INTRODUCTION

'We have the advice of the greatest living authority on Constitutional Law regarding the British Commonwealth – Dr Jennings', proclaimed the Leader of the Ceylon Senate in December 1947 in a parliamentary debate on the future constitutional design of the island. So in thrall to William Ivor Jennings was the powerful and soon to be first prime minister of independent Ceylon, D.S. Senanayake, that in the same debate it was contemptuously suggested that his initials stood for ‘Dominion Status Senanayake’, a form of independence that Jennings advocated as Senanayake’s pervasive and persuasive adviser. Senanayake was never in doubt as to the value of Jennings and publicly expressed his gratitude by delivering to the Englishman a knighthood, on his advice, for services to Ceylon, less than six months later in the King’s 1948 Birthday Honours List.

Ivor Jennings was born in Bristol on 16 May 1903. He had a remarkable career stretching across the world as a constitutional scholar in the heyday of decolonization before his death in Cambridge at just sixty-two on 19 December 1965. After studying mathematics and law, he obtained a first-class degree for the law tripos in 1924–1925 while at St Catharine’s College, Cambridge. After a short time as a law lecturer at the University of Leeds, he went to the London School of Economics (LSE) in 1929, where he rose to become Reader in English Law. While at the LSE, Jennings published some of his most famous and influential works, including *The Law and the Constitution* (1933), *Cabinet Government* (1936), and *Parliament* (1939).

After just over ten years at the LSE and a visiting professorship (in political science) at the University of British Columbia, Jennings accepted a job in Ceylon, becoming the first vice-chancellor of the University of Ceylon once full university status was achieved in 1942.

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1 *Parliamentary Debates (Hansard)*, Ceylon Senate, vol. 1, p. 172, 2 December 1947. The speaker was Sir Oliver Goonetilleke.

2 Ibid., p. 174.

(it had previously been a college with affiliation to the University of London). With characteristic ambition and formidable brio, he spearheaded the university’s move in 1952 to its new site in Peradeniya.\(^4\) Jennings proved himself an adroit administrator and he moved from Ceylon back to Cambridge to become Master of Trinity Hall, a position that he held until his death, along with a term as the university’s vice-chancellor (1961–1963) when that position rotated among the college heads.

Further academic and professional honours came his way. He was made a King’s Counsel in 1949, and was elected a fellow of the British Academy in 1955. He delivered the 1949 Waynflete lectures at Magdalen College, Oxford, on the Commonwealth in Asia (later published as a book in 1951). In 1950 he held a visiting professorship at the Australian National University. He was Chairman of the Royal Commission on Common Land from 1955 to 1958. In 1958 he delivered a lecture series on ‘Problems of the new Commonwealth’ at Duke University (published as a book the same year) and was also made a bencher of Gray’s Inn. Finally, he was appointed to the prestigious Downing Professorship in the Laws of England at Cambridge in 1962.

Jennings contributed significant international advice to universities and higher education institutions in Ceylon, Hong Kong, India, Jamaica, Kuwait, Malta, Malaya, and Uganda. Meanwhile, his publishing endeavours matched his professional ones. In addition to the books mentioned above (which have since seen multiple updated editions), came such works as *The British Constitution* (1941), *The British Commonwealth of Nations* (1948), *The Constitution of Ceylon* (1949), *Constitutional Laws of the Commonwealth* (1952), *The Queen’s Government* (1954), *The Approach to Self-government* (1955), *Constitutional Problems in Pakistan* (1957), and *Party Politics* (3 vols, 1960–1962). These editions were accompanied by an almost endless succession of critical articles in leading international journals of multiple disciplines, covering subjects as diverse as English housing legislation, emergency regulations during wartime, constitutional interpretation in Canada, utilitarianism, and prime ministerial removals.\(^5\)

\(^4\)For Jennings’ time at Peradeniya see his posthumously published *The Kandy Road*, edited and introduced by H.A.I. Goonetilleke (Peradeniya, 1993).

