THE PRESIDENCY IN THE CONSTITUTION OF THE CO-OPERATIVE REPUBLIC OF GUYANA

by

Harold A. Lutchman*

INTRODUCTION

The new constitution[1] promulgated in Guyana on the 6th October, 1980; provides for an executive presidency: This development represents a marked departure from the general pattern in the states of the Commonwealth Caribbean where the practice has been to establish institutions approximating those in the colonial power with which they were previously associated. More specifically, as far as the executive agency of government was concerned, the tendency was, on the achievement of independence, to retain the British Queen as the ceremonial head of State. The Queen was however represented by a local Governor General who was obliged, for the most part, to act on, or in accordance with, the advice of a local Prime Minister and Cabinet.

There were a few notable cases of departure from this norm, either at the very outset or shortly after independence. Thus the state of Guyana adopted a republican system of government in 1970 which entailed, inter alia, the substitution of a local President for the Governor General.[2] This change did not, however, result in any substantial modification in the position, functions and powers of the President who, in many respects, mirrored his predecessor as ceremonial head of State. The twin island state of Trinidad & Tobago adopted a similar type of republican system in 1976.[3] There are also clear indications that Jamaica is likely to follow this model in the not too distant future.[4]

The provisions in the new constitution of Guyana[5] relating to an executive president are, in these circumstances, of obvious importance, if only because of the innovation which the institution represents in the region. But this apart, the development involves issues of constitutional

1. The constitution (hereinafter the Guyana Constitution 1980), was enacted by Act No. 2 of 1980: The Constitution of the Co-operative Republic of Guyana Act 1980. An account of some of the processes by which the constitution came into being is contained in Harold A. Lutchman, Constitution Making in a Post-Colonial Setting: The Guyana Experience (Mimeo., May, 1980).
2. See Harold A. Lutchman, "The Co-operative Republic of Guyana" in Caribbean Studies, Vol. 10, No. 3.
3. For a useful discussion of the processes and the issues which were involved in drafting the new constitution in Trinidad & Tobago see Selwyn Ryan, "The Transition from Monarchy to Republic" in The Parliamentarian, Vol. LVIII, No. 3, July 1977, pp. 159, et seq.
4. See, "Plans to Turn Jamaica into Republic" in Guyana Chronicle, 3 November, 1980.
5. The constitution appears as a schedule to the Act referred to in footnote 7, page 7.

and legal significance which are worthy of serious consideration. And this is particularly so in the light of the stated objective of utilising the sum of the constitutional provisions to establish socialism in Guyana.[1]

The Rationale of Change

In general, very little was stated by way of specific reasons in justification of the change from a ceremonial to an executive president in Guyana. This was in part a consequence of the procedure adopted in drafting the constitution, which had the effect of precluding the detailed provisions subsequently enacted into law from public discussion. Nor was there any detailed discussion of the underlying principles involved.[2] In particular, no case was stated as to the connection between an executive presidency and the founding of socialism in Guyana.

The approach contained in one of the publications put out ostensibly to educate the public on some of the issues involved is typical of that adopted. This summarised the case for change as follows:

> ". . .. It is proposed to change over to a system under which the Cde. President will be both Head of State and Head of Government. The change is being made because it is felt that the dualism in the existing system is too elaborate, too expensive and too inefficient for a small society such as ours."[3]

In short, it was claimed that an alternative, both more economical and efficient than the previous system, was being sought.[4]

However, the proposed change assumes greater meaning when considered against the background of the reasons advanced in favour of the promulgation of a new constitution. In this connection, the assertion was that the major concern was with establishing an instrument more reflective of the wishes of the Guyanese people, and more appropriately geared to promote the establishment of socialism.[5] Therefore in time it was stated that an executive presidency was better equipped to achieve these ends and reflect these values.

1. Lutchman, Constitution Making in a Post-Colonial Setting etc., pp. 10, et seq.
2. Ibid., pp. 46, et seq.
3. Referendum Fact Sheet No. 2 — The PNC Guidelines for a New Guyana Constitution, p. 5.
4. It would be interesting to compare the two systems on the basis of the criteria stated, for now there are, in addition to the Executive President, five (5) Vice-Presidents (including the Prime Minister who is designated First Vice-President). Indeed, the claim has already been made that this arrangement is among the most elaborate in the world. See, for example, "PNC Hat-trick: 81 MPs for 65 seat House" in Mirror 4 January 1981; "Burnham's Government finding it easier to 'win' elections than get Guyanese to produce" in Caribbean Contact, February 1981; "153 per cent pay hike for Speaker" in Mirror, 15 February, 1981 where increases in salaries for the Vice-Presidents are reported.
5. Lutchman, Constitution Making in a Post-Colonial Setting etc., pp. 10, et seq.

What then was the nature of the ceremonial presidency which was deemed inappropriate? Under the Independence Constitution of 1966[1] the executive authority was vested in the President[2] who was the head of State and Commander-in-Chief of the armed forces.[3] He was elected by the National Assembly by secret ballot at a meeting of that body specifically convened for that purpose. The nomination paper relating to the election of a presidential candidate had to be signed by him and by three or more elected members of the National Assembly. The person who received the votes of more than half of all the elected members of the Assembly was deemed elected. However, the constitution catered for the possibility of a person not being elected on the first ballot and, in consequence, provided alternative means of electing the President.

In order to qualify as a candidate for election as President, a person had to be a citizen of Guyana of at least forty years of age. Further, he had to be eligible for election as a member of the National Assembly.[4]

In general, the idea behind the ceremonial presidential scheme was, as stated above,[5] to have a functionary approximating the position of the British Monarch in, inter alia, being above politics and acceptable to a wide cross-section of the Guyanese nation. Thus the President was required, in the discharge of most of his functions, to act in accordance with the advice of members of the government. The relevant provision stated:

> "In the exercise of his functions under this Constitution or any other law, the President shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet".[6]

This general provision was subject to certain specific exceptions, for example, where by the constitution or any other designated law the President was required to act in accordance with the advice or on the recommendation of any person or authority other than the Cabinet. A good illustration of this were the provisions relating to the appointment of judges. The relevant article provided that judges, other than the Chancellor of the Judiciary and the Chief Justice, were to be appointed by the President acting in accordance with the advice of the Judicial Service Commission.[7]

1. The Laws of Guyana (Revised Ed.): The Constitution, Chapter 1:01 (Published by the Government of Guyana, 1973) (hereinafter the Independence Constitution).
2. Art. 33 of Independence Constitution.
3. Art. 30 (1) of Independence Constitution.
4. The details relating to the election of the President are contained in Arts. 30 (2) to 30 (15) of the Independence Constitution.
5. P. 1.
6. Independence Constitution, Art. 40 (1). Emphasis added.
7. Ibid., Art. 88 (1).

There were other provisions conferring on the President powers which, though not likely to be brought into use frequently, were nonetheless of potential constitutional importance, as recent events in Australia have demonstrated.[1] Thus the President was authorised to act in his own deliberate judgement:

(a) In the appointment of a Prime Minister.[2]

(b) In the removal of a Prime Minister in certain circumstances, as where he ceased to command majority support in the National Assembly.[3]

(c) To appoint someone to act for the Prime Minister in certain circumstances.[4]

(d) In appointing and revoking the appointment of the Leader of the Opposition.[5]

Of lesser constitutional importance was the power granted the President to appoint in his own discretion his personal staff.[6]

There was also in the 1966 Constitution a provision evidently addressed to the three prerogatives inhering in the British monarchy and which were identified by Bagehot[7] as the right to be consulted, to encourage, and to warn. Thus article 41 stated as follows:

> "The Prime Minister shall keep the President fully informed concerning the general conduct of the government of Guyana and shall furnish the President with such information as he may request with respect to any particular matter relating to the government of Guyana."

The change in the presidency was a controversial issue in Guyana. On the one hand, those opposed to the change claimed that what was being attempted was the founding of a dictatorship in which it was sought to confer wide powers on the President without proper checks or safeguards in relation to such powers. These assertions were denied by the proponents

1. See generally, Labour and the Constitution 1972 — 75 ed. Gareth Evans; also Wade and Phillips, Constitutional and Administrative Law (9th Edition), pp. 226, et seq. for the principles governing British practice on dissolution.
2. Independence Constitution, art. 34 (1). This was especially likely to be the case where there was no one obviously in a position to command majority support in the National Assembly.
3. Ibid., art. 37 (2).
4. Ibid., Art. 38 (2).
5. Ibid., Art. 39.
6. Ibid., Art. 96 (3).
7. See Wade and Phillips, op. cit., pp. 222, et seq.

and sponsors of change.[1] For example, the former Prime Minister offered the following explanation regarding the change over:

> "What powers has the President that the Prime Minister does not have? The President will appoint the Judges. So does the Prime Minister now; he appoints the Chancellor. We do consult the Leader of the Opposition, his views are taken into account before the Prime Minister makes the decision. . . .
>
> . . .The Prime Minister can dissolve the House at will although the proclamation appears over the signature of the constitutional President, but all the world knows and the constitution provides that it can only be done on the advice of the Prime Minister.
>
> What new powers? Perhaps there is one that if the House passes a law the President can veto it. That is new, yes, but that is concomitant of the executive Presidency. Can they show me which other Constitution in the world with an executive Presidency does not provide for a veto by the Executive President?"[2]

The foregoing obviously provides a useful background against which to examine the detailed constitutional provisions relative to the executive presidency. In particular, the concern will be to test the proposition that, as claimed by the sponsors of the change, the changes were inconsequential.

Under the new Constitution the President, who is described as the executive authority in Guyana, is empowered in respect of the "exercise of his functions under this Constitution or any other law. . . to act in accordance with his own deliberate judgement except in cases where, by this Constitution, or by any other law, he is required to act in accordance with the advice or on the recommendation of any person or authority".[3] Where the latter situation obtains, he may refer back for reconsideration of the original advice, but must act in accordance with the advice subsequently tendered.[4]

Of particular interest are the differences in the relative positions of the two types of Presidents vis-a-vis Ministers of the Government and the Cabinet. Under the provisions of the new constitution the Cabinet consists of the President, the Prime Minister, the Vice-Presidents, and such other ministers as may be appointed to it by the President.[5] In terms of functions, the Cabinet is to "aid and advise the President in the general direction and control of the Government," and in this respect, "shall be

1. See Lutchman, Constitution Making in a Post-Colonial Setting etc., pp. 70, et seq.
2. Forbes Burnham Speaks of Human Rights (Published by Publications Division, Ministry of Information, August, 1980), pp. 13, et seq.
3. Guyana Constitution, (1980), art. III (1). Emphasis added.
4. Ibid., Art. III (2).
5. Ibid., Art. 106 (1).

collectively responsible therefor to Parliament".[1] This provision should be compared and contrasted with that relating to the Cabinet under the previous constitution where the Cabinet, consisting of the Prime Minister and other Ministers, was charged with "general direction and control of the Government of Guyana" and was "collectively responsible therefor to Parliament."[2]

In both schemes, it is to be noted, the Cabinet is stated to be collectively responsible to Parliament. Under the old system it was clear that Ministers were, at least in theory, responsible (collectively and individually) to Parliament for the conduct of the business falling within the scope of their responsibility. Whether this doctrine was of practical effect, or how it worked out in practice, is another issue. But the new provisions would seem to suggest that the Cabinet is collectively responsible to Parliament for aiding and advising the President who is not himself a member of the National Assembly. Further, although he is the executive authority and a member of the Cabinet subject to what is stated below,[3] there is no provision in the constitution making him accountable to the National Assembly for the conduct of the executive function.

