noted elsewhere in this letter that he considers it his "paramount duty to act in accordance with my conscience for the protection of rights and privileges of the majority of the Members of Parliament ... and the prevention of the destruction of democracy that we have safeguarded up to now."[121]

In the meantime, the Supreme Court issued an interim order suspending the decision of the president to dissolve Parliament.[122] The Speaker issued a statement summoning Parliament the next day.[123] The events that unfolded in Parliament in the ensuring days proved to be extraordinary in terms of the conduct of several MPs. These incidents included some MPs preventing the Speaker from taking his chair, throwing a chair at the police officers protecting the Speaker, and throwing water mixed with chilli powder at the police officers.[124] The Speaker, seated in a chair placed on a side on the floor of the House and surrounded by a human chain of police officers, presided over the passing of a no-confidence motion against the MP who had been purportedly appointed by the president as the prime minister. When the outcome of the no-confidence motion was communicated by the Speaker to the president, the president responded by alleging that the motion had not been adopted according to parliamentary procedure.[125] In his response, among other things, the Speaker made the following observation:

> The country has plunged into a serious disorder owing the decision taken by you on the 26th of October. The economy of the country, living conditions of the people, arrival of tourists, the goodwill earned by Sri Lanka at the international arena and the reputation you earned during your long political career are in the process of rapidly diminishing at the moment. An unnecessary conflict between the executive and the legislature has been created as a result.[126]

Subsequently, another no-confidence motion was passed by the House. As explained in Section 3, the crisis was resolved soon after the determination by the Supreme Court on 14 December 2019.

The actions of the Speaker during the impeachment of the Chief Justice and during the constitutional crisis are useful in understanding the significance of this office in terms of preserving parliamentary democracy and the supremacy of the Constitution. When the Constitution is disregarded and/or interpreted selectively by the executive working in tandem with the support of a group in the legislature, the Speaker's conduct becomes critical. It seems to me that the Speaker's refusal or inability to exercise constitutional agency during the impeachment added to constitutional vulnerability at the time. In contrast, during the constitutional crisis of 2018, the Speaker's exercise of constitutional

[120] English translation of the letter dated 28 October 2018 written by the Speaker to the president.

[121] Letter issued by the Speaker to the president of Sri Lanka on 5 November 2018.

[122] Interim order, SC (FR) 351, 352, 353, 354, 355, 356, 358, 359, 360, and 361 of 2018, SC Minutes, 13 November 2018.

[123] Letter issued by the Speaker, 13 November 2018.

[124] Bastians (2019), p. 63.

[125] Letter dated 14 November 2018 by the president to the Speaker.

[126] *Ibid.*

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

agency resulted in constitutional resilience. Sri Lanka's experiences also reveal the ways in which the Speaker's actions and the different aspects of the legal complex interact and influence in a mutually dependent way. In some cases, it leads to constitutional vulnerability, as was the case in the purported impeachment of the Chief Justice. In other instances, it can lead to constitutional resilience, as was evident in the case of the constitutional crisis of 2018.

4.2.2 Citizens as activists

During the constitutional crisis, citizens actively mobilized around political issues and demanded adherence to principles of constitutionalism and democratic governance.[127] Such protests could be contrasted with social movements that function within an organizational structure and have in mind long-term social transformation. In postwar Sri Lanka, citizen activism was evident among workers who protested against proposals for reforming laws that govern pensions, communities affected by groundwater pollution in a city in the Western Province, and also among the academic community. Families of persons who had been subjected to enforced disappearances have continued to protest throughout the postwar period. During the impeachment of the Chief Justice, the protests were primarily made by the legal profession. Those protests were not supported in any distinct ways by protests by citizens. During the constitutional crisis, it was striking to note that citizens mobilized, particularly in the city of Colombo. These protests were primarily by the privileged middle- and upper middle-class sections of Colombo city, with some participation from the regions, workers' unions, etc. The views of some notable members of the legal profession impacted the mobilization of these protests.[128] Notable among these protests was the almost daily protest that was carried out in the late afternoons at a prominent roundabout in Colombo. Citizens would arrive with their self-made posters or use a poster previously used and protest for a few hours before disbanding. While a few activists from civil society supported this initiative, it was clear that individuals were taking the initiative to attend this protest almost daily.[129]

Particularly during the constitutional crisis, there was a discernible interest among the public in improving their constitutional literacy. Citizens took the initiative to read relevant constitutional provisions and to consider the interpretation of those provisions. During this time, constitutional interpretation was a matter of public debate. This development should be appreciated in the context of a related development. The access to information under the Right to Information Act also had an enabling impact. Citizens, activists, and the media had been empowered to a certain extent to seek public information and to challenge arbitrary actions of the state.