An international constitutional authority

The above description points to a substantial and prodigious academic career. However, this does not reveal the full influence of this Cambridge public law don. Ivor Jennings commanded critical attention as an adviser beyond Britain to nations mostly of the Commonwealth, especially those emerging from imperial rule. From at least Easter 1938, when he gave advice to a Canadian Royal Commission on dominion–provincial relations, until his death, Jennings was one of the most sought-after constitutional experts in the world. He advised on great and small issues alike, and, at least as viewed from his papers, his advice was requested on specific constitutional, parliamentary, political, and legal issues by Canada, Ceylon, Cyprus, Eritrea, Gambia, Ghana, Gibraltar, Malaya, the Maldives, Malta, Nepal, New Zealand, Nigeria, Pakistan, Rhodesia and Nyasaland, Singapore, South Africa, and Sudan. The degree of involvement in the countries ranged from being a member of the Reid Commission responsible for drafting a constitution for the Federation of Malaya, through acting as unofficial adviser to D.S. Senanayake, producing memoranda on financial issues in western Nigeria, functioning as a paid advocate in a fundamentally important case for Pakistani democracy, and giving an opinion on the advisability of South Africa becoming a republic, to providing private advice solicited by the Governor-General of New Zealand on what to do in the event of a hung parliament.

Such a varied and topical agenda allowed Jennings an opportunity to engage and contribute beyond the limited confines of academic scholarship. Perhaps surprisingly, but no doubt excitingly for him, he readily and more often than not strayed beyond narrow terms of reference or questions of law. This allowed him to generate personal judgments on all manner of issues, especially political questions. As he remarked, for example, in his autobiography, about his fourteen years in Ceylon, ‘though I have often been consulted by the Government of Ceylon on matters within my field of study, I remember only one occasion on which I was asked to advise on “the law”’. As the selected documents will show, Jennings engaged in political realities (and expediencies) when dealing with the array of questions put before him and did not let academic niceties or legal minutiae restrict the expanse of his assessments or the style of his analysis.

When discussing British constitutional issues Jennings was and is still regularly cited, even if only in criticism or in reference to his

6Jennings, Road to Peradeniya, p. 70. The question was on martial law in the event of a Japanese invasion of the island, and was raised at Easter 1942, not long after he arrived.
constitutional authority. He remains on the reading list of many constitution-related courses and is supposedly read by the Prince of Wales and Buckingham Palace.\footnote{D.A. Low, ‘United Kingdom’, in David Butler and D.A. Low (eds), Sovereigns and Surrogates: constitutional heads of state in the Commonwealth (London, 1991), p. 15.} Lord Butler of Brockwell, who held the constitutionally omniscient role of Cabinet Secretary from 1988 to 1998, revealed in retirement that Jennings was someone ‘on whom I was brought up’, a sentiment that was probably shared by that generation of Oxbridge civil service panjandrums.\footnote{Lord Butler of Brockwell, review of Nevil Johnson, Reshaping the British Constitution: essays in political interpretation, English Historical Review, 121, no. 490 (February 2006), p. 265.} The Commonwealth scholar D.A. Low despaired that the works of Jennings were not at hand at Yarralumla\footnote{The Governor-General of Australia’s official residence in Canberra.} before Sir John Kerr sacked Gough Whitlam as Australia’s prime minister in 1975,\footnote{D.A. Low, ‘Introduction: Buckingham Palace and the Westminster model’, in D.A. Low (ed.), Constitutional Heads and Political Crises: Commonwealth episodes, 1945–85 (London, 1988), p. 18.} though they were used by the solicitor-general, Maurice Byers, to comprehend the Crown’s powers during this infamous crisis.\footnote{Paul Kelly, November 1975: the inside story of Australia’s greatest political crisis (Sydney, 1995), pp. 212–213.} The British journalist and political historian Peter Hennessy mockingly described Michael Heseltine as giving an impression of being a ‘Jermyn Street Sir Ivor Jennings’ on account of his appearance on Panorama, where he ponderously explained his dramatic resignation on constitutional grounds from the Thatcher Cabinet in January 1986.\footnote{Peter Hennessy, ‘Mottram’s law and the efficiency of cabinet government’, Political Quarterly, 57, no. 2 (April 1986), p. 137.} In 2007, Anthony King included Jennings in his ‘Canonical Sextet’ next to Walter Bagehot, A.V . Dicey, Sidney Low, Leo Amery, and Harold Laski as authors who ‘define[d] for the British, over a long period of years, what their uncodified constitution was and what it meant’.\footnote{Anthony King, The British Constitution (Oxford, 2007), p. 15.} Martin Loughlin credits Jennings as one of the pioneers of the ‘functionalist’ method and approach to public law, which, rather than viewing law and politics as separate, compartmentalized entities, understood these fields as intimately connected and complementary, and sought to reinforce the view that the constitution is merely ‘an object of description’ that could only be properly understood by an analytical study of how critical state institutions actually functioned.\footnote{Martin Loughlin, The British Constitution: a very short introduction (Oxford, 2013), p. 37, and Martin Loughlin, Public Law and Political Theory (Oxford, 1992), pp. 167–176.}
Canada is done to employ his arguments on British practices for local objectives.\textsuperscript{15} Dennis Kavanagh, in a recent well-regarded collection devoted to British politics, places Jennings as one of the ‘founding fathers of British political science’.\textsuperscript{16}