Specifically, the change in the status of the Prime Minister is significant. He is to be appointed by the President from among the elected members of the National Assembly[4] and the obvious reduction in his status is reflected in the functions which are assigned to him. He is the "Principal assistant of the President in the discharge of his executive functions and leader of Government business in the National Assembly." He also deputises for the President in certain circumstances.[5]

Likewise, ministers are appointed by the President from elected members of the National Assembly or from persons outside of Parliament. Portfolios are allocated to them by the President and they are removable by him in the exercise of his absolute and unlimited discretion.[6] In this connection, the following provision effectively summarises the shift in the balance of executive power vis-a-vis the President, the Cabinet and Ministers: "The President may assign to any Minister responsibility for any business of the Government of Guyana, including the administration of any department of Government, and shall be charged with all responsibility not assigned to any Minister".[7] In other words, the Executive President, unlike his predecessor, is to be very active politically, and this

1. Ibid., Emphasis added. It is to be noted that in some cases the legislature is referred to in the constitution as Parliament while in others it is referred to as the National Assembly. This article has followed a similar practice.
2. Independence Constitution, Art. 35.
3. See pp. , et seq.
4. Guyana Constitution (1980), Art. 101 (1).
5. Ibid., Art. 101 (2). Emphasis added.
6. Ibid., Art. 183.
7. Ibid., Art. 107. Emphasis added.

even in a partisan sense, since the system of his election ensures that he is tied to, and espouses the policy of, one or other of the parties in competition for political power. Indeed, it is a logical deduction from the election scheme that he be the leader of one or other of such parties. Alternatively, it may be stated that in this respect the only distinction between the President and other ministers is that, unlike the latter, although he may be in charge of portfolios, there are no provisions under the constitution requiring that he be accountable and answerable to the National Assembly for such portfolios.

Finally under this section, attention may be directed to the provisions empowering the President to appoint Vice-Presidents. These also clearly underline the ascendency of the Executive President in the governmental scheme. Vice-Presidents are to be appointed "for the purpose of assisting him (the President) in the discharge of his function". Vice-Presidents are to be Ministers drawn from the elected members of the National Assembly or from persons outside of the Assembly.[1]

The Process of Election

Any consideration of the position, function and powers of the Executive President must be concerned with the processes by which this functionary comes to office, may be removed from such office, and may be made accountable for his conduct. Such provisions generally indicate the extent to which powers conferred on such a person may be justified, and whether the criticism of dictatorship possesses validity.

The electoral process was raised in some of the memoranda submitted to the Constituent Assembly established to draft the new constitution.[2] The suggestions contained in the memorandum of the Guyana Trades Union Congress (TUC)[3] were among the most important, since the TUC saw in their proposals means of combatting some of the problems inherent in the Guyanese society. Additionally, the proposals were important because they represented alternatives to those subsequently written into the constitution.

The basic proposal of the TUC was that the President should be elected directly by the people at elections to be held separately from those for members of the National Assembly. It is obvious that the TUC had in mind a presidency patterned, in some respects, along the lines of that of the United States of America. In this context, and according to their conceptualisation, the President ought to be a national symbol. And

1. Ibid., Arts. 102 (1) — 103 (1). Emphasis added.
2. For an account on the work of the Constituent Assembly see Lutchman, Constitution Making in a Post-Colonial etc., pp. 46, et seq.
3. Constituent Assembly — Verbatim Record of Proceedings (7th Meeting, Monday 9th July, 1979) and Verbatim Record of Proceedings (8th Meeting, Wednesday 11th July, 1979) (hereinafter TUC Evidence).

as they submitted, "if he is to be able to function as an Executive President (he), must, at least, have the support of the majority of the people who are constituting the electorate". The ideal approach was for the political parties, by prior discussion, to agree on a particular person, this would have had the effect of removing the election from partisan considerations. The President having been elected, elections could then be held for members of the National Assembly. No problem was envisaged in the President not being drawn from the party enjoying majority support in Parliament. He was to select the members of the Government from both the majority and minority parties.[1]

The TUC felt the need to initiate systems and developments with a view to forging a departure from the "winner take all" phenomenon (under which the party winning the majority of seats was entitled to all the Cabinet posts to the exclusion of others), a dominant feature of the Westminister model. As the point was made:

> ". . . despite the fact that there are those cleavages, there is the possibility that if the parties are given the opportunity before hand to discuss and come to some consensus on the choice of a President, even though an Executive President, then the President as the Head of the Government and of the State will be able to select a Government, which we will call the National Government, on which the parties, both the majority and minority parties, would be represented. And we cannot see that there is going to be that difficulty once the parties do agree that they are prepared to serve in the National Government."[2]

No problem was envisaged with the majority in the National Assembly and the President not being drawn from the same party. Indeed, it was felt that it was possible for the electorate to support a Presidential candidate on the basis of his personality without regard to political affiliation because the President should be ". . . a man of character, a man of strength, a man of wisdom who could be counted on to lead the nation. These are considerations which go beyond party considerations when you are electing a President".[3]

On the question of the presidential powers, the TUC felt that apart from being empowered to nominate a Prime Minister and form a government, the President should have "the other powers of, perhaps initiating legislation, if necessary, through the discussions with the Prime Minister and the Cabinet. We feel that as executive president, in the final analysis, the same constitutional powers which obtain with the Prime Minister now, should rest with the President".[4]

1. TUC Evidence, 9th July, 1979, p. 99.
2. Ibid., p. 102.
3. Ibid., p. 104.
4. Ibid., p. 99.

They proposed that the President should, in certain circumstances, have a limited veto over legislation passed by the National Assembly. In this, he was to be able to refer matters back to the National Assembly for reconsideration, but was to be obliged to abide by what the National Assembly finally decided.[1]

On the matter of the tenure of office of the President, while the TUC were not in favour of limiting his election to a stipulated number of terms, they nevertheless expressed themselves strongly against the establishment of a life presidency.[2] Further, although they had not considered matters of detail regarding the removal of the President, they were firmly of the view that "if a President continues to ignore the constitutional will of the majority as expressed in the House, he is in trouble and the only course open to him. . . is to resign."[3] Specifically, no mention was made of the strength of any vote in the House which would have been required to effect his removal.

In summary, then, what the TUC evidently desired was a strong executive presidency grounded in the support of the people, with an Executive President who, by the nature of his election, could claim to speak in the name of the people even against sections of the elected members of the legislature. Hence the suggestion for separate elections. The legislature was, however, expected to serve as an effective check on the President with a view to ensuring that he acted in consonance with the popular will, i.e., there was to be a system of mutual checks and balances. The activities of these two agencies could best be harmonised by national agreement on the policy to be pursued. In quest of this objective, dialogue was to be the normal and prominent feature of Government. The politics of conflict was to be replaced by the politics of reason and consensus.[4]

The Constitutional Provisions

Contrary to the TUC's proposals, the constitution provides for the President and the National Assembly to be elected on one and the same occasion. In order to appreciate the method involved it is necessary to point out that elections in Guyana are held under the list system of proportional representation whereby parties are required to submit a list of their candidates in alphabetical order to the elections authorities. The parties are then awarded seats in proportion to the votes which are deemed to be cast for them. Thus, a party awarded 20% of the votes is entitled to 20% of the seats. The innovation introduced with reference to the election of the President is that a list of candidates "designate not more than one of those candidates as a Presidential candidate. An elector

1. TUC Evidence, 11 July, 1979, p. 111.
2. Ibid., p. 110.
3. Ibid., p. 111.
4. See, for example, TUC Evidence, 9 July, 1979, pp. 100, et seq.

voting at such an election in favour of a list shall be deemed to be also voting in favour of the Presidential candidate named in the list".[1]

There are two sets of circumstances in which a candidate is to be declared elected:

(a) If he is the only candidate named as a presidential candidate.
(b) Where there are two or more such candidates, "if more votes are cast in favour of the list in which he is designated Presidential candidate than in favour of any other list".

In case of a tie there is provision for the matter to be resolved by lot by the Chairman of the Elections Commission.[2]

The Court of Appeal is vested with exclusive jurisdiction "to hear and determine any question as to the validity of the election of the President in so far as that question depends upon the qualification of any person for election or the interpretation of this Constitution; and any decision of that Court. . . shall be final".[3] Quite strikingly, the Court is precluded from pronouncing on the validity of the election of the President per se. In this respect, the declaration of the Chairman of the Elections Commission is conclusive on the question of the validity of the election of the President. Such a declaration precludes the issue being brought before the courts. The provision states: no question as to the validity of the election as the President of the person so named shall be enquired into in any court."[4]

A number of points would seem to require discussion. It is conceivable that under existing constitutional provisions the President could be elected by a plurality, i.e., without receiving at least 51% of the votes cast. This result could be realised where there are three lists with each designating a presidential candidate. The following situation could obtain:

List	Candidates	Percentage of Votes Received
1	A	40
2	B	35
3	C	25
		100

1. Guyana Constitution (1980), art. 177 (1).
2. Ibid., Arts. 177 (2) and 177 (3).
3. Ibid. Art. 177 (4). Emphasis added.
4. Ibid., Art. 177 (6).

According to the provisions, A would then be entitled to be declared elected as President although the candidates associated with the other lists would together have received a higher percentage of the votes. Expressed in another way, A would not have been supported by a majority of the votes cast, a condition which even the ceremonial President had to satisfy to qualify for election.

It would seem to follow that there need not be a majority in the National Assembly supporting the President. While this was also a likely result under the TUC proposals, the latter at least had the merit of providing for the possibility of the President being supported by a majority of the electors voting at a separate presidential election. He could, in such circumstances, with some justification, claim to be the representative of the nation and to embody its aspirations. It would appear pertinent to enquire whether in the absence of these circumstances the President should be placed in a position equal to, co-ordinate with, or superior to, that of the National Assembly.