Citizen activists ceased their activism within a few days of the resolution of the constitutional crisis. This spontaneous coming-together (with some co-ordination) of citizens on a specific political and constitutional issue of high significance shaped public perceptions and strengthened the already mobilized actors within the legal complex and other public institutions. It was the synergy between them that led to the constitutional resolution of the constitutional crisis of October 2018.

5. Synergy, constitutional resilience, and time

What types of institutional dynamics and conditions allow constitutional resilience in the face of attempts to undermine gains in liberal constitutional democracy? My analysis of

[127] Welikala (2019a), p. 240.

[128] See e.g. the reporting of different viewpoints and constitutional interpretations offered by lawyers in a daily newspaper; Daily Mirror (2018).

[129] Groundviews (2018b).

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

how the legal complex and other public institutions mobilized in Sri Lanka in 2009–19 suggests that synergy between the legal complex and other public institutions is a factor that explains constitutional resilience. I clarify this claim by evaluating the three "complementary theoretical advances" that I have proposed to legal theory—expansion of focus to study the synergy between the legal complex and other public institutions, using the legal complex theory to study constitutional resilience, and the focus on a specific event and change over a longer period of time.

5.1 Synergy

Using the contrast between the events of 2010 and 2013 with the events of 2018 in Sri Lanka's constitutional governance, I have suggested that a deeper understanding of how the legal complex contributes to social change requires an expansion of focus. Rather than focusing only on the synergy between actors trained legally, the focus must be expanded to include the synergy between the legal complex on the one hand and other public institutions and civil society on the other.

This complementary theoretical advancement has at least three advantages. The first is the advantage of offering explanations for "failures" in advancing social change even in situations in which the legal complex has mobilized. During the impeachment of the Chief Justice in Sri Lanka, the legal complex was mobilized to a very high level. Nevertheless, the lack of synergy between the legal complex and other public institutions meant that the impeachment could not be prevented. The second advantage is that it draws attention to the significance of political and other actors beyond lawyers and the judiciary. The constitutional developments that I have examined in this article suggest that mobilization of the legal complex is necessary but by no means a sufficient condition for dealing with constitutional vulnerability or for developing constitutional resilience. The third advantage in expanding the focus in this way is that it allows better accounting of how change occurs over time. I discuss this aspect in more detail below.

Including the synergy between the legal complex and other public institutions in legal complex theory opens up a range of new possibilities for the use of this theory. The media, other professional bodies, labour unions, academic associations, and religious institutions are examples of formal public institutions that can be included. New forms of social media and student movements are examples of informal sectors that could be brought within the frame of analysis with this expanded theoretical approach. The study of the divergences within these public institutions and informal sectors, and the variations that arise due to linguistic, religious, etc. characteristics has the potential to offer insights among other things into constitutional culture. The methods for identifying and establishing the synergy between the legal complex and public institutions or informal institutions would vary and can be drawn from the rich field of socio-legal studies.

5.2 Constitutional resilience

The second complementary methodological advancement to legal complex theory that I undertook in this article was to use the theory to study a new phenomenon—that of constitutional resilience. The study of Sri Lanka's experiences in constitutional resilience offers the following four insights into how constitutional resilience develops within a jurisdiction: (1) that formal institutional design remains essential for constitutional resilience; (2) that mobilization of the legal complex may not be adequate in resisting pushback; mobilization of the legal complex alone might be inadequate in overcoming constitutional vulnerability; (3) that a synergy between other formal and informal public institutions with the legal complex can result in the development of constitutional resilience; and (4) that innovation is required to ensure that constitutional resilience is

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

reflexive. Simple constitutional resilience that falls short of such innovation can collapse into constitutional vulnerability.

First, the Sri Lankan case-study affirms that formal institutional design is a key factor in bringing about constitutional resilience. In Sri Lanka, the restoration of the independence of the judiciary and of the independent Commissions and the establishment of the first independent elections Commission through the Nineteenth Amendment had a significant impact on the post-2015 political developments. The executive presidency prior to the Nineteenth Amendment and particularly under the Eighteenth Amendment was an institution that could override or control the legislature and the judiciary. For instance, the president's power to appoint the Cabinet from MPs was abused during this time to encourage members to cross the floor. The president's power to make appointments to the appellate courts could not be subjected to judicial review. It is in this context that the Chief Justice was impeached—a high watermark of constitutional vulnerability in Sri Lanka's recent history.