Sir Roy Welensky happily interpreted a 1960 opinion from Jennings to mean that, constitutionally speaking, the politically complex 1953 Federation of Rhodesia and Nyasaland he led was essentially ‘indestructible’ (though it was, in fact, ultimately doomed). The Monckton Commission’s ideas on any secession were supposedly ‘unsound’ according to Jennings, which was music to Welensky’s ears.\textsuperscript{17} The historian Joseph Fernando persuasively reasons that the Malaysian constitution was effectively drafted by one man – Ivor Jennings;\textsuperscript{18} while A.G. Noorani and Allen McGrath strongly claim that Jennings had a not insubstantial role in the demise of democracy in Pakistan before the advent of military rule in 1958.\textsuperscript{19} Even today, his name is seldom out of the Sri Lankan newspapers, either in commendation or condemnation.\textsuperscript{20} Few would disagree with Asanga Welikala’s assessment that Jennings’ role must get ‘the weight it deserves’ in the constitutional set-up of independent Ceylon.\textsuperscript{21}

**Historical influence**

For historians of Britain, empire, decolonization, and Commonwealth, the benefits of examining Jennings and his work are threefold. First, Jennings is particularly useful for his guidance on the existence of conventions. He asked three questions: were there any precedents for these conventions; did the actors in those precedents believe they were bound by them; and what was the reason behind such conventions?\textsuperscript{22}


\textsuperscript{20}A recent article by Rajan Philips gives a good overview of the issues: ‘From Jennings to Geneva: Sri Lanka’s tortuous decline’, *The Island*, 15 March 2014.


Though there are limitations to this assessment as identified by scholars including Turpin and Tomkins in their recent edition of *British Government and the Constitution*, the ‘tripartite specification’ of testing the establishment of conventions has nonetheless been utilized by British and Commonwealth courts, including in a case from 2012 investigating the constitutional influence of the Prince of Wales. Jennings’ analysis of the observance of conventions, as Bradley and Ewing acknowledge, was in favour of political realities over legal shibboleths. Conventions were, as Jennings famously proclaimed in *Law and the Constitution*, ‘the flesh which clothes the dry bones of the law’. The documents selected in this volume clearly show his predilection for ‘the flesh’.

Secondly, an area of particular interest for imperial and political historians is Jennings’ observance of the Crown and Cabinet and their political prerogatives. His work has clearly aged; in particular, his conception of party government and parliament is, as Bogdanor argues, ‘out of date’. Nonetheless, as Brazier notes, despite the separation from events, Jennings’ work has historical value. Its utility is its inventory and deployment of constitutional precedents from at least the seventeenth century. In fact, arguably Jennings’ most preferred source for his writings were historical – the memoirs of political and constitutional practitioners. Waiting for a train in York he bought for 5 shillings the reminiscences of Sir Almeric Fitzroy, the Clerk of the Privy Council from 1898 to 1923, and thus began his massive thirst for historical precedents and ideas: ‘From it I discovered the immense volume of Constitutional Law which was not in the books but which yet regulated the whole practice of government. I went round to the best second-hand bookshop in Leeds next day and ransacked it for political biographies.’

*Cabinet Government* is clearly a work that relies on these biographies. Echoing Loughlin’s comment above about Jennings being descriptive and practical, Herman Finer, the eminent scholar of government, commented in his review of the 1936 first edition: ‘As a result of Dr Jennings’ work, there is a code available for Prime Ministers

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29 Jennings, *Road to Peradeniya*, p. 69.
and Ministers, the Crown and the people – a veritable treasury for constitutional lawyers and political scientists.\(^{39}\) Jennings harnessed examples from courtiers and counsellors around sovereigns including Queen Victoria and George V to assert judgements on less than clear-cut topics such as the personal prerogatives of the Crown to dissolve Parliament, refuse assent, and sack ministers, and the exercise of patronage.\(^{30}\) For Jennings, the Queen and her realms and responsibilities could never be treated as an academic legalistic case to ‘be read like metaphysics’, however great the temptation.\(^{31}\) In his view these powers were important. The renowned Canadian constitutional expert Eugene Forsey was convinced that Jennings believed that even the perceptive Bagehot had ‘certainly underestimated the real power of the Crown’.\(^{32}\) Even in republican India, Jennings’ work on the Crown and the historical precedents that he disseminated were cited, for example, by the attorney-general and other Indian constitutional luminaries to diminish the political aspirations of the president vis-à-vis the prime minister and Cabinet in 1951.\(^{33}\)

