

**BEYOND THE LIBERAL PARADIGM:  
THE CONSTITUTIONAL ACCOMMODATION  
OF NATIONAL PLURALISM  
IN SRI LANKA**

**ASANGA WELIKALA**

**DOCTOR OF PHILOSOPHY  
UNIVERSITY OF EDINBURGH**

**2014**

## **ABSTRACT**

This thesis concerns the theoretical issues that arise in the application of the constitutional model known as the plurinational state, developed through the experience of such Western liberal democratic states as Canada, Spain and the United Kingdom, to non-Western contexts of national pluralism through the case study of Sri Lanka. There are two closely intertwined and complementary objectives to the thesis. Firstly, to provide a fresh analytical and prescriptive framework of understanding and potential solutions to the constitutionally unresolved problem of national pluralism in Sri Lanka that has so far only generated protracted conflict. Secondly and more importantly, to contribute in more general terms to the theoretical literature on plurinational constitutionalism by way of the comparative insights generated through applying the model to an empirical context that is fundamentally different in a number of ways to that from which it originally emerged. In this latter, comparative, exercise, there are three key empirical grounds of difference that are identified in the thesis. Firstly, the difference between the sociological character of nationalisms in the two contexts, defined at the most basic level by the civic-ethnic dichotomy; secondly, the different meanings of democratic modernity in the present, determined by colonial modernity and post-colonial ethnocracy; and thirdly, the differences in the substantive content of democracy as between liberal and non-liberal democracies. The thesis argues that the plurinational state may be adapted to have a role and relevance beyond Western conditions, by addressing the theoretical issues that arise from these divergences. In doing so, it seeks to demonstrate that ethnic forms of nationalism are not necessarily inconsistent with the plurinational logic of accommodation; that an exploration of pre-colonial history reveals indigenous forms of the state that are more consistent with plurinational ideals than the classical modernist Westphalian nation-state introduced by nineteenth century colonialism; and that plurinational constitutions may be based on a broader conception of democracy than political liberalism. Building on these discussions, the principal normative contribution of the thesis is the development of a constitutional theory for the accommodation of national pluralism that is based on the norm of asymmetry, as distinct from equality, between multiple nations within the territorial and historical space of the state.

“Every generation must reinvent the wheel.”

- Walker Connor (1994) *Ethnonationalism*

“Free institutions are next to impossible in a country made up of different nationalities. Among a people without fellow-feeling, especially if they read and speak different languages, the united public opinion, necessary to the working of representative government, cannot exist.”

- John Stuart Mill (1861) *Considerations on Representative Government*

“The greatest adversary of the rights of nationality is the modern theory of nationality. By making the state and the nation commensurate with each other in theory, it reduces practically to a subject condition all other nationalities that may be within the boundary.”

- Lord Acton (1862) *Nationality*

“For centuries the Sinhalese and the Tamils have lived together in peace and amity. We have been governed by their kings and they by ours ... I put this question bluntly to my Tamil friends. Do you want to be governed by London or do you want, as Ceylonese, to help govern Ceylon? Shall the most ancient of our civilisations sink into the level of a dull and dreary negation? We all know and admire their special qualities. They are essential to the welfare of this Island, and I ask them to come over and help us.”

- The Rt. Hon. D.S. Senanayake (1945), Leader of the State Council, later first Prime Minister of independent Ceylon, moving a resolution of the State Council accepting the Soulbury Constitution

“The British, with their short-sighted policy, brought the two nations that existed for centuries together for the sake of trouble-free colonial rule. However, the nations resisted assimilation. They had the idea that like the English, Scots and the Welsh, in Ceylon also there would be a new nation-state at the expense of one or the other. That did not happen. They didn't have any idea other than the unitary system. They did not think at all whether it would be suitable to a country where, unlike in the United Kingdom, the divisions are based on much [more] distinctive identities.”

- S.J.V. Chelvanayakam, Q.C., M.P. (1951), presidential address to the first national convention of the Tamil Federal Party

“There is a growing tendency among political commentators to reject the idea of the United Kingdom as a unitary state, archetype of a nation-state. Instead, it is portrayed as a ‘union state’, emerging from prior unions of distinct kingdoms.”

- Professor Sir Neil MacCormick (1999) *Questioning Sovereignty*

“Nationalism springs, as often as not, from a wounded or outraged sense of human dignity, the desire for recognition.”