The provisions relating to the appointment of the Minority Leader are also capable of yielding some very absurd results. The relevant article states as follows:

> "The President shall, if the person concerned is willing to be appointed, appoint as Minority Leader the elected member of the National Assembly who, in his judgement, is best able to command the support of a majority of those elected members who do not support the Government."[1]

Since there is no provision requiring that the Government be appointed from among, or be supported by, the majority of the elected members, it is conceivable that, particularly after an election, and the declaration as elected of a person as President, two parties in the National Assembly could coalesce and become a majority over the supporters of the Government. This development would evidently make no difference to the position of the President whose fortunes after an election are not be affected by the majority in the National Assembly not supporting his Government. It is then possible for the person enjoying minority support to continue as President and for the one enjoying majority support to be relegated to the position of Minority Leader.

Of course, arguably, a President finding himself in such a situation would no doubt seriously consider dissolving the National Assembly and initiating the process of holding new elections. The potential controversial nature of the exercise of this power is, however, well known.[2] It was

1. Ibid., Art. 184 (1).
2. See, for example, Wade and Phillips, op. cit., pp. 226, et seq.

evidently one of the reasons why under the old constitution its exercise was subject to a discretion residing with the ceremonial President who was charged with protecting and promoting the public interest. The important point is that, under the old arrangements, it was possible for circumstances to arise in which it could be felt unjustified to grant a dissolution to a Prime Minister who might have been seeking to promote his own partisan political advantage. As the provisions now stand, there are no guidelines by which the power of dissolution, which is one of the powers entirely within the discretion of the Executive President, is to be exercised. The seriousness of this omission is the more apparent when, as will be seen later, the veto of the President can only be overridden by a special majority of the National Assembly.[1] But the point would appear valid that, even in the face of the absence of majority support, there is no provision in the constitution to prevent a person from continuing as President.

It may also be argued that the absence of clear guidelines on the question of dissolution or resignation in such circumstances need not be serious since these issues are generally better left to be regulated by convention along the lines of practice in other countries, notably in the United Kingdom.[2] But experience has shown that, even in the face of clear conventions or constitutional guidelines, it has not proved difficult to modify and/or distort practices beyond recognition. In any case, among the reasons stated for the drafting of the new constitution is the need to depart from slavish reliance on such practices.

It is of interest that when the representatives of the TUC were testifying on their proposals, the question of the extent to which the Executive President might have enjoyed support in the National Assembly was one of the issues on which they were closely questioned by members of the Government. It was put to them that their proposals could have been considered unrealistic since the result would not necessarily have been the harmonisation of the election of the President, the policy which he and the Government were obliged to implement, and majority support in the National Assembly.[3] As we have seen, existing provisions in the constitution could equally be faulted on this score.

The arrangements for the conduct of elections are among the issues which are the object of criticism and the expression of lack of confidence in Guyana. The well known principle of justice not only being done but manifestly and undoubtedly appearing to be done[4] is evidently not treated as applicable in the realm of the conduct of elections. This much was clearly recognised by the TUC when testifying before the Constituent Assembly. A member of their delegation submitted as follows:

1. See below, pp. , et seq.
2. Wade and Phillips, op. cit., pp. 226, et seq.
3. See, for example, TUC Evidence 9 July, 1979, pp. 101, et seq.
4. See R.V. Sussex Justices exp. Mc Carthy (1924) 1K.B. at 259 quoted in H.W.R. Wade, Administrative Law (4th Ed.), p. 401. Also "Let's not be hypocrites" in Catholic Standard, 5 October, 1980.

> ". . .we are hoping that provisions of the Constitution will be so clear that everybody in Guyana will be able to say that the elections will be fair and honestly run. We are not saying that they are not fair now. What we are saying is that we have made provision in our memorandum for the composition — the very first thing we put here is the composition of the election machinery and we are satisfied that if something like this is set up there could be no legitimate quarrel about the functioning of the Elections Commission or the running of the elections. . . ."[1]

No change along the lines suggested by the TUC was incorporated in the new constiution which in fact reproduced and perpetuated those provisions which were operative under the old constitution.[2]

Against this background, therefore, while it is not unusual for the constitutions of other states to stipulate for the finality of the declaration of some official or the other involved in the election of a President, and to place such declaration outside of the jurisdiction of the courts, there is good reason for advocating a departure from this model in the case of Guyana. In other similar cases, confidence in the electoral process is evidently a sine qua non for excluding the jurisdiction of the courts. Where this factor is absent, as it undoubtedly is in Guyana, there must be strong reasons for specifically empowering the courts to hear and determine the issue of the fairness or otherwise of the election of the President.

The fact that the Chairman of the Elections Commission is appointed by the President is undoubtedly one of the main reasons in support of this argument. For while it is true that this appointment is made after consultation with the Minority Leader, the manner in which practice has evolved in such matters is unlikely to mean that the appointment has the confidence of all those who are competitors for political power.[3]

The Power of Veto

The case of the United States of America is perhaps the most celebrated in illustration of the use and utility of the power of veto. It is apparent that the doctrine of the separation of powers and the belief in a system of checks and balances generally, as means of preventing despotic rule, exerted a great deal of influence on the decision to empower the President, in certain circumstances, to veto proposals originating from the legislative branch. Further, this power is felt to be justified, or at any rate

1. Ibid., p. 95.
2. See Lutchman, Constitution Making in a Post-Colonial Setting etc., pp. 62, et seq.
3. See below pp. et seq.

the case for its existence is strengthened, by the fact that the President and the legislature are elected by different constituents in the sense that they are each elected separately by different methods and on different occasions.[1] Under British constitutional custom, although the ceremonial head of State (like the President of the United States of America) has the power, as an integral part of the legislative process, to assent to bills passed by the legislature, in practice, because of the harmonisation of the activities of the executive and the legislature, it is unlikely that circumstances could arise where the executive would want to advise the Queen not to assent to a bill. The executive and the legislature are brought into being as a consequence of the results of one set of elections. And under British practice the loss of support in, or failure to carry a measure through the legislature does not manifest itself in the form of a veto but in resignation or the holding of new elections. The latter may result in the retention, or the loss of political office.[2]

The Independence Constitution of Uganda represented a good illustration of the marrying of the idea of an executive presidency with that of dependence of the executive for survival on majority support in the legislature. Under this scheme, the person in a position to command majority support in the legislature was to be the President, and his term of office could be terminated by the loss of that majority.[3] In such circumstances, the existence of a veto power over the legislature would have assumed less meaning. On the other hand, the constitution of Zambia, (which the evidence clearly illustrates was drawn on heavily in the drafting of the new constitution of Guyana) which incorporates a different electoral scheme for the President and the legislature, prominently mentions the power of veto, and how it is to be overridden.[4]

The absence of detailed information on the thinking underlying features of the new constitution makes it difficult to arrive at the justification for some of the provisions now being considered. Two statements, however, stand out. In chronological order, a member of the Government was reported as saying that "the Veto of the Executive President in relation to the National Assembly was on a similar basis to the Veto rights of the House of Lords over the House of Commons under the British Parliamentary system".[5]

1. See, for example, Richard M. Pious, The American Presidency (1979), pp. 209, et seq; Louis W. Koenig, The Chief Executive (3rd edition), pp. 164, et seq; Raoul Berger, Impeachment: The Constitutional Problems (1973), pp. 290, et seq.
2. Wade and Phillips, op. cit., pp. 228, et seq.
3. The Constitution of Uganda (15 April, 1966), Art. 34, et seq.
4. Constitution of Zambia, Appendix 3 to the Laws (1965 edition), Chapter IV, Part I and Art. 71, This constitution has since been amended, and for an account of the new election scheme see N.M. Chibesakunda, "The Election of the President of the Republic of Zambia" in The Parliamentarian, Vol. LIX, No. 2, 1978, pp. 105, et seq.
5. "Powers of the President not absolute" in New Nation, 25 May 1980.

Secondly, on winding up the debate on the Constitution the then Prime Minister explained that the veto "is a concomitant of the Executive Presidency".[1]

In the above, there is the suggestion that what the drafters of the new constitution had in mind was that in the absence of a bicameral legislature in Guyana, the President should be empowered to perform some of the functions normally associated with an upper or second chamber.[2] Clearly this must be related to the method by which both the presidency and the legislature are brought into being. And even if it is conceded that such a power in the President is necessary as an integral part of the process of legislation, (and the case in favour of such power is by no means made out), it seems legitimate to enquire why a President who may well be elected by only 40% of the votes cast should be placed in a position to override or delay the wishes of those representing 60% of the votes. In this context, the scheme proposed by the TUC on the question of the election of the President would seem more logical in terms of conferring on him the right to veto measures emanating from the legislature on the grounds that the latter is out of step with public opinion.

The statement that the veto is a concomitant of the executive presidency is inadequate as a justification for such an arrangement in a constitution which was ostensibly being drafted with an eye to establishing institutions of special relevance to the Guyanese context. It can hardly be considered satisfactory that the mere acceptance of a form should automatically mean that all other appendages or features associated with that form should also be adopted without serious consideration of the utility of those appendages or features. One sure test of whether or not there is the need for a veto power in the President vis-a-vis the legislature must be whether, in the circumstances of his election and that of the legislature, there could be any possibility that he would be in a superior position to speak for the nation as a whole. More specifically, the issue could well turn on the question of whether, in Guyana, one man should be in a position to over-rule the wishes of an overwhelming majority. The significance of this point appears the more striking when the terms of the relevant provisions are considered. Thus where the President has withheld his assent to a bill "it shall not again be presented to the President for assent unless within six months of the Bill being so returned upon a motion supported by the votes of not less than two-thirds of all the elected members of the National Assembly the Assembly resolves that the Bill be again presented for assent".[3] Adopting such a course would not mean that the wishes of the National Assembly would prevail. The President then has an option in the matter: he could either assent to the

1. Forbes Burnham Speaks on Human Rights, p. 14.
2. On the functions of the House of Lords in this respect see Wade and Phillips, op. cit. pp. 181, et seq.
3. Guyana Constitution (1980), Art. 170 (4).

Bill within twenty one days of its presentation or dissolve Parliament.[1] There is quite noticeably no question of his resignation arising in the circumstances.

The presidential veto can only be overridden by a special majority not two-thirds of the members of the National Assembly present and voting but of all the elected members. Even then the wishes of the latter need not prevail. In this respect, the provisions of the constitution are far more exacting than corresponding provisions of the constitution of the United States of America. There, at least, the assent of the President could be dispensed with,[2] but the constitution of Guyana stipulates that "A Bill shall not become law unless it has been duly passed and assented to in accordance with this Constitution".[3] This would seem to suggest that refusal to assent to a Bill could in effect mean the death of the measure unless and until a new President and legislature are elected.