The third area where Jennings was arguably at his most influential was in the shaping of constitutions in the Commonwealth and beyond, owing to his being the most physically and intellectually available expert on constitution-making during the high tide of decolonization of the British Empire. As a study of democracy and responsible government in Asia and the Pacific concluded, individuals such as ‘Ivor Jennings’ were ‘important at the inception of Westminster’, as the British system is heavily reliant on the first two of Jennings’ contributions outlined above – conventions and the powerful personalities who exercise them.\(^{34}\) Jennings was seen as the man who could get things done. He was even supposedly sought by a movement that wanted Natal to secede from South Africa in the 1960s.\(^{35}\) Related to this broader point is the fact that Jennings was also the authority who directly drafted (or at least recommended to the states he advised) a Westminster constitutional system – a system readily exported,

\(^{36}\) *The Times*, 10 October 1960.
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easily manipulated, and evasive of comprehensive description.\textsuperscript{37} As he commented in *The Approach to Self-government*, ‘wherever Britain has ruled, her constitutional ideas prevail, and […] our [Britain’s] task is eased because we have to adapt those ideas to local conditions’.\textsuperscript{38} Jennings, as I have argued elsewhere, was seen, and saw himself, as a spiritual guide and guru advocating ‘Eastminster’, an experiment of the Westminster-derived model in Asia, for territories emerging from British rule in the region.\textsuperscript{39}

Jennings functioned in an era of elites, both British and indigenous, and operated if not at their behest then comfortably from their verandas. This gives a certain understanding to his famous statement that the ‘people cannot decide until someone decides who are the people’.\textsuperscript{40} Jennings advised and was employed by those who made those decisions and he was their expert. As Andrew Harding argues about Jennings in Malaya, though he was the ‘dominant intellectual force in the drafting process’, recognized for his ‘unique blend of academic brilliance, leadership, practical wisdom, and sheer hard work’, the method of constitution-making by experts was ‘surprising’ compared to the elected Indian Constituent Assembly only a few years earlier.\textsuperscript{41} Although Jennings consulted, travelled, and read widely, and was an adviser to assemblies, his preferred method was cloistered hard work following a perceived or real legal brief. As his obituary in *The Times* noted, ‘he never spared himself’ and operated with ‘unusual powers of clear thinking, concentration [and] logical analysis’. Perhaps this was due to his having little time for anything but work: the dedicated don recorded his only recreation as ‘books’.\textsuperscript{42} Though frequently mentioned in the press either as author or subject, his inclination and skills tended to lend themselves to private rather than public constitutional assignations.

While he was not their creature, the sultans and the Savile Row-suited could expect a sympathetic ear, as Jennings often looked to traditional rulers and the surrounding elites as a substitute for perceived democratic deficits, in the hope that they might eventually conform to British ideals. In Nepal, for example, Mara Malagodi reflects that ‘Jennings was convinced that a modified Westminster


\textsuperscript{38} Jennings, *Approach to Self-government*, p. 20–21.


\textsuperscript{40} Jennings, *Approach to Self-government*, p. 56.


\textsuperscript{42} *The Times*, 20 December 1965.
model would be easy to transplant in Nepal assuming that the Nepali constitutional edifice would revolve around the principles of constitutional monarchy as expounded in the UK. This is not to say that he was always appreciated. The Governor of Ceylon, Sir Andrew Caldecott, told London in 1944 that, ‘however great an authority on the British constitution’, Jennings had limited knowledge of Ceylon and was ‘not a legal draftsman’. Meanwhile, the formidable Kenneth Roberts-Wray, legal adviser at the Colonial Office, thought in late 1945 that Jennings’ draft for Ceylon ‘would be quite useless as a Constitution’ and ‘must be started de novo’, which did not happen.

As a scholar of English public law, Jennings is still quoted, critiqued, and drawn upon by public law scholars. His famous critique of Dicey having too narrow and conservative a view of the constitution is still utilized. He encouraged generations of his students and colleagues to look beyond narrow legal definitions. As the principled public law scholar John Griffith explained, recalling lectures by his old teacher at the LSE from decades before, ‘He taught me to see the important distinction between definition and description’. This was a clear Jennings axiom, which he employed constantly in practice with his constitution-making and advice. It sometimes put him at odds with legal doctrines and their associated luminaries, but it also helped promote a career beyond the legal–academic parapet. Perhaps most prominently, Jennings’ place in public law was illustrated by a special centenary issue of the Modern Law Review in September 2004, entitled ‘Sir Ivor Jennings and the development of public law’. The articles in this special issue of a journal for which Jennings had been a regular contributor and editor covered many areas, including Cabinet, Parliament, public law as a discipline, his academic career, and his major English law publications.