- Professor Sir Isaiah Berlin (1996) *The Sense of Reality*

“Nationalism reminds us that individuals fear being stateless; liberalism tells us that they ought to fear the state they have created.”

- Yael Tamir (1997) *The Land of the Fearful and the Free*

# TABLE OF CONTENTS

## CHAPTER 1 – INTRODUCTION

1.	Introduction	3
1.1	The Research Problem: National Pluralism and its Constitutional Accommodation	4
1.2	The Case Study: Sri Lanka’s Constitutionally Unresolved Condition of National Pluralism	8
2.	Research Questions and Potential Scope of Original Contribution	9
3.	Methodology and Framework Theory: Constitutional Theory as Functional Normativity	15
4.	The Structure of the Thesis	19

## CHAPTER 2 – THE SRI LANKAN CONSTITUTIONAL REFORM DEBATE: A TYPOLOGY OF POSITIONS

1.	Introduction	24
2.	The Unitary State Perspective	25
2.1	Sinhala-Buddhist Nationalism and the Unitary State	29
2.2	The Jacobin Variant	49
3.	The Federal State Perspective	50
3.1	The Sub-State Tamil National Challenge	50
3.2	The Liberal Variant	63
4.	Concluding Remarks	66

## CHAPTER 3 – NATIONAL PLURALISM BEYOND THE LIBERAL PARADIGM: PLURINATIONAL CONSTITUTIONALISM AND SRI LANKA

1.	Introduction	67
1.1	Departures from the Liberal Paradigm: Three Grounds of Divergence	68
2.	The Liberal Plurinational State: A Brief Introduction to its Theoretical and Constitutional Concerns	76
3.	Sri Lanka: Plurinational Constitutionalism as a New Framework of Constitutional Self-Understanding	79
3.1	The Role and Relevance of Historiography	80
3.2	The Monistic <i>Demos</i> Thesis and Host State Societal Dominance	88
3.3	Relational Sovereignty and the ‘Hard State’	94
3.4	The Disaggregation of Nation and State	102
4.	Concluding Remarks	105

## CHAPTER 4 – BRIDGING TRADITION AND MODERNITY: PERFORMATIVE NATIONALISM AND PLURINATIONAL CONSTITUTIONALISM

1.	Introduction	107
2.	The Civic-Ethnic Dichotomy: Myths and Realities	116

3.	Theoretical Approaches to Nationalism in Sri Lanka	129
3.1	The Nation of the State? The Post-Orientalist and Ethnicist Accounts of the Sinhala-Buddhist Nation	130
3.2	The Sub-State National Challenge: The ‘Instrumental Primordialism’ of Tamil Nationalism	145
4.	An Analytical Framework for National Pluralism: Performative Nationalism and Plurinational Constitutionalism	158
5.	Concluding Remarks	164

**CHAPTER 5 – THE CONSTITUTIONAL ACCOMMODATION OF NATIONAL PLURALISM AND THE SRI LANKAN STATE: RE-APPRAISING DEMOCRATIC CONCEPTS**

1.	Introduction	166
2.	Problematising the Post-Colonial Democratic State	173
2.1	Colonial Modernity and Post-Colonial Nation-State Building: Difference and Exception	174
2.2	The Shift from Monistic <i>Demos</i> to Hegemonic <i>Ethnos</i> : The Process of Ethnocratic State Formation	181
3.	The Plurinational State and Sri Lanka: Exploratory Propositions for a Plurinational Democracy	197
3.1	From Liberal Democracy to Comprehensive Pluralism	197
3.2	From Plurinational Union State to Plurinational State-Nation	208
4.	Concluding Remarks	212

**CHAPTER 6 – NATIONAL PLURALISM AND CONSTITUTIONAL ASYMMETRY**

1.	Introduction	213
2.	The Idea of Constitutional Asymmetry: A Short Conceptual Outline	224
3.	The Meta-Constitutional Foundations of a Plurinational Sri Lanka: Asymmetrical Pluralism v. Constitutional Equality	227
3.1	Asymmetrical National Histories, Democracy and Contemporary Constitutional Form	228
3.2	Plural Nations, Asymmetrical and Relational Sovereignties	235
3.3	Institutional Asymmetry: Guiding Principles	247
4.	Concluding Remarks	252

