



**RESHAPING THE EXECUTIVE:  
CHOOSING THE PRIME MINISTER IN A  
PARLIAMENTARY SYSTEM**

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## Introduction

In the first phase of reforms following the 2015 presidential election, the Nineteenth Amendment to the Constitution effected changes to the executive presidency that changed the nature of the 1978 Constitution from a ‘president-parliamentary’ system into a ‘premier-presidential’ system.<sup>1</sup> The second phase of reforms now being undertaken in 2016 contemplates the departure from the semi-presidential form of government altogether, and the restoration of a fully-fledged parliamentary system. Solemn promises to abolish the executive presidency have repeatedly been made at the highest levels of the government since January 2015. In view of the experience of presidentialism – such that the Gaullist experiment<sup>2</sup> became more a Bonapartist ordeal<sup>3</sup> – the people of Sri Lanka have consistently voted for presidential candidates who proposed abolition from 1994 onwards.<sup>4</sup> The recent report of the Public Representations Committee on Constitutional Reform also notes “the overwhelming recommendation that the country adopts a Parliamentary Cabinet system of government.”<sup>5</sup>

Within the deliberations of the Constitutional Assembly process on the form of the future parliamentary system, a proposal currently under consideration is for the introduction of a directly elected prime minister. The thinking underlying the proposal appears to be threefold: (a) that it would promote the stability of government in the context of the proposed Multi-Member Proportional (MMP) electoral system which is not expected to yield overly-large governmental majorities; (b) that the people have been accustomed to the direct election of their chief executive under the 1978 Constitution and that it would be undemocratic to take this right away; and (c) that the election of the chief executive on the basis of the entire country as one electorate would have both a unifying and a moderating effect on electoral politics in the context of a communally plural polity.

Although it has been proposed as a solution for various problems in countries such as Japan,<sup>6</sup> this unusual innovation within the parliamentary model has only been actually put into practice in Israel, and then too, quickly abandoned as a failure (although

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<sup>1</sup> A. Galyan, ‘*The Nineteenth Amendment in Comparative Context: Classifying the New Regime Type*’ in A. Welikala (Ed.) (2016) *The Nineteenth Amendment to the Constitution: Content and Context* (Colombo: Centre for Policy Alternatives): Ch.12.

<sup>2</sup> A.J. Wilson (1980) *The Gaullist System in Asia: The Constitution of Sri Lanka (1978)* (London: Macmillan).

<sup>3</sup> R. Coomaraswamy, ‘*Bonapartism and the Anglo-American Constitutional Tradition in Sri Lanka: Reassessing the 1978 Constitution*’ in A. Welikala (Ed.) (2015) *Reforming Sri Lankan Presidentialism: Provenance, Problems and Prospects* (Colombo: Centre for Policy Alternatives): Ch.1.

<sup>4</sup> For an analysis of this long-standing debate, see A. Welikala, ‘*The Executive Presidency and the Sri Lankan State: Myths and Realities*’, *Groundviews*, 20<sup>th</sup> January 2015: <http://groundviews.org/2015/01/20/the-executive-presidency-and-the-sri-lankan-state-myths-and-realities/>

<sup>5</sup> Public Representations Committee on Constitutional Reform, *Report on Public Representations on Constitutional Reform*, May 2016: 30, 34.

<sup>6</sup> J. Rheuben, ‘*A Presidential Prime Minister: Japan’s Direct Election Debate*’ (2007) *Journal of Japanese Law* 24: 81-105

admittedly, in that experience this had more to do with the failures of a peculiar electoral system than with the principle of direct election *per se*).<sup>7</sup> For Westminster model purists, it may seem as if the principle of direct election negates one of the most important strengths of the model: obviating presidential unilateralism through a collegial executive within which the prime minister is only *primus inter pares*. For Sri Lankan reformists, it may also seem as if one of the main rationales for abolishing presidentialism is being brought back in through the backdoor to instantiate a system of ‘presidential parliamentarism’.<sup>8</sup>

In this paper we closely scrutinise the main arguments for and against the principle of direct election of the prime minister. If subject to a series of institutional safeguards that we articulate, we think there may be defensible grounds for the innovation. However, there are also grave risks, including the exacerbation of the tendency to ‘elective dictatorship’<sup>9</sup> (or at least executive dominance) to which the Westminster model is susceptible, and which is even more pronounced in the relatively weak political cultures and legislative practices of ‘Eastminster’<sup>10</sup> polities such as ours. Accordingly, our assessment concludes with a preference for less radical institutional innovations than direct election that in our view would meet the objectives of stability and clarity, namely, the express pre-election nomination of prime ministerial candidates by political parties, and the consolidation of the prime minister’s authority through an immediate post-election investiture vote. At the end of the paper, we provide a quick-reference comparison table and a textbox that summarise the institutional features of a directly elected PM model as well as our own preferred model.