As Loughlin commented in his introduction, the issue served not to celebrate Jennings’ career but instead to assess his significance

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and ‘contribution to the development of public law scholarship’ for so long. The authors of the core legal textbook *Constitutional and Administrative Law*, A.W. Bradley and K.D. Ewing, respectively describe Jennings’ personal and professional contributions to the law and his lasting reminder that an understanding of social and economic factors is essential to explain constitutions. Adam Tomkins delivered to Jennings the accolade of giving public law scholars two reasons to be grateful for his ‘pioneering work’:

The first arises through his efforts in bringing detailed analysis of political institutions into the mainstream of British public law research. All public lawyers who have written about Parliament or about the institutions of government have Jennings to thank for demonstrating that these topics rightly belong at the heart of public law scholarship. The second reason lies in Jennings’ successful endeavours in showing that public law scholarship could consist of something other than the mere application of private law technique to the worlds of politics and government.

**Beyond Britain and law**

The special issue made no claim to cover all of Jennings’ work and openly admitted the gap of his toils over constitution-making in the Commonwealth. Even his entry in the *Oxford Dictionary of National Biography* devotes just one sentence to his role as an international constitutional adviser. Perhaps part of the reason is that the extent of Jennings’ international roles were often recognized by few in Britain; even abroad his precise contribution was rarely known beyond a small circle of indigenous and British official elites. It is interesting to note that he was never directly honoured by the British state. Instead he was knighted first in 1948, as mentioned above, on the recommendation of the Ceylonese, and a KBE followed in 1955 on the advice of ‘Her Majesty’s Pakistani Ministers’ for his role as ‘Constitutional Adviser to the Government [of Pakistan]’. Even his appointment to the Reid Commission on the Malayan Constitution a year later was almost rejected by senior officials within the Commonwealth Relations and Colonial Offices, who thought Jennings “a bit of an advertiser”, apt to

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52 *London Gazette* (Supplement), issue 40501, 3 June 1955.
throw his weight about and perhaps somewhat lacking in tact’. Only
the personal representations of the Malayan leader Tunku Abdul
Rahman, who had been a friend of Jennings’ since their time as
students at St Catharine’s College, Cambridge, ensured his selection.
He remained ‘unpopular’ with British officials.\(^{53}\) Perhaps this was
the reason for Jennings’ conspicuous absence in the first wave of
Caribbean decolonization, starting in August 1962 with Jamaica and
Trinidad and Tobago. This was the case despite his former student
and the future Governor-General and President, Sir Ellis Clarke,
being one of the key constitutional players in Trinidad and Tobago’s
politics.\(^ {54}\)

Jennings spent approximately half his career in Britain and the
other half overseas. This naturally affected his interests, capabilities,
and reputation. The Master’s Lodge at Trinity Hall was a regular
meeting place for figures from around the world seeking his advice.\(^ {55}\)
When overseas, apart from meeting the leading locals, he would
more often than not spend time with British diplomatic and colonial
officers and they with him. In Nepal, for example, he and the British
ambassador shared a ‘sense of desolation’ in not being able to hear
the result of the 1958 University Boat Race between Cambridge and
Oxford as their radio ‘faded out’.\(^ {56}\) His peripatetic career and multiple
relationships with indigenous and British elites bolstered the scope of
a man otherwise isolated by habit and inclination. His experience of
both worlds did not necessarily make him a natural fit in either, but
it did foster his impressive range of experience. Locals and Britons
sought information on the other from a man who dealt with both.
Held in high esteem as a constitutional authority by many, he was
also seen less positively by others as a superior Svengali not given to
suffering fools.

In a similar manner, he has been characterized recently as having
two sides: an ‘occidental Jennings’ and an ‘oriental Jennings’,\(^ {57}\) which
neatly differentiates the two separate avenues of scholarly interest
in his work and influence. The Orient had certainly affected him.
Following his return to a British academic post in 1955 after a gap of
almost fifteen years, his forays back into writing British constitutional