Second, it seems that the experience of mal-governance and of constitutional vulnerability during this time created the ground conditions for the assertion of constitutional agency by the legal complex in tandem with other public institutions. Subsequently to the purported impeachment, lawyers and the BASL continued to mobilize along with citizens and some political parties, eventually resulting in the change of government in 2015. Within the first few months of the election of a new president, the Nineteenth Amendment was enacted and several other legislative and policy reforms were introduced. As illustrated in Sections 3 and 4 of this article, the institutional reforms enacted through the Nineteenth Amendment provided the framework within which the exercise of constitutional agency and the development of constitutional resilience took place post 2015.

Third, the study of Sri Lanka's experiences in constitutional resilience suggests that it requires legal actors working in tandem with other institutions and sectors to bring about this outcome. Formal and informal public institutions and sectors matter in this regard. By informal institutions and practices, I particularly mean citizens acting as activists, and the political and constitutional culture within which such activism is undertaken. The development of constitutional agency is shaped by these informal institutions and practices. Citizen engagement in social media is a relatively new phenomenon that comes within this category. The impact of social media was felt across society particularly during the constitutional crisis. The legal complex acting in synergy with citizens can create an environment for resisting attempts to roll back on gains made in strengthening a constitutional democracy.

The synergies between formal institutions and between formal and informal institutions determine the development of constitutional resilience. Constitutional mechanisms, statutory agencies, and independent Commissions, for instance, either work in tandem or pull apart to produce constitutional vulnerabilities or constitutional agency. Therefore, it is useful to pay attention to the interactions between these institutions. It is also useful to reflect on how best to facilitate such synergy. Ensuring legal accountability for the financing of elections campaigns of political parties, ensuring access to courts through effective legal-aid programmes, and the promotion of constitutional literacy among different stakeholders are ways in which such synergies can be promoted.

My fourth point is about the durability of constitutional resilience. Constitutional resilience remains simple when it successfully resists attempts to roll back progress made in strengthening constitutional governance. However, if no measures are taken to develop innovations to prevent the recurrence of that pushback, it can be a source of vulnerability. In Sri Lanka, after the constitutional crisis, Parliament ought to have impeached the president for intentionally violating the Constitution. Parliament failed to do so, and it seemed as if affairs of the government returned to business as usual. However, soon after the Easter Sunday attacks it was revealed that the rift between the president and the

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

Prime Minster remained, and that it affected the effective functioning of the National Security Council. As a result, the security sector failed to act on the intelligence that had been shared by India about the possibility of an imminent attack. This grave negligence had a domino effect on the ongoing (but already weak) attempts at constitutional reform and legislative reform. It further led to a loss of confidence in the Nineteenth Amendment itself. The perception that the amendment weakened the office of the president, that requiring the president to work in partnership with the prime minister led to ineffective government, gained ground. This perception was built upon by the current government to enact the Twentieth Amendment. This amendment has strengthened the office of the executive president by, among other things, replacing the Constitutional Council with a Parliamentary Council that the president may consult, the reintroduction of the option of enacting "urgent" Bills, and by changing the regime type to presidential-parliamentary.[130]

In other words, the simple constitutional resilience that was evident during the constitutional crisis of 2018 was inadequate. The constitutional vulnerability that arose determined the course of subsequent events. If factors that contributed to the crisis of 2018 had been addressed, reflexive constitutional resilience may have been developed. These developments suggest that tracing the synergy (or the lack thereof) between the legal complex and other public institutions across time is particularly useful. I turn to this aspect below.

5.3 Synergy across time

In addition to institutional design/reform, informal practices, and the synergies between the two, the study of how constitutional resilience develops or declines over time due to the synergy between the legal complex and other public institutions and civil society actors over time is instructive. The Sri Lanka case-study suggests that with the passing of time, constitutional vulnerability can yield to constitutional resilience and vice versa. The development is incremental in nature. The study of these developments over a longer period of time will allow a deeper understanding of constitutional resilience. Therefore, it is useful and even necessary to consider events, but also successive events across time, in understanding the dynamics of constitutional resilience.