**CHAPTER 7** 254

**BIBLIOGRAPHY** 266

**ACKNOWLEDGEMENTS** 300

## CHAPTER 1

### INTRODUCTION

1. Introduction
  - 1.1 The Research Problem: National Pluralism and its Constitutional Accommodation
  - 1.2 The Case Study: Sri Lanka's Constitutionally Unresolved Condition of National Pluralism
2. Research Questions and Potential Scope of Original Contribution
3. Methodology and Technique
4. The Structure of the Thesis

#### 1. Introduction

For comparative constitutional lawyers, ours is the age of pluralism.<sup>1</sup> No sooner had the consolidation of democratic nation-states reached maturity in the modern era that political and legal theorists began questioning the civic homogeneity that was the defining characteristic of modernity and the basis of its forms of power and authority. From Isaiah Berlin's theory of value pluralism to Robert Dahl's theory of interest group pluralism, from Seymour Martin Lipset's concept of crosscutting cleavages to John Rawls' and Michel Rosenfeld's notions of plural comprehensive conceptions of the good, from Charles Taylor's Liberalism II to Will Kymlicka's conception of multicultural citizenship, from Neil MacCormick's theory of institutional normative order to Neil Walker's idea of constitutional pluralism, the post-World War II period has seen a gradual but steady shift of emphasis from monistic conceptions of key concepts like society, nation, state, and sovereignty, as well as institutional forms of political organisation, towards the embracement of the democratic value of pluralism in all its diverse manifestations.

---

<sup>1</sup> A. Marmor (2007) *Law in the Age of Pluralism* (Oxford: OUP): p.vii.

Repudiating any single conception of truth and justice, in the age of pluralism, not only is the existence of multiple conceptions of the good and the just celebrated as a good in itself, but also that the reasonable disagreements arising from these competing visions demand engagement rather than rejection, accommodation rather than suppression. As new conceptions of institutional and normative order within and beyond the traditional nation-state emerge in response to new empirical contexts of deep, abiding and growing diversity, we observe constitutionalism itself evolving in hitherto unanticipated directions. It is not an overstatement therefore to say that the central question for constitutionalism today is the issue of pluralism, and that constitutionalism itself is increasingly being understood as an inherently pluralistic discipline.<sup>2</sup> These re-articulations of constitutionalism and its central aims and tasks pose new theoretical and practical challenges across the whole range of normative, functional, institutional and symbolic issues that constitutions have traditionally been concerned with, forcing constitutional law into an unprecedented engagement methodologically and substantively with theory as well as other disciplines and activities such as history, politics, sociology and philosophy.

## **1.1 The Research Problem: National Pluralism and its Constitutional Accommodation**

In this thesis, I am concerned with an important aspect of this general movement towards pluralist constitutionalism,<sup>3</sup> which questions one of the most strikingly monistic of modernist macro-concepts: that of the unitary nation-state. The condition of ‘national pluralism’, which denotes the existence of more than one group claiming a *national* identity within the territory and space of a state, and the accompanying rights claims asserted by these groups as *nations*, raise fundamental

---

<sup>2</sup> See e.g., M. Rosenfeld (2010) *The Identity of the Constitutional Subject: Selfhood, Citizenship, Culture, and Community* (Abingdon: Routledge): Ch.1.

<sup>3</sup> As distinct from ‘constitutional pluralism,’ which is a more specific concept: see N. Walker, ‘Rosenfeld’s Plural Constitutionalism’ (2010) *International Journal of Constitutional Law* 8(3): pp.677-684 at p.678.

questions for established conceptual categories of law and politics in relation to nationality and statehood.<sup>4</sup>

The constitutional claims that flow from the assertion of national status by territorially based and historically defined groups (whose collective identities may be expressed in either ethno-cultural or more civic-modernist terms), are both different from and more difficult to address through conventional concepts of democratic constitutionalism than are claims to recognition and representation made by ‘minority’ groups.<sup>5</sup> Comparative constitutional law and international law and practice, as well as liberal political theory and philosophy, have addressed the question of minority rights and multiculturalism with relatively little disruption to established categories of democracy and the nation-state.<sup>6</sup> From the development of the normative content of democracy to structural innovations with constitutional forms, a rich variety of means and methods of securing the rights of minorities and multicultural citizenship are reflected in a voluminous literature as well as in a body of comparative practice developed during the post-war era, and in particular in the aftermath of the ‘Third Wave’ of democratisation that followed the end of the Cold War.<sup>7</sup> It is, however, the condition of national pluralism that poses the more fundamental challenges for the democratic nation-state and its traditional constitutional structures and doctrines, demanding more radical responses from both

---

<sup>4</sup> For a critical view, see N. Stojanović, ‘*Mononational and Multinational States: A Valid Dichotomy?*’, paper for conference on Legal Reasoning and European Law: The Perspective of Neil MacCormick, European University Institute, 21<sup>st</sup> May 2010.