\(^{53}\) Charles O.H. Parkinson, *Bills of Rights and Decolonization: the emergence of domestic human
\(^ {54}\) Ellis Clarke, ‘West Indies’, in Butler and Low, *Sovereigns and Surrogates*, p. 172.
\(^ {55}\) For example, Jennings’ daughter Shirley Watson remembers several distinguished
visitors to the Lodge, including Jomo Kenyatta and Hastings Banda.
\(^{56}\) Jennings, *Road to Peradeniya*, p. 245.
\(^ {57}\) Mara Malagodi, ‘The oriental Jennings: an archival investigation into Sir Ivor Jennings’
constitutional legacy in South Asia’, *Legal Information Management*, 14, no. 1 (March 2014),
scholarship were judged by W.A. Robson to be without the ‘freshness and originality which had marked his earlier work’, owing to his long absence, and his 1960–1962 Party Politics ‘was a mistake’. Meanwhile, a recent study on the Westminster system in the settler countries has argued that Jennings was too occidental and that ‘none of his principles is concerned with the wider Commonwealth’. This opinion was not shared by the elites in the oriental ‘Eastminsters’, who employed him precisely because of his knowledge of the wider Commonwealth, his appreciation of their political agenda, and his ability to navigate the corridors of both Whitehall and Government House.

There were limits to oriental Jennings’ deviations from the Occident. His qualms about the Westminster model’s suitability outside of Britain did not translate to an eagerness to advocate other foreign models and innovations such as bills of rights. There were clearly tensions between these facets of Jennings’ academic personality. However, neither occidental or oriental Jennings, thus far, has been properly exposed, since for both avatars he carefully cultivated an academic and professional appearance that allowed his books and lectures to do the explaining. While his ‘flood of authorship’ was legendary, even his pieces covering countries or issues where he was acutely involved would hardly ever reveal anything about his own often critical role, beyond fleeting personal observations or comedic relief. Though K.M. de Silva believes that Jennings’ absence from his writings on Ceylon were ‘uncharacteristically modest’, this was also the case for other countries in which he was involved. Jennings, perhaps for scholarly or personal reasons, left himself out of the analysis. This volume seeks to put him back in.

**Constitution-making matters**

Though Jennings held academic law positions such as the Downing Chair in the Laws of England at Cambridge, he robustly believed it absurd to be restricted by one discipline. He wrote that ‘boundaries between academic subjects are very artificial’, and his remark that

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38Robson, ‘Sir Ivor Jennings’.
60See Parkinson, *Bills of Rights and Decolonization*.
63For example, in *Constitutional Problems in Pakistan* (Cambridge, 1957), which examines key legal and constitutional issues in Pakistan after independence, there is almost no detail of what Jennings actually witnessed first-hand and was tasked to provide.

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he was sometimes accusingly labelled ‘not a lawyer’ illustrates a frustration at academic narrowness.\textsuperscript{64} Indeed, it may surprise legal scholars that in his autobiography he constantly refers to himself as a political scientist.\textsuperscript{65} Whatever else, he fervently believed that, regardless of one’s academic background, constitutions mattered and affected everyone. In particular, he believed in the intrinsic value of the British constitution – though he was mindful of its defects. In \textit{The British Commonwealth of Nations}, the first sentence of a chapter (appropriately titled ‘Where the sun never sets’) expresses the following opinion: ‘Whatever be their defects, the British people have a remarkable capacity for constitutional innovation. They make no attempt to force governments into a rigid classification; on the contrary, they adapt institutions to suit the environment.’\textsuperscript{66}

Jennings could have been describing himself. He was responsible for taking the abstract principles and curious institutions of Britain to places far removed from the comfort of the Master’s Lodge. Despite warning ‘that every country must have a Constitution to suit itself, a Constitution made to measure, not one bought off the rack’,\textsuperscript{67} he was suggesting constitutional designs from British material. This is what his clients wanted; observing one exchange with members of the Constituent Assembly of Pakistan and their British predilections, he saw parallels with the barons at Merton in 1236 and their pronouncement ‘\textit{nolamus leges Angliae mutare}’ – ’we do not want to change the laws of England’.\textsuperscript{68} To Jennings, the fact that even the local critics of the British constitution, as he observed in Ceylon, depended on books written by British intellectuals such as Harold Laski, G.D.H. Cole, and D.N. Pritt belied their anti-British rhetoric.\textsuperscript{69}

In his own writings and actions, Jennings admitted his preferences for the intrinsic merit in Britain’s constitutional heritage and approach:

There is method in this peculiarly British – or it may be Commonwealth – fondness for the ambiguity in politics, for it avoids debate over words which disguise unessential differences, allows the dead past ample time to bury its dead, and permits generations yet unborn to build new Jerusalems in their own pleasant style. It is hardly an exaggeration to say that the British constitution and the British Commonwealth have survived the storms of centuries because