## 1. Arguments Against a Directly Elected Prime Minister

In this section we set out what we see as the virtues of conventional parliamentarism in contrast to both executive presidentialism and a directly elected prime minister.

### 1.1. The risk of authoritarianism

The executive presidency had the effect of transforming political campaigns into competitions of personal traits and charisma. The impact of this transformation permeated even parliamentary elections, where many candidates for parliamentary office were seen to ride the ‘coattails’ of the charismatic incumbent. This rendered the president’s office the political centre of gravity, with all other politicians falling in line under his command in order to gain and remain in power. It is likely that a directly elected prime minister could continue this tendency in Sri Lankan politics. A prime

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<sup>7</sup> See e.g., R.Y. Hazan, ‘The Unintended Consequences of Extemporaneous Electoral Reform: The 1999 Elections in Israel’ (2000) *Representation* 37(1): 39-47; R.Y. Hazan & A. Diskin, ‘The 1999 Knesset and Prime Ministerial Elections in Israel’ (2000) *Electoral Studies* 19: 615-646; P.Y. Medding, ‘From Government By Party to Government Despite Party’ (1999) *Israel Affairs* 6(2): 172-208.

<sup>8</sup> See R.Y. Hazan, ‘Presidential Parliamentarism: Direct Popular Election of the Prime Minister, Israel’s New Electoral and Political System’ (1996) *Electoral Studies* 15(1): 21-37.

<sup>9</sup> Lord Hailsham, ‘Elective Dictatorship’, The Richard Dimpleby Lecture, 21<sup>st</sup> October 1967, *The Listener*: 496-500.

<sup>10</sup> H. Kumarasingham (2013) *A Political Legacy of the British Empire: Power and the Parliamentary System in Post-Colonial India and Sri Lanka* (London: I.B. Tauris).

ministerial election will need to take place simultaneously with general elections, which could allow authoritarian characters in Sri Lankan politics not only to remain the only protagonists of the political arena, but also to continue devaluing the importance of consensus and compromise among representatives of a range of differing viewpoints, which is a hallmark of representative parliamentary democracy.

## **1.2. The risk of ethno-religious majoritarianism**

Extending the above line of thought, it is also noted that the executive presidency, being based on a highly majoritarian system of election, has had a profound impact on the ethno-nationalist politics of Sri Lanka. This is one of the major reasons in favour of its abolition. The proposed alternative, pure parliamentarism, is arguably more counter-majoritarian to the extent that it relies on a collegial system of governance where no individual can claim to command the support of an absolute majority of the entire voting population, or more perniciously, marginalise minorities by relying on extremist forms of majoritarian nationalist mobilisation. However, foisting a directly elected prime minister on a parliamentary system would reintroduce this majoritarian feature back into Sri Lanka's constitutional framework, threatening to render even the alternative system susceptible to the divisive political forces that seek to benefit from ethnic disharmony.

## **1.3. Risk of cohabitation and (therefore) weak/unstable government**

The continued instability and eventual demise of Ehud Barak's coalition in Israel roughly between 1999 and 2001 is a useful example of the results of cohabitation, which is where a prime ministerial candidate belonging to one party wins the popular vote, while some other party or coalition wins a larger share of the votes and/or parliamentary seats. Barak won 56% of the vote in his own election, while his coalition, 'One Israel', secured only 20% of the vote at the general election, earning them 26 seats out of a 160-member Knesset. He was compelled to form a patchwork coalition with a number of minor parties, who contributed to the deadlock in government that eventually resulted in Barak's resignation in 2000.<sup>11</sup>

A ballot split is an absolute necessity if direct election is to be feasible; however, a ballot split between a generally elected Parliament and a specifically elected Prime Minister runs the inherent risk of resulting in cohabitation. In such a situation, the elected Prime Minister will be compelled either to form a minority government or to broker a coalition consisting of breakaway parties from a pre-existent coalition and/or members who have crossed-over.