6. Resilience through synergy?

In seeking to answer the question "What types of institutional dynamics and conditions allow constitutional resilience in the face of attempts at undermining gains in liberal constitutional democracy?", I have proposed three complementary methodological advances to legal complex theory. I have illustrated the validity of those advances through a study of constitutional governance in contemporary Sri Lanka.

First, I argued that a broader structural view must be taken of social mobilization. One method for broadening the view is through the study of synergy within the legal complex and the study of the synergy between the legal complex and other public institutions (formal and informal). I illustrated how this may be undertaken through the study of the synergy between the legal complex, the Speaker of Parliament, and the citizens. Second, I argued that the legal complex theory can used to study the dynamics of constitutional resilience. The dynamics of constitutional resilience, I argued, require the study of the relationship between constitutional vulnerability, constitutional agency, and constitutional resilience. Constitutional resilience itself, I have argued, can be simple or reflexive.

[130] Samararatne (2021), *supra* note 45.

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

Through examples of recent critical events from constitutional governance in Sri Lanka, I illustrated how the exercise of constitutional agency by the legal complex in synergy with other public institutions can result in simple constitutional resilience. The failure to innovate, however, results in vulnerability. In Sri Lanka's case, the failure to take the follow-up measures to respond to the constitutional crisis has today led to a state of constitutional vulnerability. Third, and relatedly, I argued that the study of synergies between the legal complex and other public institutions and civil society must include a study of specific events, but also a study of related events across time. This allows a study of how a chain of events determines future events. It also allows, in the case of the study of the dynamics of constitutional resilience, a study of the links between constitutional vulnerability and resilience—of simple constitutional resilience and reflexive constitutional resilience.

Acknowledgements. A draft of this paper was presented at the workshop on "Constitutional Resilience in South Asia" held at the Melbourne Law School, 5–7 December 2019. The author wishes to thank Mayur Suresh, Tarunab Khaitan, and Arun Thiruvengadam for their feedback at this workshop. Research for this paper (February 2019 to October 2020) was fully funded by the Australian Government through the Australian Research Council (ARC) Laureate Program "Balancing Diversity and Social Cohesion in Democratic Constitutions."

References

Bandaranayake, S. (2019) *Hold Me In Contempt: A Memoir*, Colombo: Sarasavi Publishers.

Bastians, Dharisha (2019) "The Siege: Inside 52 Days of Constitutional Crisis in Sri Lanka," in Asanga Welikala, ed., *Constitutional Reform and Crisis in Sri Lanka*, Colombo: Center for Policy Alternatives, 22–88.

Bonß, W. (2016) "The Notion of Resilience: Trajectories and Social Science Perspective," in A. Maurer, ed., *New Perspectives on Resilience in Socio-Economic Spheres*, Wiesbaden: Springer, 9–24.

Chandrasekeram, Visakesa (2017) *The Use of Confessionary Evidence under the Counter-Terrorism Laws of Sri Lanka: An Interdisciplinary Study*, Amsterdam: Amsterdam University Press.

Choudhry, Sujit (2018) "Constitutional Resilience to Populism: Four Theses," https://verfassungsblog.de/constitutional-resilience-to-populism-four-theses/ (accessed 19 April 2020).

Colombo Telegraph (2012) "Withdraw the Impeachment against CJ—the Bar Association of Jaffna," *Colombo Telegraph*, 3 December.

Colombo Telegraph (2013) "'Stop Debating The Impeachment': Bar to Strike for Two Days," *Colombo Telegraph*, 9 January.

Colombo Telegraph (2014) "Bar Association Condemns Illegal Eviction of Families and Militarization," *Colombo Telegraph*, 30 January.

Colombo Telegraph (2019) "Sirisena Should Not Have Exercised Executive Powers to Release BBS Gnanasara," *Colombo Telegraph*, 29 May.

Contiades, Xenophon, & Alkemene Fotiadou (2015) "On Resilience of Constitutions: What Makes Constitutions Resistant to External Shocks," 9 *Vienna J on International Constitutional Law* 3–26.

Contiades, Xenophon, & Alkemene Fotiadou (2019) "Constitutional Resilience and Unamendability: Amendment Powers as Mechanisms of Constitutional Resilience." 21 *European Journal of Law Reform* 243–58.

Coomaraswamy, Radhika (1997) *Ideology and the Constitution: Essays on Constitutional Jurisprudence*, Colombo: International Centre for Ethnic Studies.