\textsuperscript{64} Jennings, \textit{Road to Peradeniya}, p. 69.
\textsuperscript{65} See, for example \textit{ibid.}, p. 105.
\textsuperscript{67} Jennings, \textit{Approach to Self-government}, p. 2.
\textsuperscript{68} \textit{Ibid.}, p. 12.
they took no thought for the morrow but bent to every wind that blew strongly enough.\textsuperscript{30}

With this ethos Jennings set to work as an adviser and constitution-maker across the world, frequently exemplifying the message above with various consequences. As the anthropologist Maxwell Owusu reminds us, Jennings had major reservations about the successful implementation of democracy, in spite of his role as constitutional adviser to states seeking just that. He confessed as much in one of his last books, \textit{Democracy in Africa}:

\begin{quote}
the essential problem of African democracy is \ldots{} the essential problem of democracy everywhere – and it is wise to remember that only a few countries in the world have really made a success of it. Democracy has succeeded in Northwestern Europe and in a few countries outside Europe because it has become entwined in the traditions of the people.\textsuperscript{31}
\end{quote}

Perhaps to counter the above apprehensions, Jennings created new traditions and precedents like a ‘slot machine’ and, powerfully, he had the power to explain and justify them, which he candidly admitted:

we have a series of precedents so vast that hardly anyone, and perhaps no one, knows all of them. Nevertheless, they are tucked away in one’s memory or at least accessible in the books. When a member of a Drafting Committee or Constituent Assembly asks a question about the means to overcome a local difficulty, it is as if he puts a coin in a slot machine. Out pops a precedent; perhaps not exactly in point, but near enough to suggest a line of development.\textsuperscript{32}

With his range and reputation, Ivor Jennings would be one of the most influential constitution-makers the world has ever seen.

\section*{Selected documents}

The documents in this book are drawn exclusively from the papers held at the Institute of Commonwealth Studies, University of London, which were purchased from Lady Jennings in 1983. The collection is a vast one and this volume does not include them all. Material related to Jennings’ multiple educational and administrative duties across the world have been entirely excluded, as have papers narrowly covering specific legal cases and statutes. The papers selected concentrate

\begin{footnotes}
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instead on three main sources: diaries, memoranda, and private impressions of subjects that he knew well through his international constitutional roles and academic expertise. As editor I have followed two rules in making my selection: first, the material has not been published elsewhere (to the best of my knowledge); second, Jennings had to have had a personal involvement or expertise in the subject he was writing about. The first rule was made primarily because some of his books are still in print and his important published works are still available in most libraries. The material in this introduction consciously cites Jennings’ important published works so that the reader can be aware of them when reading the documents selected and consult them for further reading. The second rule was established to weed out the massive range of topics on which Jennings wrote and instead to concentrate on the subjects he knew best and on which he had a privileged perspective to comment.

Owing to my objective to keep as wide a selection of documents from varied cases as possible, I have not included everything from the two countries with which Jennings was most heavily involved – Ceylon and Pakistan, both of which he wrote on extensively. However, I am planning two separate collections covering these countries. The London School of Economics and the Institute of Commonwealth Studies are also currently establishing a website on Ivor Jennings, which will initially be administered by Dr Mara Malagodi and me.

As the contents page indicates, I have divided the book into country sections for ease of reference and have a large section at the end covering Jennings’ impressions on constitution-making, South Asian prime ministers, and the Magna Carta in the Commonwealth. Despite the structure of the volume, I would encourage the reader to consult the index for countries and names, since Jennings more often than not draws on examples from further case studies to illuminate others. For legal case references, unless otherwise noted, I have not reproduced the original citations of various printed case reports as used by Jennings, but the system of neutral citation that has been adopted across the Commonwealth since 2001. This is to facilitate universal access, especially via online resources such as the case and statute databases of the Commonwealth Legal Information Institute (www.commonlii.org) or the British and Irish Legal Information Institute (www.bailii.org).

For Ceylon, this will include a previously unpublished and candid manuscript, which Jennings entitled ‘Donoughmore to Independence: a contribution to the constitutional history of Ceylon, 1931–1948’. The proposed Pakistan volume will include material related to his controversial role in the mid-1950s advising the Constituent Assembly on drawing up a new constitution and later advising the Governor-General of Pakistan in the Tamizuddin Khan case.
Readers will notice that some words are missing and occasional individuals named in the text left unidentified. Jennings’ near indecipherable handwriting and the difficulty despite strenuous research of finding all the minor figures he came across made this a regrettable reality. I have generally left the documents in the style and format Jennings wrote them and have not corrected anything except clear accidental mistakes. Jennings occasionally used different spellings for names of places and people. In order to achieve consistency I have standardized all names to reflect the version he either used the most or the one that he employed in his published works.