None of these options are satisfactory, as they envisage kingmakers in small parties and crossover politicians, affording them a disproportionate amount of power in government to an extent that it negates representativeness and breeds instability.

## **1.4 In choosing a *formateur* and eventual Prime Minister, assembly confidence is far more relevant than the direct will of the people**

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<sup>11</sup> E. Ottolenghi, 'Why Direct Election Failed in Israel' (2001) *Journal of Democracy* 12(4): 114, 117.

The direct will of the people, in the context of choosing a *formateur* (i.e., the leader who negotiates the formation of a government) and a Prime Minister to lead it, is overrated as a democratic ideal. The direct will of the people is relevant at the level of determining the policy issues that need to be represented in Parliament, and for choosing the individuals most suitable to represent those issues in Parliament. The choice of Prime Minister, as a matter of forming an operational government, is best left to the representatives who are tasked by the voters with the actual business of governing on behalf of them. That choice is heavy with factors concerning the interpersonal skills and leadership style of a potential prime minister, and elected representatives, who are frequently in professional contact with each other, are in a better position to gauge these factors than a regular voter is. In this sense, the ideal that representative government must be based on *assembly* confidence (as opposed to public confidence) is not only adequate as the principle guiding the formation of government—it is also the essential one.

### **1.5 The potential of creating two parallel popular mandates for the Prime Minister and Government**

The fact that the Prime Minister will be elected in a separate election may perhaps give rise to claims on their part to an extraordinary popular mandate that is independent from the rest of the government. Especially in a context where government consists in a coalition brokered *after* a general election, the simultaneous existence of parallel mandates for the Prime Minister and the government can lead not only to confusion, but also to authoritarianism and to conflicts in the chain of accountability and a basis for shirking responsibility.

### **1.6A three-way split would overcomplicate the ballot for the voter**

Sri Lanka's previous experience with electoral systems, i.e., with the first-past-the-post system and the proportional representation system respectively, alternated between two competing democratic ideals: the need for a strong link of accountability between the elector and the elected, and the need for the legislature to represent adequately the diversity of political interests obtaining in the polity.

In the context of the 2016 reforms process, the evolving consensus among political parties favours the Multi-Member Proportionality (MMP) system, in which the ballot provides the voter a first-past-the-post (FPTP) vote on a constituency basis, reinforcing the relationship between the voter and the representative, while also providing a proportional representation (PR) element that ensures overall representativeness in the legislature. Thus, MMP systems ensure that the two best aspects of the FPTP and PR systems are combined in principle, while enhancing the array of democratic choices available to the people.

However, if the direct election system is foisted on the MMP system, the ballot will need to be split in three different ways, potentially causing more confusion for the voters and exposing them to the threat of invalid votes.

## 2 Arguments in Favour of a Directly Elected Prime Minister

In this section we discuss the arguments that can be adduced in favour of the institutional innovation of a directly elected Prime Minister within the overall context of a parliamentary system.

### 2.1 Enhancing the popular legitimacy of government formation by fully democratising the choice of who leads that process

A hallmark of representative democracy is government's ability to facilitate consensus and compromise among proponents of differing political views. In this regard, parliamentary models are argued to be better than presidential models, based on two important features: the equal status of all elected representatives and the dependence of governments on assembly confidence to remain in power. They combine, as the argument goes, to offer more chances of forming coalition-based governments than presidential systems do.

The democratic legitimacy of this approach depends on the assumption that any poor choices made by political parties or individual members in forming, joining, supporting or breaking away from coalitions will be corrected by the people in the next general election. In Sri Lanka, this assumption is unsupported empirically: bizarre political coalitions and erratic crossovers between polar opposite parties remain commonplace as a general practice, and have survived widespread public disapproval through multiple elections. This results usually in erosion of the public's confidence in parliamentary democracy. The inter-party horse-trading that became rampant in Israel through the late '80s and early '90s produced coalitions that bore no resemblance to how the people had cast the ballot.<sup>12</sup> The widespread public dissatisfaction that this engendered gained momentum to ultimately result in the 1992 reform that provided a direct election for the prime minister in Israel.

Since, in parliamentary systems, the prime minister is tasked with the power and responsibility of forming governments, a directly elected prime minister would ensure that the formation of government is based adequately on the will of the people. Such a system would, before the election, clearly delineate the ideological camps of the political parties by causing their differences to become personified in their prime ministerial candidate. The prime minister, thus elected, will provide a more legitimate rallying point for coalition building by virtue of their popular mandate.