<sup>5</sup> S. Tierney (2006) *Constitutional Law and National Pluralism* (Oxford: OUP): pp.4-5; M. Keating (2001) *Plurinational Democracy: Stateless Nations in a Post-Sovereignty Era* (Oxford: OUP): pp.3-6; W. Kymlicka (1995) *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: OUP): Ch.2; A.D. Smith, ‘*Nations in Decline? The Erosion and Persistence of Modern National Identities*’ in M. Young, E. Zuelow & A. Sturm (Eds.) (2007) *Nationalism in a Global Era: The Persistence of Nations* (London: Routledge): Ch.2.

<sup>6</sup> For e.g., see H. Catt & M. Murphy (2002) *Sub-State Nationalism: A Comparative Analysis of Institutional Design* (London: Routledge); M. Burgess & J. Pinder (Eds.) (2007) *Multinational Federations* (London: Routledge); J. Hopkins (2002) *Devolution in Context: Regional, Federal and evolved Government in the European Union* (London: Cavendish); M. Weller & B. Metzger (2008) *Settling Self-Determination Disputes through Complex Power-Sharing* (Netherlands: Martinus Nijhoff); T. Benedikter (Ed.) (2009) *Solving Ethnic Conflict through Self-Government* (Bozen/Bolzano: EURAC); C.R. Sunstein (2001) *Designing Democracy: What Constitutions Do* (Oxford: OUP): Ch.4; C. Kukathas (2003) *The Liberal Archipelago: A Theory of Diversity and Freedom* (Oxford: OUP): Ch.5. Cf. W. Kymlicka, ‘*The Rights of Minority Cultures: A Reply to Kukathas*’ (1992) *Political Theory* 20(1): pp.140-46.

<sup>7</sup> S. Huntington (1993) *The Third Wave: Democratization in the Late Twentieth Century* (Oklahoma City: Univ. of Oklahoma Press).

constitutional theory and law in accommodating this socio-politically distinctive type of polity.<sup>8</sup>

These issues have come to the forefront of political and constitutional reform agendas in a number of Western liberal democracies such as Belgium, Canada, Spain and the United Kingdom in recent decades. This has generated a substantial body of work in the fields of sociology, political science and philosophy, and in constitutional law and theory, of which the interest of the present project is on the *theoretical challenges* posed by politico-constitutional claims of plural sub-state nations and nationalisms, and on the *constitutional arrangements* employed for their accommodation; in particular, the analytical, normative and institutional underpinnings of the theoretical construct called the ‘plurinational state’.<sup>9</sup> The preponderance of the academic literature relating to national pluralism and its politico-constitutional accommodation within the plurinational state arises from the experiences of the established liberal democracies mentioned above, and consequently, the plurinational state has so far been mainly theorised as a ‘discrete category of multilevel polity’<sup>10</sup> within the discourse of liberal democratic constitutionalism.<sup>11</sup>

---

<sup>8</sup> In relation to Western plurinational states with substantial immigrant ethnic communities, Will Kymlicka has drawn a distinction between multinationalism and multiculturalism: W. Kymlicka, ‘Immigrant Integration and Minority Nationalism’ in M. Keating & J. McGarry (Eds.) (2001) *Minority Nationalism and the Changing International Order* (Oxford: OUP): pp.61-83. See for a critique, S. Choudhry, ‘National Minorities and Ethnic Immigrants: Liberalism’s Political Sociology’ (2002) *Journal of Political Philosophy* 10: pp.54-78.

<sup>9</sup> Two key works heavily relied upon throughout this thesis will be Tierney (2006), a seminal treatment of the theoretical and substantive issues of plurinational constitutionalism, and Keating (2001), a pioneering exploration of the history and practice of plurinational democracy.