Coomaraswamy, Radhika (2012) "The 1972 Republican Constitution of Sri Lanka in the Postcolonial Constitutional Evolution of Sri Lanka," in Asanga Welikala, ed., *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice*, Colombo: Centre for Policy Alternatives, 125–44.

Daily FT (2013) "Lawyers Collective says 'Black Day in history of Sri Lanka'," *Daily FT*, 12 January.

Daily Mirror (2018) "The Unfolding Political Crisis," *Daily Mirror*, 30 October, https://www.dailymirror.lk/article/the-Unfolding-political-crisis-157590.html (accessed 8 October 2021).

Daly, Tom (2019) "Democratic Decay: Conceptualising an Emerging Research Field." 11 *Hague Journal on the Rule of Law* 9–36.

deVotta, Neil (2004) *Blowback: Linguistic Nationalism, Institutional Decay, and Ethnic Conflict Sri Lanka*, Stanford: Stanford University Press.

Edrisinha, Rohan (2008) "Sri Lanka: Constitutions without Constitutionalism, a Tale of Three and a Half Constitutions," in R. Edrisinha and A. Welikala, eds., *Essays on Federalism in Sri Lanka*, Colombo: Center for Policy Alternatives.

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

Edrisinha, Rohan, & A. Jayakody, eds. (2011) *The Eighteenth Amendment to the Constitution: Substance and Process*, Colombo: Centre for Policy Alternatives.
Edrisinha, Rohan, & N. Selvakkumaran (1990) "Constitutional Change in Sri Lanka since Independence." 13 *Sri Lanka Journal of Social Sciences* 79–103.
Eighth Parliament of the Democratic Socialist Republic of Sri Lanka (2019) "Report of the Select Committee of Parliament to look into and report to Parliament on the Terrorist Attacks that took place in different places in Sri Lanka on 21st April 2019," https://www.parliament.lk/uploads/comreports/sc-april-attacks-report-en.pdf (accessed 26 August 2021).
Grabenwarter, Christoph (2018) "Constitutional Resilience," https://verfassungsblog.de/constitutional-resilience/ (accessed April 19 2020).
Groundviews (2018a) "Statement Issued by 75 Lawyers and Academics 'On Interpretation of the Constitution'," https://groundviews.org/2018/11/12/statement-by-lawyers-and-academics-on-the-interpretation-of-the-constitution/ (accessed 20 April 2020).
Groundviews (2018b) "The Constitutional Crisis: A Round Up," https://groundviews.org/2018/11/02/the-constitutional-crisis-a-round-up/ (accessed 20 April 2020).
Gunasingham, A. (2019) "Sri Lanka Attacks." 11 *Counter Terrorist Trends and Analyses* 8.
Halliday, T. C., et al., eds. (2007) *Fighting for Political Freedom: Comparative Studies of the Legal Complex and Political Liberalism*, Oxford: Hart.
Halliday, T. C., et al., eds. (2012) *Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex*, Cambridge: Cambridge University Press.
Hattotuwa, Sanjana (2019) "Framing a Putsch: Twitter and Facebook in Sri Lanka's Constitutional Crisis," in Asanga Welikala, ed., *Constitutional Reform and Crisis in Sri Lanka*, Colombo: Center for Policy Alternatives, 179–239.
Intergovernmental Panel on Climate Change (2007) "Climate Change 2007: Synthesis Report. Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change," https://www.ipcc.ch/site/assets/uploads/2018/02/ar4_syr_full_report.pdf (accessed 24 August 2021).
International Bar Association (2013) *A Crisis of Legitimacy: The Impeachment of Chief Justice Bandaranayake and the Erosion of the Rule of Law in Sri Lanka*, London: International Bar Association.
Jayawardene, Kumari (1983) "Aspects of Class and Ethnic Consciousness in Sri Lanka." 14 *Development and Change* 1–18.
Jayawardena, Kumari (2003) *Ethnic and Class Conflict in Sri Lanka: The Emergence of Sinhala-Buddhist Consciousness 1883–1983*, Colombo: Sanjiva Books.
Karpik, L., & T. C. Halliday (2011) "The Legal Complex." 7 *Annual Review of Law and Social Science* 217–36.
Kodikara, Chulani (2017) "Familial Ideology, Development Indicators and Gender Equality in Sri Lanka," in Maitrayee Mukhopadhyay, ed., *Feminist Subversion and Complicity: Governmentalities and Gender Knowledge in South Asia*, New Delhi: Zubaan.
Kumarasingham, Harshan (2015) *The Road to Temple Trees—Sir Ivor Jennings and the Constitutional Development of Ceylon: Selected Writings*, Colombo: Center for Policy Alternatives.
Loganathan, Ketheshwaran (1996) *Sri Lanka: Lost Opportunities: Past Attempts at Resolving Ethnic Conflict*, Colombo: Centre for Policy Research and Analysis.
Lorenz, Daniel F., & Cordula Dittmer (2016) "Resilience in Catastrophes, Disaster and Emergencies," in A. Maurer, ed., *New Perspectives on Resilience in Socio-Economic Spheres*, Wiesbaden: Springer, 25–59.
Mate, Manoj (2012) "Priests in the Temple of Justice: The Indian Legal Complex and the Basic Structure Doctrine," in Terence C. Halliday, et al., eds., *Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex*, Cambridge: Cambridge University Press, 112–46.
Orjuela, Camilla, Herath, Dhammika, & Jonas Lindberg (2016) "Corrupt Peace? Corruption and Ethnic Divides in Post-War Sri Lanka." 11 *Journal of South Asian Development* 149–74.
Samararatne, Dinesha (2016) "Recent Trends in Sri Lanka's Fundamental Rights Jurisdiction." XXII *Bar Association Law Journal* 234–46.
Samararatne, Dinesha (2017) "Judicial Interpretation of Human Rights," in Dinesha Samararatne, ed., *Sri Lanka: State of Human Rights*, Colombo: Law & Society Trust, 35–68.
Samararatne, Dinesha (2018) "Judicial Borrowing and Creeping Influences: Indian Jurisprudence in Sri Lankan Public Law." 2 *Indian Law Review* 205–23.
Samararatne, Dinesha (2020a) "Gendering the Legal Complex: Women in Sri Lanka's Legal Profession." 47 *Journal of Law and Society* 666–93.
Samararatne, Dinesha (2020b) "Sri Lanka's Constitutional Ping-Pong," https://www.himalmag.com/sri-lankas-constitutional-ping-pong-2020/ (accessed 24 August 2021).