At the same time, the possibility of confusing and conflicting mandates between a generally elected parliament and a separately elected prime minister would need to be

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<sup>12</sup> In Israel, both dominant parties (Mapai and Likud) consistently failed to win a majority of seats, the tally of seats between them usually being near-even. Thus, the formation of governments was dependent on forging either "national unity" coalitions between those two major parties, or regular coalitions between one major party and other minor parties holding smaller clusters of seats. The erratic and opaque manner in which these alliances were struck, often between parties who were ideologically polarised, led to the perception among voters that their will was being subverted by politicians after they were elected into office. The direct election of the Prime Minister was primarily suggested as a remedy to the erosion of public confidence in a parliamentary system that yielded this type of coalition-making process.

pre-empted. This can be achieved through the constitution, by requiring that the end of every process of government-formation is signified by an official statement of policy made by the government, which will express its mandate exhaustively (and having the effect of subsuming all other popular mandates of the members of the government, including the prime minister). Since the flexibility of government policy is a necessary value, a stated policy point may be subsequently amended with the vote of the cabinet. However, there can be no vote on this Statement of Government Policy in the manner seen under the Westminster system's Throne Speech, since doing so would render direct election of the prime minister nugatory.

## **2.2 The ballot, under conventional parliamentarism, fails to fully gauge the range and complexity of a voter's democratic choice**

Conventional parliamentary systems rely on the overall performance of the party to choose the person that leads the ensuing process of forming a government. This reliance is based on the assumption that the overall electoral performance of the *party* is an indication of the people's will on who should form a government, or who should lead the process of negotiating one with multiple other parties. Based on this assumption, conventional systems afford the individual role of negotiating and forming governments, known as the *formateur*, to the leader of the party that won either the most seats or the largest share of votes. However, especially if the variety of electoral systems under which assemblies are elected is taken into account, the undue breadth of the central assumption becomes clear. Under the first-past-the-post system, for example, voting in favour of a representative within a single-member constituency does not necessarily indicate that voter's total approval of the party their chosen representative came from.

Thus, the voter's choice of a representative for their local constituency, or the same voter's choice of which party deserves to be represented in Parliament or form a government, cannot fairly be extended to determine some of the factors relevant to choosing a *formateur* in a newly elected assembly. A *formateur* would lead the process of government formation, would have (especially in a hung parliament) the upper hand in coalition bargaining, and needs to be, in the voter's opinion, the most capable person to lead the ensuing government as its prime minister. In this manner, the position of *formateur* can validly be distinguished from other elected representatives of the legislature.

It could be argued that, despite the complexity inherent to an individual's political choices, it is impractical to have the ballot paper reflect all the many facets of such choices. However, as noted above, the currently evolving consensus among political parties is around an MMP electoral system, which necessarily involves a split ballot, i.e., one vote for a constituency representative (elected on FPTP) and another for a list candidate (elected according to PR). This logic can be extended to split the ballot a third way to isolate the voter's choice of prime minister as well.

Until 1978, the ceremonial head of state was tasked with appointing a *formateur*, and was bound nominally by parliamentary convention. Under the 1978 Constitution, the identification of a *formateur* became a power of the directly elected president, causing it to become a politicised question, and reflected the influence the executive president



exerted over the legislature. Providing for the direct election of the prime minister would democratise the choice of *formateur* by basing it directly on the expressed will of the people. The importance of democratising this choice lies in the fact that, over a span of nearly forty years, Sri Lankan voters have been conditioned to play a larger role in government formation, through the executive presidency, than as contemplated by the Westminster system.

The important caveat, however, is that, even with direct election, the system still retains the right of elected representatives to *reverse* the people's choice through no-confidence procedures, provided they are assured their reasons for dismissing an elected prime minister will satisfy the public in the ensuing prime ministerial election (see below).

### **2.3A directly elected Prime Minister stands to overcome the worst of both worlds as between presidentialism and parliamentarism**

In Sri Lanka, the return to parliamentary democracy is being advocated as a response to the authoritarianism that arose under presidentialism. This fear survives in the possibility that direct election of the prime minister could replicate the old authoritarian tendencies in the new parliamentary system. However, there is an important distinction between a directly elected president and a directly elected prime minister to the extent the latter always faces the possibility of dismissal through a withdrawal of confidence. No-confidence procedures are unarguably less complex than impeachment procedures, and if they are coupled with other checks and balances against the prime minister (such as fixed-term parliaments and limitations on cabinet size), the office could be protected from lapsing into authoritarianism.