<sup>10</sup> Tierney (2006): p.4

<sup>11</sup> ‘Sub-state nation’ and its cognate expressions will be used here to describe the entities which Tierney (2006) terms ‘sub-state national societies’; Keating (2001): ‘stateless nations’; Montserrat Guibernau ‘nations without states’ in M. Guibernau (1996) *Nationalisms: The Nation-State and Nationalism in the Twentieth Century* (Cambridge: Polity Press): Ch.5 and M. Guibernau (1999) *Nations without States: Political Communities in a Global Age* (Cambridge: Polity Press); and Will Kymlicka: ‘national minorities’ and ‘minority nationalisms’ in, respectively, W. Kymlicka (1995) *Multicultural Citizenship* (Oxford: OUP), and W. Kymlicka, ‘Liberal Multiculturalism: Western Models, Global Trends, and Asian Debates’ in W. Kymlicka & Baogang He (Eds.) (2006) *Multiculturalism in Asia* (Oxford: OUP): Ch.2. For a list of other terms used in the literature, see Tierney (2006): p.4, fn.5

Nevertheless, the condition of national pluralism itself is not a phenomenon that is unique to the Western world.<sup>12</sup> In fact, ethnic, religious, linguistic and cultural diversity is arguably far more profound in states and societies outside the West, and especially in several countries in Asia and Africa, sub-state groups mobilising in distinctively nationalist terms do so along similar, although not identical, empirical (historical and territorial) bases to those of their Western counterparts, and make similar normative (political and legal) claims.<sup>13</sup> However, the experience with constitutional accommodation of national pluralism in the non-Western contexts has generally been less than ideal. There has also been comparatively little scholarly investigation of how the theoretical developments in the directions suggested by Western plurinational constitutionalism may have application in the different historical, socio-political and constitutional contexts in Asian and African countries.<sup>14</sup> Yet the need for exploring how constitutional law, theory and instruments can be employed in the better organisation of plurinational polities is arguably more acute in these countries, if only for the reason that unresolved anomalies between the constitutional form of states and their essentially pluralistic

---

<sup>12</sup> According to one account, '90 per cent or more' of existing states cannot be considered mono-national nation-states: P. van den Berghe, 'Ethnies and Nations: Genealogy Indeed' in A. Ichijo & G. Uzalac (Eds.) (2006) *When is the Nation? Towards an Understanding of Theories of Nationalism* (London: Routledge): Ch.3.3

<sup>13</sup> Based on Minorities at Risk (MAR) data, Jacques Bertrand and André Laliberté calculate that there are 126 ethnic groups in 23 countries in Asia, out of which 15 are classified as 'sub-state national groups'; 362 ethnic groups in 43 countries in Sub-Saharan Africa, out of which 4 are sub-state national groups; and 74 ethnic groups in 19 countries in North Africa and the Middle East, out of which 4 are sub-state national groups. This means that there are sub-state national groups in 39% of countries in Asia, 9% of countries in Sub-Saharan Africa, and 21% of countries in North Africa and the Middle East: J. Bertrand & A. Laliberté (Eds.) (2010) *Multination States in Asia: Accommodation of Resistance?* (Cambridge: CUP): pp.10, 11.

<sup>14</sup> This is not to deny the importance of much useful work in this area, but merely to underscore the fact that much of it is normatively from multiculturalism theory and institutionally of the federal variety, which are analytical and theoretical perspectives that share similar (liberal) concerns but are distinct to those of plurinational constitutionalism. See e.g., Y. Ghai (Ed.) (2000) *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States* (Cambridge: CUP); B. Berman, D. Eyoh & W. Kymlicka (Eds.) (2004) *Ethnicity and Democracy in Africa* (Ohio: Ohio UP); Kymlicka & Baogang He (2006); Baogang He, B. Galligan & T. Inoguchi (Eds.) (2007) *Federalism in Asia* (Cheltenham: Edward Elgar); S. Choudhry (Ed.) (2008) *Constitutional Design for Divided Societies: Integration or Accommodation?* (Oxford: OUP); Bertrand & Laliberté (2010); Y. Ghai & S. Woodman (Eds.) (2013) *Practicing Self-Government: A Comparative Study of Autonomous Regions* (Cambridge: CUP).

polities have had a tendency to generate protracted conflict, and descend into sustained and intense violence.<sup>15</sup>