The balance of power in the matter of the exercise of the veto and its control is undoubtedly weighted heavily in favour of the Executive President. Further, the method of his accession to office could hardly be advanced in justification of vesting in him the very considerable power which the possession of the veto entails.

Removal and Immunities

The provisions regarding the removal of the President from office, and the immunities attached to him, are among the most significant and important in the context of the proposition which this study sets out to examine. These provisions are also of direct relevance to the scheme under which the President is elected.

A. Grounds of Removal

There are two grounds under which the removal of the President may arise viz:

(a) Incapacity

(b) Violation of the Constitution or gross misconduct.

(a) Incapacity

The procedure under this head entails the passing of a motion supported by a majority of all "the members of the National Assembly whose names appeared as candidates on the same list as that of the President

1. Ibid., Art, 170 (5).
2. Pious, op. cit., p. 204.
3. Guyana Constitution (1980), Art. 170 (6).

at the last election". The motion has to request that the question of the physical or mental capacity of the President to discharge the functions of his office ought to be investigated.

The next step is for the Prime Minister, who has to convene the meeting of the members identified above, to inform the Chancellor of the Judiciary of the passing of the motion. Then "the Chancellor shall appoint a board consisting of not less than three persons selected by him from among persons who are qualified as medical practitioners under the laws of Guyana and the board shall enquire into the matter and shall make a report to the Chancellor stating the opinion of the board whether or not the President is, by reason of any infirmity of body or mind, incapable of discharging the functions of his office".[1]

Should the board report that the President is incapable of discharging the functions of the office and the Chancellor certify in writing accordingly the President shall then cease to hold office.[2]

The constitution provides for the President to cease to perform the functions of the office until the results of the relevant investigation are known. During this period the Prime Minister or, where there is no Prime Minister available or capable of discharging the functions, such member of the Cabinet being an elected member of the National Assembly as shall be elected by the members who appeared in the list mentioned above, shall perform the functions of the office. However, "any person performing the functions of the office of President shall not dissolve Parliament or, save on the advice of the Cabinet, revoke any appointment made by the President".[3]

Nothing, or very little, was stated by way of reason for, or in justification of, these provisions. However, their similarity to those in the constitution of Zambia is particularly striking. One notable difference, though, is that the Cabinet is the body empowered to invoke the relevant provisions in Zambia; and the functionary designated to appoint the board, receive its report, and act on it is the Chief Justice.[4] Further, in the Zambian case, apart from being unable to dissolve Parliament, any person performing the functions of the office of President is in addition not empowered to exercise the powers of the President to revoke the appointment of the Vice-President.[5]

The logic in restricting the motion designed to effect the removal of the President to members who appeared on the list on which the President was elected is not readily appreciated. It is possible that such persons could, because of their affiliation with the President, be reluctant to

1. Ibid., Art. 179 (1).
2. Ibid., Art. 179 (2).
3. Ibid., Art. 179 (3).
4. Constitution of Zambia, Art. 35 (1).
5. Ibid., Art. 35 (3).

initiate such a move, as to do so could be interpreted as a reflection on their party. Further, given the process by which such members normally come by seats in the National Assembly,[1] (and the undoubted fact that such seats are the consequence of the dispensing of patronage by the party leadership), the pressures on them not to initiate the relevant process would be particularly strong. They may be fearful of provoking the ire of the President.[2]

It may well be that the rationale for the restriction lies in the feeling that should it be open to any group of members in the National Assembly to initiate the process, those opposed to the President may well do so capriciously, or for the achievement of their own political ends. But any such tendency would surely be counter-balanced by the fact that the invoking of the process is by no means conclusive of the matter. There still has to be a medical finding on the question of incapacity by a group of persons qualified to make such finding and who would probably do so on professional grounds.[3] Those empowered to bring the relevant provisions into operation would possess no power to appoint those who have to make the relevant finding of medical fact, which is the condition precedent to the removal of the President on this ground.

The effect of the restrictiveness of the provisions would appear the more striking when considered in the context already discussed. For example, it could transpire that the President remains in office through the reluctance of the forty per cent (40%) of the National Assembly[4] supporting the Government, to set in train the relevant process in circumstances in which, if empowered to do so, the remaining sixty percent (60%) would have been willing to act. At any rate, there seems no justification in such circumstances for 60% of the membership of the National Assembly not being empowered to start a process of investigation. Alternatively, it seems illogical that the will of the minority should carry more weight than that of the majority in a matter of such crucial national importance.

(b) Violation and Misconduct

The provisions relating to the removal of the President under this heading are even more extreme and difficult to justify. Under the previous ground, difficulties of invoking the relevant process apart, a finding of fact

1. On this subject see Harold A. Lutchman, "Factors in the Functioning of Parliament in Guyana" in Lutchman, et al., Selected Issues in Guyanese Politics (1976), pp. 42, et seq.
2. Such would seem to be the possibility also in other systems. For an interesting discussion in the context of the United States of America see Koenig, op. cit., pp. 76, et seq.
3. Though it has to be appreciated that in the American context it has been suggested that disability may be a concept not altogether free of political connotations —vide ibid.
4. See above, pp. et seq.

by the relevant medical authorities would at least, without more, result in the removal of the President from office. But it is hard to envisage the President ever being removed under the ground now under consideration. This view is in sharp contrast to that of the sponsors of the constitution who had contended that "once the Executive President was guilty of misconduct, or if he were guilty of any serious constitutional misconduct, he could be legally removed from office".[1] But this statement conceals such a great deal as to seem capable of qualifying for the description of a misrepresentation. That legal provisions exist for the removal of the President on the grounds stated is undeniable. The submission here is that the difficulties in the way of bringing about this result are so overwhelming as to render the provisions of little or no effect, thereby making the removal of the President virtually impossible in practice.

The removal procedure is started by way of a motion incorporating the relevant allegations. Notice of such a motion has to be given in writing to the Speaker of the National Assembly "signed by not less than one-half of all the elected members of the Assembly". The motion has to specify the particulars of the allegations and propose the establishment of a tribunal to investigate the allegations. On coming before the National Assembly the motion is not to be debated but the person presiding "shall forthwith cause a vote to be taken on the motion and, if the motion is supported by the votes of not less than two-thirds of all the elected members of the Assembly, shall declare the motion passed".[2]

The passing of the motion is next followed by the appointment of a tribunal by the Chancellor of the Judiciary to investigate the allegations and report its findings to the National Assembly. The tribunal is to comprise "a Chairman and not less than two other members selected by the Chancellor from among persons who hold or have held office as a Judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction on appeals from any such court". The procedure provides for the President tc appear and to be represented before the tribunal in the course of its investigations.[3]

A finding by the tribunal in favour of the President, i.e., that the allegations are not substantiated, brings an end to the matter.[4] However, the provisions relating to a finding that the allegations have been established are so important they they bear verbatim reproduction. They are to the following effect:

1. New Nation, op. cit.
2. Guyana Constitution (1980), Arts. 180 (1) & (2).
3. Ibid., Art. 180 (3).
4. Ibid., Art. 180 (4).

> "If the tribunal reports to the National Assembly that the tribunal finds that the particulars of any allegation specified in the motion have been substantiated, the Assembly may, on a motion supported by the votes of not less than three-quarters of all elected members of the Assembly, resolve that the President has been guilty of such violation of the Constitution or, as the case may be, such gross misconduct as is incompatible with his continuance in office as President and, if the Assembly so resolves, the President shall cease to hold office upon the third day following the passage of the resolution unless he sooner dissolves Parliament."[1]

The implications of the foregoing obviously require comment. In the first place, the debt which is owed by the drafters of the constitution to the Zambian constitution is once more immediately recognisable. Save for minor modifications, the provisions of the constitution of Guyana are substantially reproductions of equivalent provisions in the Zambian constitution. Quite noticeably, though, the latter provides that the removal process is to be initiated by not less than one-third of all the elected members.[2] As we have seen, the Guyanese case is more stringent in that it requires the support of at least 50% of all the elected members of the National Assembly. Thus the obvious point may be reiterated that in the case of a President elected simultaneously with the total membership of the National Assembly by say, 40% of the votes cast, it would require a much greater percentage of votes to even initiate the removal process. The reasons for this greater stringency have not been stated. It is to be emphasised that what would be involved would not be the question of a vote on the specific question as to whether or not the President should be removed, but the initiation of the process of investigation by a tribunal intended to be independent and impartial. In other words, the starting of the process would by no means be conclusive of the guilt or otherwise of the President since this would still have to be investigated and established.

This would seem to lead naturally to a consideration of the increasing size of the percentage required to establish the tribunal and to effect the removal of the President. The nature of the tribunal clearly suggests that the inquiry into the allegations against the President is to be judicial or quasi-judicial in form, with the intention of removing the inquiry into the allegations from purely political considerations. There would therefore seem less reason for such substantial percentages for the setting up of the tribunal and more so to accept and approve of the findings of the tribunal. In actual practice, what this would probably mean would be that even in the face of a finding by the tribunal that the allegations against the President have been established, the President would remain in office unless or until the overwhelming majority of the legislature is in favour of

1. Ibid., Art. 180 (5).
2. Constitution of Zambia, Art. 36.

his removal from office. Thus, what would evidently determine a vote for his removal would not be the finding of guilt, but the political predisposition of members of the National Assembly. In other words, a finding of fact of guilt is still likely to be of no effect unless and until three-quarters of all the elected members vote in support of this finding. This is somewhat puzzling, for the fact of guilt would not be made more conclusive by such a high vote, or less if it is supported by for example, 2/3, (i.e. 66 2/3% which is by any measure already a very high percentage) of all the elected members. In the absence of any explanation on the point, the conclusion that the size of the vote needed to make the finding of fact by the tribunal effective is designed to make the removal of the President from office difficult, if not impossible, seems well founded. The question may well be posed as to why a President whose election was not even subject to a condition that he receive at least a bare absolute majority of votes cast (i.e. 51%) should ultimately require a 75% vote of all the elected members to effect his removal. An answer to this question seems the more necessary when it is recalled that the President is not elected separately and apart from the membership of the legislature. He can therefore claim no greater support among the electorate than that received by the party by which he was sponsored. But under the existing scheme, were the President to lose even a substantial part of the support which his party enjoyed from the electorate, he could nevertheless legally remain President. Thus even where he is, for example, elected by a forty percent (40%) vote, in the end he would still need to lose a further fifteen percent (15%) before the tribunal's finding of fact could result in a sufficient vote calling for his removal.

Strong and cogent reasons would need to be advanced in justification of making available to the President the power to dissolve Parliament even after the very stringent requirements for his removal have been satisfied. The effect of the exercise of this power would be, at least in the short run, even in the face of overwhelming lack of support for him in Parliament, to enable him to retain office. The intention is evidently to enable him to attempt to convince the electorate of his innocence notwithstanding the findings of the tribunal and their ratification by 75% of the membership of the National Assembly, or alternatively, to persuade the electorate that even in the face of the findings he should continue as President.