Yash Ghai, a prominent public law professor and ‘constitution-maker’ in his own right, looked back at the ‘glamorous’ era when Ivor Jennings could write constitutions from the ‘splendour of a vice-chancellor’s lodge’ compared with the modern-day life of a constitution-maker who ‘rubs shoulders with soldiers and rebels with AK-47s, self-confessed killers while roughing it in small towns, putting himself or herself at considerable security risk’. Though it is true that Jennings rarely roughed it with the partisans and protestors, he had to perform as adviser-extempore in fluid and complex constitutional situations where the domestic situation was often fraught with political tension and desolate of precedent. As one learned and general overview of the task comments, the field of constitution-making still ‘retains a frontier quality’ and often lacks ‘systematic empirical evidence’ to expose the perspective and context of the constitution-makers and their process.

Jennings operated at the ‘frontier’, and the documents in this volume will go some way towards rectifying the current lack of detailed first-hand observations of constitution-making, since they hold a treasure chest of information on the subject from a wide field of cases. Thus, in A3 we see Jennings advising the unsure prime minister of Ceylon, Dudley Senanayake, how to sack his capricious cousin and eventual successor, Sir John Kotelawala. In A4 we read his predictions for constitutional monarchy in Ceylon and in B1 the need for Ethiopia to become one under Haile Selassie. Meanwhile, in C1 and E1 respectively Jennings inserts his political judgments in the Mediterranean to justify the retention of Gibraltar as a British fortress and the overlooked idea of integrating Malta with the United Kingdom.

In F1 and H1 Jennings offers the Nepali king and the Pakistani governor-general the institutional machinery to display a façade of democracy while maintaining the tools associated with absolute monarchy, such as the power to suspend the constitution. We learn in D1 of his frustrations working with his fellow commissioners in Malaya and the intriguing idea in D2 to keep the Queen on in Penang and Malacca after independence in the Federation of Malaya. In another federation, that of Rhodesia and Nyasaland, he gives ultimately vain legal reasons for its future existence in I1, despite the political realities of the ‘Wind of Change’ era. In H3 we see Jennings advising a solution to the Kashmir quagmire. South Africa in K1 is supplied with the positives and negatives of leaving the Commonwealth and the political perils of its ‘euphemistically’ separate development policy for Black South Africans.

Jennings warns Lord Cobham not to do a ‘Byng’ as Governor-General of New Zealand in the event of an electoral dead heat. He mercilessly parodies all and sundry at constitutional conferences in London on Rhodesia and Singapore in I2 and J1. In L2 he seeks to preempt the disintegration of Sudan by advocating a scheme that would give a degree of autonomy to Juba. In M3, meanwhile, he unleashes his inner voice by confiding what he really thinks of the South Asian prime ministers he has encountered. In M4 we follow the mythical ‘Wilkins’ and his journeys as a constitutional draftsman. The final document, M6, investigates problems and promises of the Magna Carta in the Commonwealth, including an admission that bills of rights could be useful for certain states. While not a Damascene conversion, it is a noticeable change for a man who otherwise throughout his career advised against such protective instruments as an unnecessary encumbrance.

Though many of the issues, events, and constitutions that Jennings addresses in this volume have themselves disappeared (though many have not, especially the issues), this does not equate to their irrelevance. In fact a closer examination may expose the roots of contemporary concerns and directions.

Jennings stated in the preface to the first edition of Parliament in 1939 that his method in writing it was to try to give ‘description and analysis and not criticism’, and that he tried to ‘suppress [his] own views’ in the book. Though it is not clear that he succeeded in these objectives, they are, nonetheless, also mine for this volume. I have endeavoured to allow only Jennings’ voice to be heard throughout these pages, as this book is neither a biography nor an argumentative judgement of

his actions. As editor I have tried to evade the enticing lure to critique Jennings so that this volume can be a tool for scholars seeking Jennings directly and not my version or assessment of his life and work. However, I do fiercely advocate his importance and significance, which this volume illustrates. It is my hope that Constitution-maker will become a resource for scholars in Britain and across the world to understand analytically the impact of Jennings and the political context in which he was working, in order to undertake much-needed full appraisals of the multiple areas and issues that he influenced. As editor, nothing would please me more than if this volume were used for constitutional scholars critically to examine not only Jennings and his legacy but also the trials of democracy and state-building, which never cease.

Such a critique will be attempted in H. Kumarasingham (ed.), Constitution-making in Asia: decolonization and state-building in the aftermath of the British Empire (London, 2015).