## **1.2 The Case Study: Sri Lanka's Constitutionally Unresolved Condition of National Pluralism**

Sri Lanka is a salutary, indeed, cautionary, example of an Asian state characterised by rich ethnic, religious and cultural pluralism in which the post-colonial process of nation-building failed to construct an inclusive, civic conception of Sri Lankan national identity transcending older ethnic cleavages. Since achieving independence from Britain in 1948, Sri Lanka has also demonstrated a persistent inability to fashion a form of state that is constitutionally congruent with its richly plural polity, with serious consequences for both peace and stability. As a result, the entirety of Sri Lanka's post-colonial history has been characterised by serious ethnic tensions, including a long period of armed conflict between the island's two major ethno-cultural communities, the majority Sinhala-Buddhists and the principal minority, the Tamils. Institutionally, the majoritarian form of Sri Lankan democracy has helped the Sinhala-Buddhists to consolidate their numerical dominance over the polity and to reap the benefits of controlling the state. In the absence of efficacious counter-majoritarian minority protection safeguards, the ascendancy of post-colonial Sinhala-Buddhist nationalism alienated minorities and especially the Tamils from the state.

Since immediately after independence, inter-ethnic political relations between the Sinhalese and the Tamils increasingly became one of competing nationalisms. The

---

<sup>15</sup> See e.g., R. Premdas, S.W.R. de A. Samarasinghe & A. Anderson (Eds.) (1990) *Secessionist Movements in Comparative Perspective* (London: Pinter); M.E. Brown (Ed.) (1993) *Ethnic Conflict and International Security* (Princeton, NJ: Princeton UP); T.R. Gurr & B. Harff (1994) *Ethnic Conflict in World Politics* (Boulder, Colo.: Westview Press); R. Stavenhagen (1996) *Ethnic Conflicts and the Nation State* (New York: St. Martin Press); J. Hutchinson & A.D. Smith (Eds.) (1996) *Ethnicity* (Oxford OUP); Part VII; P. Harris & B. Reilly (Eds.) (1998) *Democracy and Deep-rooted Conflict: Options for Negotiators* (Stockholm: International IDEA); M.E. Brown, O.R. Coté, Jr., S.M. Lynn-Jones & S.E. Miller (Eds.) (2001) *Nationalism and Ethnic Conflict* (Rev. Ed.) (Cambridge, Mass.: MIT Press); M. Kaldor (2007) *New and Old Wars: Organized Violence in a Global Era* (2<sup>nd</sup> Ed.) (Stanford: Stanford UP).

majority Sinhala-Buddhist nationalism, drawing upon a powerful historiography of dominance over the island from ancient times, succeeded first in overshadowing the terms of democratic and electoral competition, and then in recreating the post-colonial state in its own image. The three major elements of Sinhala-Buddhist nationalism's constitutional agenda – the recognition of a special place for Buddhism and the Sinhala language, and a centralised unitary state – were constitutionally entrenched when the country became a republic in 1972. For their part, the Tamils articulated a sense of their own national consciousness based on a common language, culture and history, and made a territorial claim to the north-eastern parts of the island. In constitutional terms, Tamil nationalism demanded power-sharing and territorial autonomy in a federal constitution, and when that was rejected, set about the establishment of a separate state through armed struggle. Active conflict ended with the comprehensive military defeat of the armed secessionist Liberation Tigers of Tamil Eelam (LTTE) by the Sri Lankan state in 2009, but the deeper constitutional anomalies and grievances remain not only wholly unaddressed, but also aggravated by the triumphalist and intolerant Sinhala-Buddhist nationalist regime that won the war and controls the state.

## **2. Research Questions and Potential Scope of Original Contribution**

There are two closely intertwined and complementary objectives to this thesis. First, to provide a fresh analytical and prescriptive framework of understanding and potential solutions to the constitutionally unresolved problem of national pluralism in Sri Lanka that has so far only generated protracted conflict. Second, to contribute in more general terms to the theoretical literature on plurinational constitutionalism by way of the comparative insights generated through applying the model to an empirical context that is fundamentally different in a number of ways to that from which it originally emerged.