By their very nature the achievement of these objectives would require that the President seek to discredit the findings of the tribunal and those who voted in support of them. Also, far from removing the matter from the hurly burly of politics, the President would have of necessity to seek to convert the issue into a mainly, or exclusively, political one. By way of analogy, it may be argued that the President would be in a much better position than those (notably judges) who find that the establishing of facts by a judicial or quasi-judicial body invariably means that the requisite sanction is applied and that they have no political means of

attempting to escape such sanctions as may be applicable to them.[1]

If the issue of the guilt or otherwise of the President is to be resolved by political considerations and by the electorate, then there seem to be very strong reasons why the latter should be brought into account at a stage earlier than before the elaborate procedure in relation to establishing the charges against the President and ratifying such findings is exhausted. On the other hand, it may be inferred that injecting a judicial element into the inquiry is designed to ensure that the President is not lightly accused or discredited. However, as the procedure now stands, the President is in a position to enjoy the best of two worlds, i.e., the procedure by which charges against him are to be established is exceedingly stringent in his favour, while even in the face of such stringency the President is provided with means by which to seek to off-set the effects or consequences of a finding resulting from this stringency.

It is submitted that the requirements for establishing allegations levelled against, and to effect the removal of the President, should be geared to bring to an end as early as possible the term of any President who has had such serious charges against him established. A finding that the President has been guilty of the allegations, plus the size of the vote (which by any measure is excessive) to accept the findings of the tribunal and to move for his removal from office, should, without more, be sufficient to bar him from ever standing for public office again.

The power of dissolution in the circumstances must surely be regarded as an indication of the extent to which provisions in the new constitution have been designed to protect the position and powers of the head of Government. It is difficult to envisage a Prime Minister under the old constitution losing support to the extent of 75% of the membership of Parliament and remaining in office, or being granted a dissolution of Parliament by the ceremonial President. In such circumstances, the latter, with any sence of appreciation of his duty of safeguarding the public interest, would undoubtedly have moved to dismiss the Prime Minister and to appoint someone likely to command the support of the majority in Parliament. The election process by which the Executive President comes to office does not differ in any significant respect from that by which the Prime Minister was brought to office under the old constitution, and there is certainly nothing special in the process which could be urged in favour of placing the Executive President in a significantly different position vis-a-vis his relationship with the National Assembly. It would require a great deal of effort to come up with a more ingenious scheme to make it difficult to constitutionally remove a President from office than that contained in the new constitution of Guyana. The efficacy of a scheme must surely be judged by the speed with which the term of office of a functionary judged to be guilty of serious offences could be brought to an end, while at the same

1. It is instructive on this point to compare the provisions relating to the removal of the President with those relating to the removal of judges — vide Guyana Construction (1980), Arts. 197 (3) — (7).

time ensuring that such a functionary is not lightly accused and is given a fair chance to exculpate himself. The enormity of the vote required at various stages in the Guyanese scheme has at least the virtue of providing for the President to be accused only by substantial percentages of the legislature and to be given a full opportunity to defend himself. But any power beyond this could reasonably be construed as designed to preserve the position of the President.

B. Immunities

There is an obvious connection between the immunities provided for the President and the removal process. Judged by the stated objectives of the drafting and bringing into effect of the new constitution, the provisions on this subject and the objectives would seem to be at serious variance with each other. The desire to establish a presidency in which the incumbent would be active politically was clearly articulated and was never in doubt. What the constitution has sought to do is to try to avoid some of the consequences which should flow naturally and logically from this development. Thus the constitution provides that:

(i) Subject to the provisions dealing with the removal of the President for violation of the Constitution or gross misconduct "the holder of the office of President shall not be personally answerable to any court for the performance of the functions of his office or for any act done in the performance of those functions and no proceedings, whether criminal or civil shall be instituted against him in his personal capacity in respect thereof either during his term of office or thereafter".

(ii) "Whilst any person holds or performs the functions of President no criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him in his private capacity and no civil proceedings shall be instituted or continued in respect of which relief is claimed against him for anything done or omitted to be done in his private capacity".[1]

Although a number of difficult problems could arise in interpreting and applying these provisions, the effect is evidently to put the President above the ordinary law of the land in respect of things done both in his official and personal capacities, i.e. both as President and as a private citizen. This, though, was not at all times made clear to the public. For example, one of the regime's spokesmen on the constitution had "decried those persons who he said, continue to distort the Constitutional provisions that have to do with protecting the Executive President from being sued". That authority offered the explanation "that the Constitution sought to protect the Executive President from being sued in his personal capacity,

1. Guyana Constitution (1980), Arts. 182 (1) & (2). Emphasis added.

for act or acts committed by a Government Officer during the reign (sic) of the Executive President".[2]

Just a cursory perusal of the relevant provisions would however reveal that this is far from an accurate representation of what the constitution in effect sought to achieve, and that immunities relating to criminal acts by the President, even in a personal capacity, are also a prominent feature of the provisions.

What, then, were some of the reasons advanced in favour of extending immunities in such wide terms to the President? The former Prime Minister (now President) offered the following explanation:

> ". . .So far as presidents are concerned that is standard throughout the world and it is a mere sort of carry-over of the British principle that the Crown can do no wrong, but when he comes out, it is another matter. He can do plenty wrong. Now, they say he can't be impeached! Sure they say that but the provisions of the Constitution also provide for his removal".[1]

The reluctance to reveal the full extent and effect of the immunities is very much in evidence in the above. However, the rationale for the immunities would appear rather surprising, and particularly the reference to the British precedent, since any analogy between the position of the Queen and the Executive President must, for a number of reasons, be forced, if not false. Dias has succintly commented on the British principle that "the monarch can do no wrong" in the following terms:

> "The origin of this is that a feudal lord was not suable in his own court, and the monarch, as the highest feudal lord in the land, was not suable in any court. The question is whether the monarch is capable of legal wrongdoing but enjoys a procedural immunity, or whether there is no initial breach of duty. The opinion is ventured with reserve that, in early times at any rate, the monarch could do wrong but was not suable. . . .'[2]

But the important point of difference between the two schemes must reside in the fact that the essence of the British system is the placing of the Monarch, as regards official acts, in a position in which she could do no wrong because she acts for the most part by and through ministers who could do wrong and be punished therefor. As we have already seen, the Guyanese scheme is clearly designed to vest all executive power in the President whose ministers are merely to serve as his aides and advisors. He himself is empowered to carry direct responsibility for portfolios in equal (or even greater, according to his disposition) measure with his ministers and is therefore in a position to do a great deal of wrong while in office. This is in sharp contrast to the position of the ceremonial President who quite understandably replicated the position of the Monarch.[3] There

1. New Nation, op. cit.
2. Forbes Burnham speaks of Human Rights, p. 14.
3. R.W.M. Dias, Jurisprudence (4th Edition), p. 343.

would therefore seem no logical reason why, in such circumstances, the Executive President should not be held accountable in equal measure (arguably moreso) with his aides and advisers, who evidently are not to enjoy similar immunity even in respect of their conduct of official business.

Even if it is conceded that the President should enjoy immunity in respect of his official acts, (and this writer is by no means convinced that this should be so), much stronger reasons than a mere reference to precedents from the British or any other system would need to be advanced in justification of immunity in respect of his personal acts. Constitutional provisions should not be devised in a vacuum, but should be relevant to the society for which they are fashioned. Experience has demonstrated that while it is probably a fair assumption in other social contexts that personal conduct would not descend below certain levels, this assumption does not necessarily hold good in countries such as Guyana where allegations of serious criminal conduct are frequently levelled against political leaders, both in their official and personal capacities. What is good for Britain is not necessarily good for Guyana. There would, therefore, seem no valid reason for exempting such persons from the incidence of the criminal process, for the essence of the operation of that process is the presumption of innocence, with the burden being placed on the accusers to make out their case beyond reasonable doubt. The burden of the submission here is that the President ought to be subject to sanction for both his constitutional functions (i.e. the sanction of removal from office) and for his personal criminal acts, i.e., like any other citizen, he should be answerable to the criminal law and not be placed above it.[1] If there is need for support on this point this is surely to be found in the fact that one of the stated reasons behind the introduction of the constitution was to abolish some of the features of the 1966 Independence Constitution whose origin and inspiration were stated to be grounded in archaic British principles and practices, and to introduce an instrument more relevant to the needs of the society. It must then appear somewhat contradictory that the justification for such an important principle should be founded on what has been identified as a principle of British feudal origins. Further, the principle of special immunity for the President in his personal capacity would seem at variance with the stated objective of establishing a more egalitarian society in which certain privileges would be abolished. Vesting the President with immunities over and above those to be enjoyed by any other citizen must surely rank as a marked departure from this objective.

There is no necessary incompatibility between an executive presidency and personal accountability under the ordinary law. This is evidenced in

1. See above, pp. et seq.
2. It may be of interest to note that the question whether the President of the United States of America enjoys immunity from criminal process while in office is at best doubtful. What would appear clear is that the constitution does not seem to immunise the President in the terms of the Constitution of Guyana — vide Koenig, op. cit., pp. 74, et seq.

the case of the Tanzanian presidency. Admittedly, even there the constitution immunises the President, while in office, from criminal process.[1] But the fact that the British model need not be slavishly followed is seen in the departure in relation to the civil liability of the President. The relevant provision reads thus:

> "No civil proceedings in which relief is claimed against the President shall be instituted whilst he is in office in respect of anything done or not done, or purporting to have been done or not done, by him in his personal capacity, whether before or after he entered upon his office, unless, at least thirty days before the proceedings are instituted, notice in writing has been delivered to him or sent to him in the manner prescribed by Act of Parliament, stating the nature of the proceedings, the cause of action, the name, description and place of residence of the party by whom the proceedings are to be instituted and the relief which he claims."[2]

Under this scheme, the immunity conferred is only partial in that the President could be sued in respect of civil wrongs while in office provided that certain procedural requirements are satisfied. This is in marked contrast to provisions in the Zambian constitution (incorporated and reproduced in substance and form in the constitution of Guyana) which embody the principle of total immunity.[3] The decision to adopt the total immunity principle in Guyana reflects the approach of regarding certain concepts and principles as sacrosanct without advancing reasons for doing so. What is needed though, is a thorough examination and questioning of such principles with an eye on their relevance for the society in which they are to be operative. The procedure followed in drafting the constitution precluded any serious public discussion or consideration of the matter from this angle.