https://doi.org/10.1017/als.2021.36 Published online by Cambridge University Press

Samararatne, Dinesha (2021) "Chameleon Constitutions and Sri Lanka's 20th Amendment," https://lawandotherthings.com/2021/01/chameleon-constitutions-and-sri-lankas-20th-amendment/ (accessed 24 August 2021).

Saravanamuttu, Paikiasothy (2011) "The 18th Amendment: Political Culture and Consequences," in R. Edrisinha and A. Jayakody, eds., *The Eighteenth Amendment to the Constitution: Substance and Process*, Colombo: Centre for Policy Alternatives, 12–20.

Sedelium, Thomas, & Jonas Linde (2018) "Unravelling Semi-Presidentialism: Democracy and Government Performance in Four Distinct Regime Types." 25 *Democratization* 136–57.

Spencer, Jonathan (1990) *Sri Lanka: History and Roots of Conflict*, London: Routledge.

Udagama, D. (2012) "The Sri Lankan Legal Complex and the Liberal Project," in T. C. Halliday, et al., eds., *Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex*, Cambridge: Cambridge University Press, 219–44.

Welikala, Asanga, ed. (2016) *The Nineteenth Amendment to the Constitution: Content and Context*, Colombo: Centre for Policy Alternatives.

Welikala, Asanga (2019a) "Introduction," in Asanga Welikala, ed., *Constitutional Reform and Crisis in Sri Lanka*, Colombo: Center for Policy Alternatives, 8–21.

Welikala, Asanga (2019b) "The Sri Lankan Culture of Constitutional Law and Politics: The Lessons of the Constitutional Reform Exercise of 2015–19 and the Constitutional Crisis of 2018," in Asanga Welikala, ed., *Constitutional Reform and Crisis in Sri Lanka*, Colombo: Center for Policy Alternatives, 263–328.

Wickramasinghe, N. (2006) *Sri Lanka in the Modern Age: A History of Contested Identities*, Colombo: Vijitha Yapa.

Cite this article: Samararatne, Dinesha (2022). Resilience through Synergy? The Legal Complex in Sri Lanka's Constitutional Crisis. *Asian Journal of Law and Society* **9**, 1–25. https://doi.org/10.1017/als.2021.36