If a prime minister's dismissal through a successful no-confidence motion results mandatorily in a fresh election, it could establish a balance of power between the executive and the legislature: parliament's dismissal of the prime minister resulting in a fresh election allows the people to approve or reprove the dismissal in a *de facto* referendum, ensuring that the procedure will not be resorted to wantonly. In such a paradigm, the prime minister would be insulated from the politically disruptive tactics commonly associated with pure parliamentarism (at least as practised in the developing world).

If an elected prime minister's dismissal should result in fresh elections, the next question that arises is the scope of such an election: should it elect the entire assembly afresh or be restricted only to selecting a successor to the prime minister's office? In Israel, a successful vote of no confidence against the prime minister dissolved the entire Knesset, triggering a fresh general election. However, the voluntary resignation of the prime minister (or their death, incapacitation, etc.) resulted only in a fresh election to choose their successor.

There are a number of disadvantages in a successful vote of no confidence against the prime minister resulting in a general election. First, by its sheer size, a general election would have a broader focus, by virtue of the scope of the contest (e.g., under an MMP system with direct election for the prime minister, a general election would envisage local constituency campaigns, party list campaigns, as well as prime ministerial campaigns). This would dilute the 'referendum effect' of fresh elections, which was

argued to be important for stability. By contrast, a prime ministerial election would be squarely focussed on the prime minister, in terms of the validity of the predecessor's dismissal and choosing a desirable successor.

Second, the successful dismissal of the prime minister would unnecessarily reward all political parties with an opportunity to canvass their platforms afresh, even if the term of parliament has barely elapsed. Third, a general election would also incur a larger cost on public spending, and are preferably held only when absolutely required.

On the other hand, if parliamentary terms are fixed and are guaranteed to supersede the incumbent prime minister's time in office, having the dismissed prime minister replaced through a specific election for the prime minister appears to be an adequate solution. Only incumbent Members of Parliament should be able to contest in such an election.

In the UK, early elections can be brought about in two contrasting scenarios: either if a motion of no confidence against the government is passed by a simple majority of the House of Commons, or if a motion calling early elections secures the support of a two-thirds majority of the House of Commons.<sup>13</sup> The combined effect of these two rules is that, unless there is broad consensus on the need for it, early elections can only be brought about by the explicit dismissal of the entire government with a vote of no confidence. (In Sri Lanka, the concept of a fixed-term parliament was introduced by the Nineteenth Amendment, which specified the term of parliament and ensured that early elections could only be called with the consent of a two-thirds majority of the assembly.)

It is necessary to specify that an elected prime minister's term in office is always subject to the parliamentary term, so that the supremacy of the legislature is established as a clear constitutional principle *vis-à-vis* its relationship with the executive. Accordingly, all general elections would see a simultaneous election for the prime minister, irrespective of the length of time spent in office by the incumbent. Such a framework would reinforce the balance of power between the assembly and the cabinet, while ensuring that the overall direction of political life follows the rhythm of the fixed cycle of general elections, as opposed to any other election.

In addition to these safeguards, it might also be necessary to consider the benefits of a narrow grace period after a general election (e.g., six months or one year), during which motions of no confidence are prohibited; this may allow a newly elected government the time and space needed to prove its worth without the distraction of disruptive tactics from across the aisle.

#### **2.4A directly elected Prime Minister could serve to strengthen and/or catalyse intra-party democracy**

In the Sri Lankan context, where political parties often face internal instabilities, factions frequently emerge within parties to challenge the legitimacy of their party's leadership. The prime minister, if directly elected, will be in a position to pre-empt such challenges by virtue of the expressed will of the people, affording the ruling party a

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<sup>13</sup> Fixed-Term Parliaments Act 2011: s.2.

degree of stability and allowing the government to get on with the business of governing. At the same time, in a context where most Sri Lankan political parties are not internally democratic, the failure of a party's leader to secure the prime ministerial post in a competition with her counterparts in other parties would have the consequence of catalysing reforms for intraparty democracy, especially if other members of the party succeed in securing parliamentary seats in their own right while the leader fails to secure the PM position as the party's leader.