The combined effect of the provisions relating to the removal of the President and the immunities attached to him is to create a functionary of formidable and unprecedented position and status in the country's consitutional development. The extent of these developments, and the intention behind them, are perhaps reflected in the words of the former Prime Minister when he stated:

> "Power and ultimate power must lie somewhere. Where does the Opposition want us to put it? In the hands of the irrelevant Opposition?. . . ."[4]

1. See the Interim Constitution of Tanzania (1965) Art. II (1).
2. Ibid., Art II (2). Emphasis added.
3. Constitution of Zambia, Art. 43.
4. Forbes Burnham Speaks on Human Rights, p. 14.

The parts of the constitution relating to the presidency certainly seem designed to reflect the principle contained in the first sentence of this statement.

Other Provisions Relating to the Presidency

There are other provisions in the constitution which need to be considered because they shed light on the position and powers of the President. Although the intention in certain areas is to establish independent bodies beyond the control of political forces, ways and means are available (and this has been so even before the executive presidency was established) to either circumvent the constitutional provisions or operate them to yield significantly different results from what was originally intended. The argument here is that now that there is an executive presidency these tendencies are likely to be strengthened, and this development is facilitated by certain constitutional provisions.

The constitution provides, as did its predecessor, for the establishment and appointment of a number of commissions to be responsible for various areas of public business. An examination of provisions relating to these bodies would suggest that the intention is that they be independent in their operations, notwithstanding that they are to be appointed by the President, either in his own discretion or on the advice of, or in accordance with the advice of some other body or authority. The relevant commissions[1] are:

(a) The Elections Commission

(b) The Judicial Service Commission (JSC)

(c) The Public Service Commission (PSC)

(d) The Teaching Service Commission (TSC)

(e) The Police Service Commission

The President also has the power to appoint public functionaries such as the Chancellor of the Judiciary and the Chief Justice, in the two latter cases "acting after consultation with the Minority Leader".[2] This formulation suggests some restriction or limit on the powers of the President. The problem, though, is to determine the extent of the limit and the meaning and effect of the term "consultation" whether in relation to appointments concerning these functionaries or the commissions.[3] The

1. Guyana Constitution (1980), Art. 226 (7).
2. Ibid., Art. 127, cf Art. 87 of Indpeendence Constitution.
3. The existence and consequence of this problem are clearly seen in the case of the Ombudsman — vide Harold A. Lutchman, "Correcting Faults in Administration: The Role of Guyana's Ombudsman" in Guyana Law Journal, vol. 3, No. 1. (1981), pp. 13, et seq.

extent of this problem could be seen in the fact that, as regards the membership of the J.S.C., a category of members designated "appointed members" is to be appointed after consultation with the Minority Leader.[1] The provisions relating to the P.S.C. have a similar formulation in that the Chairman and three members of that body are appointed by the President acting after consultation with the Minority Leader, and two after he has consulted such bodies as appear to him to represent public officers or classes of public officers.[2] The latter qualification to the usual formula also appears in relation to the appointment of the Chairman of the TSC. He is to be appointed by the "President acting after consultation with such bodies as appear to him to represent teachers",[3] which formulation would seem to vest even greater discretion in the President in that the finding of a certain set of facts is to be left entirely to him.

The Commissioner and Deputy Commissioner of Police "shall be appointed" by the President acting after consultation with the Police Service Commission".[4] Likewise, the Ombudsman is to be appointed by the President acting after consultation with the Minority Leader.[5]

But even more limiting is the formulation which requires the President to make appointments acting in accordance with the advice of some other body or authority. The Clerk and Deputy Clerk of Parliament are, for example, appointable by the President acting in accordance with the advice of the Speaker.[6] Judges, apart from the Chancellor of the Judiciary and the Chief Justice, are appointable by the President acting in accordance with the advice of the JSC. This provision also relates to acting judges.[7] Likewise, the Director of Public Prosecutions is appointed by the President acting in accordance with the advice of the Public Service Commission tendered after the Commission has consulted the Prime Minister.[8]

The most restrictive formulation in terms of apparent limits on the powers of the President would appear to be where an appointment is to be made on the nomination of a body or authority. Thus, in the case of the TSC, one of its members is to be "one person nominated for appointment by the Minister assigned responsibility for local government after that Minister has consulted with such body as appears to him to represent the interests of local democratic organs",[9] though it should be clear that in the

1. Guyana Constitution (1980), Art. 198 (2).
2. Ibid., Art. 200 (1).
3. Ibid., Art. 207 (1).
4. Ibid., Art. 211 (1).
5. Ibid., Art. 191 (2).
6. Ibid., Art. 57 (1).
7. Ibid., Arts. 128 (1), & 128 (3).
8. Ibid., Arts. 203 (1).
9. Ibid., Art. 207 (2) (c). A somewhat similar formulation relates to the appointment of the Auditor General who is to be "appointed by the President, acting in accordance with the advice of the Public Service Commission" — vide Art. 204 (1).

instant example, even under this formulation, Presidential influence is potentially great since it is inconceivable that the competent Minister would ever think of nominating someone not acceptable to the President.

Where the President has the power to make appointments, notwithstanding the intended constitutional status of the agency in question, he could use this power in a manner designed to secure his way with the agency. In a country like Guyana, one of the tendencies in evidence is the sense of obligation which persons feel for those who are responsible for their preferment in such circumstances, to the point of willingly complying with the wishes of their patron. The pressures on such persons to comply are for a number of reasons extremely severe, and especially because of the practice of the doctrine of the paramountcy of the party over the agencies of government, which in actual translation means that a status of independence from the ruling party is frowned on or, at the very least, not encouraged.[1]

Even where the President may be obliged to act after consultation with or on the advice of some person or authority, a failure to do so would not entitle those aggrieved to legal redress. The constitution specifically excludes the courts from enquiring whether the "President . . . has received or acted in accordance with such advice or recommendation, or whether such consultation has taken place, or whether the appointment has received such concurrence . . . ."[2]

The constitution states that save where the constitution so provides, a commission in the exercise of its functions under the constitution "shall not be subject to the direction or control of any other person or authority."[3] As against this, two other sets of provisions need to be known. Firstly, a commission may act notwithstanding any vacancy in its membership, or the absence of any member; and such eventuality would not invalidate its proceedings. Secondly, participation in the work of a commission of any person not entitled to be present or to participate in its proceedings does not have the effect of invalidating such proceedings.[4]

Further, enquiry by the courts into a number of other irregularities is expressly precluded, viz:

(a) Whether a commission has validly performed any function vested in it by or under the constitution.

1. See Lutchman, Constitution Making in a Post-Colonial Setting etc., pp. 27, et seq.
2. Guyana Constitution (1980), Art. 231. This article does not specifically refer only to the President but to "the President or any other person or authority" —Ibid.
3. Ibid., Art. 226 (1).
4. Ibid., Art. 119. A recent illustration of the effect of this provision is the case of the Elections Commission where, notwithstanding the non-participation of one of its members, it nonetheless declared the results of the elections held in December 1980 — vide "PPP Quits in Disgust" in Caribbean Contact, op. cit.

(b) Whether any member of a commission or any other person has validly performed any function delegated to such member or person by a commission in pursuance of the provisions of the constitution.

(c) Whether any member of a commission or any other person has validly performed any other function in relation to the work of the commission or in relation to any such function as is referred to in (b).[1]

The commissions were originally established on the basis of certain assumptions, for example, that in the face of the clear intention to establish such bodies free of political dictation and control and articles in the constitution providing for this, such matters would not have arisen, or have become issues to be adjudicated upon by the courts, but would be left to be regulated by practice, custom, or convention. But even if such assumptions were initially accepted by politicians,[2] as time passed they evidently saw certain political advantages in being able to influence and/or control the work of such bodies. They therefore set in train methods of achieving this end.

Arguably, a President who acts in violation of the provisions of the constitution relating to the work of the commissions could, notwithstanding the apparent absence of a remedy through the courts, find himself facing allegations that he has violated the constitution, or has been guilty of gross misconduct and be liable to sanction under the relevant provisions for the same. However, the limitations inherent in this remedy have already been discussed.[3] And here the view may be stated that it is most unlikely that such a remedy would be effective in such a case.

The issues raised and considered in the above may be regarded as hypothetical or theoretical and as unlikely to arise in practice. But experience with the Elections Commission provides a good illustration of the extent to which constitutional provisions could be rendered ineffective to the point where a range of activities intended to be under the control of an independent body has been brought under political control.

The constitution provides that the Elections Commission:

(a) "shall exercise general direction and supervision over the registration of electors and the administrative conduct of all elections of members of the National Assembly; and

1. Ibid., Art. 226 (6). But see Chuks Okpaluba, Judicial Review of Administrative Action in Guyana, pp. 57, et seq., on the likely effect of such "privative" clauses.
2. For clear evidence in this respect relating to Guyana see The Public Service of Guyana: Report of the Commission of Inquiry 1969 (Chairman: Dr. B.A.N. Collins), Appendix. 9.
3. See above, pp. 127, et seq.

(b) shall issue such instructions and take such action as appear to it necessary or expedient to ensure impartiality, fairness and compliance with the provisions of this Constitution or of any Act of Parliament on the part of persons exercising powers or performing duties connected with or relating to the matters aforesaid".[1]

The composition of the commission is designed not only with an eye to its independence, but to its impartiality in the sense that in the conduct of its affairs it does not operate to favour any of the contestants for political power. This is exemplified, inter alia, in the qualifications which are laid down in respect of its Chairman. Although he is to be appointed by the President in his discretion he should hold or have held office at least at the level of judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or be qualified for such appointment.[2] In practice, the conduct of elections has been brought under the exclusive control of the ruling party which is perhaps the only group expressing confidence in the fairness of results produced under the commission's activities or claiming that it performs its functions in accordance with constitutional provisions.[3]

Incidentally, and in passing, the control which the existing regime has over the conduct of elections in Guyana is one of the factors to be taken into account when considering the effect of the power of the President to dissolve Parliament even after 75% of all the elected members of that body may have voted for his removal from office. It is quite conceivable that this control could produce, even after such an overwhelming adverse vote in the legislature, a massive vote in favour of the President at any subsequent election. Attention has to be paid to the claims that even low turnouts at elections, or election type exercises, have been declared not only as high turnouts but as overwhelming support for the regime.[4] Experience has demonstrated that there is really no effective legal means of challenging or nullifying such results. These factors must be regarded as crucial in any consideration of presidential powers.

The foregoing is by no means an exhaustive list of the powers residing in the President. For example, attention may be drawn to the provisions which relate to extending the life of Parliament beyond the normal maximum five year period. It is in this regard stated that Parliament may from time to time extend the life of Parliament by not more than twelve months "when the President considers that Guyana is at war."[5] Further,

1. Guyana Constitution (1980), Art. 162 (1).
2. Ibid., Art. 161 (2).
3. See, for example, Lutchman, Constitution Making in a Post-Colonial Setting etc., pp. 62, et. seq.
4. Ibid., pp. 46, et seq. See also Something to Remember: The Report of the International Team of Observers at the Elections in Guyana, December 1980 (Parliamentary Human Rights Group 1980).
5. Guyana Constitution (1980), Art. 70 (4).

when and where Parliament meets, and its dissolution and prorogation, are in the entire discretion of the President, who is under no constitutional obligation to consult anyone in these matters.[1] The extent of the powers wielded by the President and his actual status cannot be determined by reference only to constitutional provisions. The nature of a society; and its parties, politics and even personalities are important variables to be considered in the matter. The submission here is that in so far as these factors are important in Guyana they serve to strengthen the tendency towards the concentration of power which is all too evident in the presidential scheme. A consideration of the influence of these factors strictly falls outside of the purview of this study. But enough has been written to demonstrate the extent to which the new constitution has, even in legal terms, created a new and more powerful functionary in the form of the Executive President. The relevance of such a functionary to socialism in Guyana remains to be considered.

The Presidency and Socialism

No attempt was made, during the series of exercises directed at the promulgation of the constitution, to establish a connection between the founding of socialism in Guyana and the constitutional provisions relating to the presidency. Indeed, in terms of specific references to socialism, the constitution as a whole is relatively silent, though it describes Guyana as a "state in the course of transition from capitalism to socialism. . . ."[2] There are provisions of the constitution which are, however, not consistent with this statement since they are evidently premised on the assumption that Guyana is already socialist.[3]

Among states which describe themselves and/or are regarded as socialist, there is great disparity in the form and practice of the presidential scheme. It is necessary, though, to recognise that difficulties exist in any comparison or analogy between the institutions in such states because of the conceptual problems which are encountered and have to be resolved. There is, too, the more general problem of the extent of the divergence between constitutional form and practice even in individual states.

In these states, powers and functions, which devolve on the President alone in Guyana, are shared with other agencies. Thus in the case of the Democratic People's Republic of Korea (DPRK), (whose constitution evidently influenced some of the provisions in the new Guyana constitution though not necessarily those relating to the presidency),[4] the President, who is elected by the Supreme People's Assembly (SPA) and is accountable

1. Ibid., Art. 70 (1) & (2).
2. Guyana Constitution (1980), Art. 1.
3. See, for example, Ralph Ramkarran, "The New Constitution of Guyana" in Thunder, Vol. 12, No. 1, January to March, 1980, p. 8.
4. See Harold A. Lutchman, Constitutional Change and Development: The Case of Guyana (Mimeo., October, 1978), pp. 53, et seq., footnote 59, et seq.

thereto for his activities,[1] is described as the head of State and as representing state power.[2] He is also "the supreme commander of all the armed forces. . . and the Chairman of the National Defence Commission, and commands all the armed forces of the State".[3] The President, inter alia, promulgates the laws and ordinances of the SPA, the decrees of the Central People's Committee (CPC) and the decisions of the Standing Committee of the SPA. Further, he issues edicts, exercises the right of granting special pardons, ratifies or abrogates treaties concluded with other countries and receives the letters of credence and recall of diplomatic representatives accredited by foreign states.[4]

On the other hand, the Vice Presidents and the Secretary and members of the CPC are elected or recalled by the SPA on the recommendation of the President.[5] The SPA also elects or recalls members of the Standing Committee of the SPA and does the same for the Premier of the Administration Council on the recommendation of the President.[6] Ministries and executive bodies of the Administration Council are established and abolished by the CPC and Vice-Premiers, and Ministers and other members of the latter Council are appointed and removed by the CPC on the recommendation of the Premier of the Administration Council.[7] Quite noticeably too, the sessions of the SPA are convened by the Standing Committee of the SPA.[8]

Under the constitution of the German Democratic Republic (GDR) the Council of State represents the GDR under international law. It, inter alia, ratifies and denounces international and other pacts subject to ratification.[9] But the Council of Ministers is described as "an organ of the People's Chamber" and as "the government of the German Democratic Republic." It, inter alia, "directs the uniform implementation of govern-

1. Socialist Constitution of the Democratic People's Republic of Korea (December 2, 1972) (hereinafter DPRK Constitution), Arts. 90 and 98.
2. Ibid., Art. 89.
3. Ibid., Art. 93.
4. Ibid., Arts. 94—97. The constitution describes the SPA as "the highest organ of State power" and states that "Legislative power is exercised exclusively by "the SPA. It is composed of deputies elected on the principle of universal, equal and direct suffrage by secret ballot — vide arts. 73—74. The SPA is described as "the highest leadership organ of state power". It is headed by the President and "consists of the President and Vice Presidents . . . and the Secretary and members of the Central People's Committee" — vide Arts. 100 — 102.
5. Ibid., Art. 76.
6. Ibid. The Standing Committee of the SPA is described as a permanent body of the SPA consisting of the Chairman, Vice-Chairman, Secretary and members — vide Arts. 85—86.
7. Ibid., Art. 103. The Administration Council is described as "the administrative and executive body of the highest organ of State power". It works under the guidance of the President and the CPC and consists of the Premier, Vice-Premiers, Ministers and other necessary members — vide Arts. 107 & 108.
8. DPRK Constitution, Art. 87; Cf. Arts. 69 & 70 of the Guyana Constitution where this power is at the exclusive discretion of the President.
9. The Constitution of the German Democratic Republic, Art. 66. The Council of State is described as "an organ of the People's Chamber". It is composed of the Chairman, the Vice-Chairmen, the members and the Secretary who are elected by the People's Chamber — vide Arts. 66 & 67.

mental policy on behalf of the People's Chamber and organises the execution of the political, economic, cultural and social tasks assigned to it. It is responsible and accountable for its activities to the People's Chamber". Further, the Council of Ministers directs the national economy and other spheres of public life, and "directs, co-ordinates and supervises the activities of the Ministries, the other central organs and the county councils. . . ." The Council of Ministers is composed of the Chairman of the Council of Ministers, the Deputy Chairman and the Ministers. Quite instructively, it is stipulated that the "Council of Ministers is a body working on a collective basis. All members of the Council are responsible for its activities. Each minister is responsible for the portfolio assigned to him."[1] In addition, the Chairman of the Council of Ministers directs its activities. The latter functionary is probably the closest approximation to the Executive President under the Guyanese Constitution.

The constitution of Cuba provides for a President who is described as the "head of State and Head of Government".[2] He is elected from among the deputies of the National Assembly of the People's Power (National Assembly) who, in addition, elect the Council of State. The relevant provision is as follows:

> "The National Assembly. . . elects from among its deputies, the Council of State, which consists of one President, one First Vice-President, Five Vice-Presidents, one Secretary and 23 other members. The Council of State is accountable for its action to the National Assembly. . . to which it must render accounts of all its activities".[3]

The scheme is one of a sharing of power between the President, the Council of State and the National Assembly. Thus the Council of State is assigned the function of summoning special sessions of the national Assembly. It also has the function, on the initiative of the President, of replacing the members of the Council of Ministers in the period between sessions of the National Assembly. Likewise, on the initiative of the President, the Council of State appoints and removes diplomatic representatives either of Cuba or of foreign states.[4]

The President is assigned the power to represent the state and the government and to conduct their general policy. He convenes and presides over the meetings of the Council of State and the Council of Ministers, and controls and supervises the development of the activities of the ministries and other central agencies of the administration. Further, he assumes the leadership of any ministry or central agency of the administration, and in so far as members of the Council of Ministers are appointed by the National Assembly, this is done on the proposal of the President.[5]

1. Ibid., Arts. 76 & 80.
2. The Constitution of the Republic of Cuba, Art. 72.
3. Ibid.
4. Ibid., Art. 88.
5. Ibid., Art. 91.

The President accepts the resignation of members of the Council of Ministers and proposes their replacement either to the National Assembly or Council of State. He receives the credentials of the heads of foreign diplomatic missions, though this function may be delegated to any of the Vice-Presidents. He is supreme commander of the Revolutionary Armed Forces, signs the decrees — laws and other resolutions-of the Council of State and arranges for their publication in the Official Gazette of the Republic.[1]

It is of interest that none of the three constitutions examined above contain provisions addressed to the removal of the President and certainly not in the elaborate terms in which the matter is dealt with in the new constitution of Guyana. Nor do they contain provisions conferring immunity on the President in any capacity, whether private or public. They also do not provide him with the power of veto over legislation.

In so far as statements have appeared rationalising the executive presidency as a development in the direction of establishing socialism in Guyana, these have tended to treat the presidency as an integral part of the constitution and not as a separate feature deserving of independent mention or treatment.[2] While it is possible to argue that the entrenching of new social and economic rights in the constitution is a movement in the direction of establishing socialism, if only because the constitutions of capitalist countries do not generally adopt this approach which is standard in socialist constitutions,[3] it is far more difficult to justify the provisions which confer far-reaching powers on the presidency on this ground.

The new constitution represents an amalgam of features culled from both capitalist and socialist sources.[4] This is evident in the provisions relating to the presidency; and we have already seen that it has been admitted that some of its features are inspired by principles with origins and foundations in capitalist societies.[5] It is because of these reasons, (in addition to the approach adopted in bringing the constitution into being), that the conviction remains strong that the constitution in general, and the nature of the presidential scheme in particular have very little, if anything, to do with the introduction of socialism in Guyana. Rather, the evidence is strong that the intention is to enable the regime in control of the state machinery not only to perpetuate itself in office, but also to increase the power at its disposal.[6] It is obvious that a shift in the balance of power in

1. Ibid.
2. See, for example, "A People's Inauguration" in New Nation, 25 January, 1981.
3. See above, footnote
4. A comparison between Chapter I and Chaper II of the constitution amply bears out this point. In this respect even the difference in the drafting style and the general use of language is striking. For a useful work which analyses some of the difficulties inherent in the differences between the two chapters see Rudy James, National Goals and Basic Social Rights and Obligations in the Guyana Constitution (Mimeo. 1981).
5. See above, pp. 36, et seq.
6. See Lutchman, Constitution Making in a Post-Colonial Setting etc., pp. 62, et seq.; "New Constitution Makes Burnham Supreme" in Dayclean, Vol. IV, No. 2, January 1980; "Guyanese must resist 'creeping dictatorship' of PNC" and Editorial under caption "New Constitution a Colossal Fiction!" in Mirror, 3 February 1980; Catholic Standard, 17 February, 1980.

favour of the Executive President has occurred in the new constitution. This much has been demonstrated above. While it is true that new organs and instruments have been created and established ostensibly to transfer greater "power to the people",[1] none of these have, in constitutional terms, an effective counter-balancing role vis-a-vis the powers of the President. This much is evident, by way of illustration, in relation to the legislative innovations which are for the most part vested with deliberative powers and not control or decision-making powers.[2]

CONCLUSION

The first election held since the promulgation of the new constitution has served to underline the extent to which the powers of the person holding the post of Executive President have been increased and his status enhanced. Even before the election was held, the leader of the ruling party, who had previously served as Prime Minister under the old constitution, was able to accede to the presidency and all the new powers attached to that office, by operation of law.[3] This in effect meant that the election was conducted under the supervision of the Government and was undoubtedly one sure means of ensuring that the regime remained in control of future developments. But even more important in relation to the powers and status of the President is the extent of the vote which was reported as received by the President and his party, i.e., 77% of the total votes cast.[4] This figure obviously has far-reaching implications and significance both for existing provisions in the constitution and possible future constitutional and political developments.