### **2.5 Gradual transition to pure parliamentarism is less risky than a change overnight**

The 1978 Constitution, for the first time, established the head of government outside Parliament by embedding that position in the office of the President, who was both directly elected and explicitly precluded from being a Member of Parliament. The broad effect of these reforms was to immunise the president from the vicissitudes of assembly confidence, allowing the president the scope not only to become authoritarian in his decision-making, but also to endure in office through periods of eroded public confidence and to manipulate the composition and continuity of parliament in ways that were suitable to his or her own interests. The resulting political environment allowed the focus of electoral campaigns to shift from policy issues and reform agendas to the personality and charisma of the candidates who ran for presidential office; once in office, winners of such personality contests had the ability, through the president's constitutional powers, to significantly influence other key political partners. In the previous system, a prime minister was considered the 'first among equals'. Under the 1978 Constitution, the president became the clear dominator in the term's broadest sense, leaving a culture of political sycophancy in his wake. This culture has transformed politics in Sri Lanka, particularly the public conception of governance and accountability, to such an extent that a reversal, overnight, to the collegial, compromise-based style of governance envisioned in conventional parliamentarism would do more harm than good. In this sense, a directly elected prime minister would allow a more gradual transition to collegial governance, leaving the establishment of a more pure form of parliamentarism as an option open for the future.

## **3 Conclusion: An Alternative to Direct Election**

In the preceding discussion we have attempted a dispassionate assessment of the strengths and weaknesses of the institution of a directly elected prime minister. It is inevitable that political considerations beyond purely technical ones would play a role in determining the final constitutional choice on this question. From the perspective of good constitutional design contextualised to the specific political conditions and problems we face in Sri Lanka at this particular historical juncture, we feel, on balance, that the arguments against outweigh the arguments for a directly elected prime minister. In addition to the specific points set out in section 2 above, this conclusion has been guided by our general understanding of the nature of the current 'constitutional moment': that the constitutional order is constituted not merely by a constitutional text (or formal amendments to it) or a set of institutions (or their reformulation), but by the political principles supported by the people at extraordinary moments of intense constitutional participation and deliberation, which result in transformations of the

body politic that should be respected by political elites and legal institutions consistent with the ideal of constitutional democracy.<sup>14</sup> Seen in this light, the two elections of 2015 signified not merely a change of government – dramatic though that was – but the manifestation of a deep democratising desire amongst the people of this country. In no sense was this registered more starkly than in the public rejection of executive presidentialism and its institutional features, capping more than two decades and four presidential elections at which the electorate endorsed candidates promising its abolition. The corresponding desire was and is to return to a more democratic parliamentary system. In other words, the people have equated presidentialism with authoritarianism and parliamentarism with democracy. To introduce an innovation to the parliamentary model that is so redolently a hallmark of presidentialism therefore seems like an unsympathetic distortion of the current constitutional moment. In this context, we strongly believe that a simpler and less radical alternative to direct election is more appropriate; one that is capable of balancing the conflicting values discussed above.

This model envisages, firstly, a constitutional requirement that all parties and coalitions contesting in a given general election must officially indicate their preference of a Prime Minister from among the field of candidates relevant to that election. At the same time, the Constitution must be clear that parties and coalitions are free to choose a candidate of their own party or another party. The ultimate result is that the party or coalition with the most number of seats in Parliament will see their nominated candidate identified as the Prime Minister-elect. Under this set up, the will of the people on who should be Prime Minister is validly inferred from the overall performance of the contesting parties and coalitions, significantly undercutting the need for a separate and direct election for the Prime Minister.

Secondly, under the same system, the constitution will need to require the confirmation of the presumptive Prime Minister by the assembly through a positive vote of investiture before he or she may assume office. The requirement that a Prime Minister-elect should garner the explicit approval of the majority of the assembly will contribute to its stability and representativeness during a given parliamentary term.

In the absence of a directly elected Prime Minister, it becomes necessary to consider the sequence in which different party leaders must be called upon to attempt government formation, in the event the first designated person (aka the Prime Minister-elect) fails. However, that all parties in Parliament have identified their nomination for a preferred PM will provide a clear sequence, post election, based on each party's electoral performance. However, it may be necessary to constitutionalise some of the principles underpinning the hierarchy, in order to insulate the process from the political vicissitudes of the day.