As regards the first point, the effect is that even the 75% vote which the constitution requires at the last stage of the procedure in relation to the removal of the President would now be more difficult to achieve.[5] The following problem is therefore posed in rather acute form: What consti-

1. Guyana Constitution (1980), Chapters VII & VIII.
2. In illustration of this point see Art. 83 which assigns to the Supreme Congress of the People the function to "discuss any matter of public interest and. . . make recommendations thereon to the National Assembly or the Government. In particular, the Congress shall advise the President on all matters which he may refer to it. . ." Emphasis added.
3. This was the effect of S. 10 of Act No. 2 of 1980 which reads as follows: "The person who immediately before the appointed day holds the office of Prime Minister under the existing Constitution shall, subject to the provisions of article 97 of the Constitution (relating to the taking of an oath by the President), assume office as President of the Co-operative Republic of Guyana that day as if he had been elected thereto in pursuance of the provisions of the Constitution and shall, unless he sooner dies or resigns or unless he ceases to hold office by virtue of articles 93 & 94 of the Constitution, continue in office until the person elected President in the next following Presidential election held for the purposes of article 91 of the Constitution assumes office". A similar provision applied to the post of Prime Minister — vide s. 11 of Act No. 2 of 1980.
4. See, "Winning Party takes 77% of votes" in Guyana Chronicle 19 December, 1980. The announcement of the results was reportedly made by the Acting Chairman of the Elections Commission, and according to this source, of 406,265 votes cast, the PNC polled 312,988 votes or 77.04%; the PPP 78,414 votes or 19.30%; the U.F. 11,612, votes or 2.86%. In consequence the PNC was awarded 41 seats, the PPP 10 seats, and the UF 2 seats.
5. See above, pp. , et seq.

tutional means are there to counterbalance and control the wide and unprecedented powers which have devolved on the Executive President? An answer to this problem would seem the more necessary when certain tendencies in relation to the possession and exercise of power in Third World Countries are borne in mind. The demand is usually for absolute power, and the acceptance on the part of the populace of restrictions on certain freedoms as means of solving the social, economic and political problems confronting the state. And as this writer has observed elsewhere, ". . . the general pattern in such circumstances is to suggest that the Leader should be implicitly obeyed and followed and should possess power which should only be limited by the extent and exercise of his own wisdom. He is the only one capable of deciding the public interest and should be empowered to take any action in furtherance of that interest as he interprets it. The new constitution sets out to reflect this principle".[1]

What has been written about the presidency of Zambia (which, as we have seen, inspired provisions relating to the presidency in Guyana) is of considerable interest: "a very powerful Executive President. . . is essentially the focal point of the system. The office clearly remains one designated to provide leadership and to act as the central unifying institution in Zambia under the philosophy of humanism".[2] The Executive President has been portrayed in similar light in Guyana with the exception that the philosophy in question is stated to be socialism.[3]

As regards the second point, whether the presidency is likely in future to develop along the lines of the next stage that was regarded as logical in countries such as Zambia, Tanzania, and Malawi, i.e., in the direction of a one-party state and/or a life presidency, must be a matter of concern. In such states the main arguments presented as favouring a one-party state included the relative weakness and ineffectiveness of opposition groups and their defeat at successive elections.[4] In the context of Guyana the regime tends to express contempt for the opposition which is at times regarded as irrelevant and on these grounds, as an impediment.[5] As matters now stand, the regime has the capacity, in terms of its control of the electoral machinery and of the legislative process, to obliterate any opposition group and convert Guyana into a one-party state.[6] Any such

1. See Lutchman, Constitution Making in a Post-Colonial Setting etc., p. 84.
2. The Parliamentarian, Vol. LIX, No. 2, op. cit., p. 106.
3. See for example, Editorial entitled, "The People have spoken: Progress Nationwide will Continue" in New Nation, 21 December 1980.
4. See for example, D.N. Mwakawago, "Tanzania's One-Party Parliament" in the Parliamentarian, Vol. LX, No. 4, (October 1979), p. 198. It may be of interest that the PNC secured 66 2/3% and 77.04% of the votes and seats at the elections held in 1973 and 1980, respectively.
5. See Forbes Burnham Speaks of Human Rights, p: 14 where the opposition is referred to as irrelevant; "PNC only truly National Party" in New Nation, 16 November 1980; Editorial entitled "The People have spoken: Progress Nationwide will continue" in New Nation 21 December, 1980.
6. The most secure articles in the constitution require a two-third (i.e. 66 2/3%) majority plus a referendum but experience has shown that securing a majority at such an exercise poses few problems — see Guyana Constitution (1980), Art. 164; Lutchman, Constitution Making in a Post-Colonial Setting etc., p. 90.

intention has, however, been denied by the leadership, and this for quite understandable reasons.[1] At a certain level it may however be argued that taking such a formal step would not really be necessary since it is quite possible to maintain the legal framework of a multi-party system while in practice operating a one-party system, i.e., the difference between a de jure and de facto one party system. At any rate, a multi-party system does not normally assume much meaning and significance where the control of a regime over the organs of state is so overwhelming as to reduce the role of other groups participating in the formal governmental process to a merely ritualistic one, as is the case in Guyana.

Very similar arguments may also be advanced in connection with the fear of the possibility of the present incumbent being declared President for life. While the regime possesses the governmental control it now does, there is in point of law, nothing to prevent an amendment of the constitution to effect such a result. But it is possible that here also, the need to maintain the facade of democracy would be a factor influencing any such development. Arguably, there is hardly any need to initiate such a development since the control over the electoral machinery could always be relied on to ensure the re-election of the President. And in this respect events have proved that the regime, like Muhammad Ali, have been quite adept at both forecasting and producing, within a very small margin, the votes which they receive at, and the percentages by which they win, elections and election type exercises.

But at least in the short-run, whether or not there will be a life presidency in Guyana will depend less on what the people think than on what the regime judges to be expedient. Experience has shown that even undertakings solemnly given, or arguments advanced with apparent sincerity, are either ignored or not necessarily treated as binding in regard to future conduct. This point could be illustrated by reference to developments which have occurred since the last general election. The argument that the ceremonial presidential system was much too elaborate, requiring, as it did, a President and a Prime Minister, has not prevented the initiation of action which cut across this argument. Since the founding of the executive presidency there have been appointed, in addition to a President and a Prime Minister (who is also First Vice-President) four other Vice-Presidents. The indications are that these functionaries are to be remunerated at a higher level than all other political functionaries with the exception of the President and the Prime Minister and First Vice-President. Further, the ushering in of the new constitution has witnessed a steep increase not only in the number of persons who hold ministerial posts, but

1. This writer has argued elsewhere that a formal system may have no higher ideal than to maintain a facade and give the appearance of democracy — see Factors in the Functioning of Parliament, loc. cit., pp. 48, et seq. One of the distinctive features of the existing regime is the extent to which many institutions exist merely in formal terms and do not effectively carry out even constitutional functions with which they are charged. The Ombudsman and Public Accounts Committee are outstanding examples.

also in those who serve as special advisers to the President.[1] In circumstances of meaningful accountability for the spending of public funds,[2] the latter development would, at the very least, have been the subject of explanation by the regime if only because it would seem inconsistent with the idea on which the constitution is premised, i.e., all ministers being aides and advisers to the President. An explanation may well be that in keeping with his new status the President requires two sets of advisers. By any objective criteria it would be difficult to conclude that the present system is less elaborate than the previous one. It is evident that matters of political expediency rather than rational considerations of economy and efficiency influenced these developments.[3]

Such developments could be regarded as a natural consequence of a presidential scheme structured along the lines described above. Even then, though, it should be apparent that what may be regarded as objectionable about the system is, quite apart from the considerable powers which are conferred on the President by the constitution, the process by which the entire scheme was brought into being and by which wide-ranging powers were conferred on an individual. States which were once in a colonial relationship with Britain have tended to accept that the monarchical system or its equivalent is in need of change both for reasons of emotion and efficiency. But it would appear self-evident that if any alternative system is to be successfully established, from the point of view of gaining popular acceptance it must, as a first quality, be grounded in the consent and participation of the people and not be the result of political manipulation or imposition. The argument here is that where the former approach is adopted it is less likely that an incumbent who possesses wide powers would be inclined to abuse such power. On the other hand, where the latter approach is the means by which institutions are brought into being, then the abuse of power must be inherent in the system.

1. For the details of the increases both in number and public expenditure see "New Parliament may cost over $3 million" in Mirror, 11 January, 1981. By way of summary it is stated therein that there are one (1) President, Five (5) Vice-Presidents 14 (fourteen Senior Ministers), 16 (sixteen Ministers), 3 (three) Parliamentary Secretaries. 15 (fifteen of the ministers are technocrats (non-elected). See also on this subject "Multiplication of Ministers" in Catholic Standard, 11 January, 1981.

2. The inadequacy of the system of accountability in respect of public funds and the fact that no meaningful distinction is drawn between the latter and party funds is a matter of common knowledge. But see on this subject Annual Country Report on Human Rights Practices in Guyana — 1980 (USICA, 11 February, 1981), p. 1 where mention is made of the blurring of the distinction between the ruling party and the government and the party's access to unaudited public funds. See also "Public Accounts Pose Problems" in Catholic Standard, 12 October 1980 for a useful summary on the state of the public accounts.

3. The contention here (which it is hoped to treat more fully in another work) is that factors such as the need to appoint persons portrayed as representing certain categories such as ethnicity, interest (such as trade union), and sex as a means of projecting an image of wide cross-sectional support were influential. Then too, there was the obvious need to reward those who had served the party and its leadership faithfully. This latter consideration is evident among the special advisers.

In a real sense the presidential system, as indeed the constitution of which it is part, is a product of the political crisis now existing in Guyana.[1] As such it is more likely to be an instrument for the exercise of absolute power than one of social cohesion and for solving the many problems facing the nation.

1. See, for example, Clive Y. Thomas, The Current Crisis in Guyana (Mimeo. n.d.).

*The writer is grateful to his colleague Professor Rudy James for his comments on an earlier draft of this article.