The same identified sequence may also apply in the event an incumbent Prime Minister has been dismissed, thus negating the need for fresh elections, while also affording no-confidence procedures a degree of predictability in general. Alternatively, the constitution may require that a Prime Minister may only be removed through a constructive vote of no confidence, where the assembly must suggest and install an

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<sup>14</sup> B. Ackerman (1991) *We the People: Foundations* (New York: Belknap Press): 3-5.

alternative Prime Minister in order to remove the incumbent.

In any case, in the context of a fixed-term Parliament, the removal of the Prime Minister will not result in a fresh election. We recommend minimising the frequency of general elections to alleviate the cost of elections on public spending and general disruptions to governance and public life. Within the framework of fixed-term parliaments, as mentioned above, fresh elections may be called either by a simple majority dismissing the government at large (as opposed to the PM alone) or by a two-thirds majority resolving to call an election before the parliamentary term expires. The Nineteenth Amendment envisaged only the two-thirds majority rule, which may, in the context of a purely parliamentary government, unduly restrict Parliament's ability to dissolve a government it has lost confidence in. Thus, the subtleties of the rules surrounding fixed-term parliamentarism require further engagement.

In the final analysis, the system set out above as an alternative to direct election contemplates an appropriate balance between two conflicting values: on one hand, the need to democratise PM-selection and, thereby, the process of government formation; on the other, the need to ensure that Parliament is unified by the principle of "first among equals" based on the importance of assembly confidence.

## Summary of the Assumed Framework

### For Direct Election:

- All general elections will take place under the MMP system, where the ballot is split in three ways, with separate choices for local representative, party list preference and Prime Ministerial candidate
- A Prime Ministerial candidate must win more than 50% of votes to become the Prime Minister
- The term of Parliament is fixed, and Parliament may only be dissolved if a) two-thirds of the assembly agree on the need for early general elections, or b) a simple majority prevails in a vote of no confidence against government. The dissolution of Parliament will result in general elections.
- The Prime Minister's term in office is subject to Parliament's term; the expiry of the latter will always end the duration of the former
- The vacation of the Prime Minister's post before the end of the parliamentary term (whether through dismissal or resignation) will result in a prime ministerial election, held only for the Prime Minister's post, in which only incumbent Members of Parliament are able to contest
- The upper limit of the cabinet's size is constitutionally prescribed
- That the Constitution requires that the end of every government-formation process is signified by an official statement of policy made by the incoming government in Parliament, which will constitute its mandate during its term in power, and which will subsume all other "popular mandates" of the members of the government, including that of the Prime Minister. There can be no vote on this Statement of Government Policy in the manner seen under the Westminster system's Throne Speech.
  - Provided that a stated policy point may be subsequently amended with the vote of the cabinet.

### For Pre-election Nomination:

- All general elections will take place under the MMP system.
- The term of Parliament is fixed, and Parliament may only be dissolved if a) two-thirds of the assembly agree on the need for early general elections, or b) a simple majority prevails in a vote of no confidence against government. The dissolution of Parliament will result in general elections.
- Parties identify their preferred Prime Minister, before the election, from the field of candidates facing that election.
- The nominee of the party winning the most number of seats will be considered the presumptive PM, and will make the first attempt at government formation.
- A presumptive Prime Minister must be confirmed before they may assume office through a vote of investiture in Parliament.
- The Constitution will specify the sequence in which different individuals must be called to attempt the formation of government, as *formateur*.
- The vacation of the Prime Minister's post before the end of the parliamentary term (whether through dismissal or resignation) will not result in a prime ministerial election.
- This sequence may be applied to identify the successor to a dismissed Prime Minister; alternatively, an incumbent may only be dismissed through a constructive vote of no confidence.
- The unner limit of the cabinet's size is constitutionally nrescribed.

**Table: The Alternative Systems Compared at a Glance**

<b>System</b> <b>Values</b>	<b>Directly Elected PM</b>	<b>Pre-election Nomination</b>
Electoral system	MMP	MMP
Fixed-term Parliament?	Yes	Yes
Parliamentary term subsumes PM's term?	Yes	Yes
Dismissal of PM will result in an election?	Yes	No
PM is first among equals?	No	Yes
Choice of PM reflects will of the People?	Yes	Yes
Choice of PM is majoritarian?	Yes	No
The selection process of PM imposes a feedback loop on intraparty democracy?	Yes	Yes
The possibility of parallel popular mandates between government and PM?	Yes	No
Post-election leadership struggles for PM's place within a party?	No	No