For this latter, comparative, exercise, there are three key empirical grounds of difference that are identified in the thesis as providing the basis of analysis. Firstly, the difference between the sociological character of nations and nationalisms in the two contexts, defined at the most basic level by the civic-ethnic dichotomy; secondly, the different meanings of politico-constitutional modernity, determined by colonialism and post-colonial constitutional development; and thirdly, the differences in the substantive content of democracy as between liberal and non-liberal democracies. The thesis argues that the plurinational state may be adapted to have a role and relevance beyond Western conditions by addressing the theoretical issues that arise from these divergences. In doing so, it seeks to demonstrate that ethnic forms of the nation are not necessarily inconsistent with the plurinational logic of accommodation; that an exploration of pre-colonial history reveals indigenous forms of the state that are more consistent with plurinational ideals than the classical modernist Westphalian nation-state introduced by nineteenth century colonialism; and that plurinational constitutions may be based on a broader conception of democracy than political liberalism. Building on these discussions, it is envisaged that the principal normative contribution of the thesis is the development of a constitutional theory for the accommodation of national pluralism that is based on the norm of asymmetry, as distinct from equality, between multiple nations within the territorial and historical space of the state.

The exercise in comparativism envisaged in the thesis between the Western plurinational state and the Sri Lankan case should not be a matter of the mechanical application of the former, understood as an ideal-type, to the latter. Rather, the critical, explanatory, and normative theses of plurinational constitutionalism will be understood as providing new analytical tools for a fresh understanding of Sri Lanka's national pluralism and its failures of constitutional accommodation. On the other hand, using these analytical tools in an exploration of the Sri Lankan case, empirically so different from the Western liberal democracies on which the plurinational state has thus far been theorised, also enables a further refinement of those tools themselves. It allows, or so I claim, a potential expansion of the theoretical scope of the plurinational state from one that is currently an ideologically

liberal concept, confined in application to Western liberal democracies that have fully evolved as modern states, to a more broadly applicable constitutional model that can have application to contexts in which the process of democratic modernity is itself incomplete, or at least states which have not followed the teleological path expected by modernist theory.

The thesis is a work of constitutional theory, an approach that is partly dependent on the theoretical character of plurinational constitutionalism, and partly determined by the nature of constitutional discourse in the case study. The constitutional reform debate in Sri Lanka that reaches back to the early 1900s has three striking features.<sup>16</sup> The first is the richness of intellectual imagination in ideas for institutional reform that have been proposed for enduring problems of constitutional democracy and ethno-cultural pluralism.<sup>17</sup> The second is the failure of those ideas to find traction and implementation in the realm of the political, whereby ethnicised majoritarianism, partisan political interests of the government in power, and executive convenience have either dominated or hijacked every major attempt at constitutional change, especially in the post-independence era.<sup>18</sup> The third is the near complete absence of theory in this debate.

Reformist arguments for the institutional restructuring of the Sri Lankan state in appreciation of societal pluralism or in furtherance of constitutional democracy have

---

<sup>16</sup> See R. Edrisinha, M. Gomez, V.T. Thamilmaran & A. Welikala (Eds.) (2008) *Power-Sharing in Sri Lanka: Political and Constitutional Documents, 1926-2008* (Colombo: CPA); A.J. Wilson (1988) *The Break-Up of Sri Lanka: The Sinhalese-Tamil Conflict* (London: C. Hurst & Co.); L. Marasinghe (2007) *The Evolution of Constitutional Governance in Sri Lanka* (Colombo: Vijitha Yapa); N. Wickramasinghe (2006) *Sri Lanka in the Modern Age: A History of Contested Identities* (Colombo: Vijitha Yapa); M. Roberts, 'Introduction: Elites, Nationalisms, and the Nationalist Movement in British Ceylon' in M. Roberts (Ed.) (1977) *Documents of the Ceylon National Congress and Nationalist Politics in Ceylon*, Vol.1 (Colombo: Dept. of National Archives): pp.xxvii-ccxxii.

<sup>17</sup> Illustrated in the documents in Edrisinha et al (2008).

<sup>18</sup> Except perhaps two: *viz.*, the Thirteenth and Seventeenth Amendments to the 1978 Constitution, which introduced, respectively, a scheme of provincial devolution and a framework for the de-politicisation of key public services. See generally R. Amarasinghe, A. Gunawardena, J. Wickramaratne & A.M. Navaratne-Bandara (2010) *Twenty Two Years of Devolution: An Evaluation of the Working of Provincial Councils in Sri Lanka* (Colombo: ICS); L. Marasinghe & J. Wickramaratne (Eds.) (2010) *13<sup>th</sup> Amendment: Essays on Practice* (Colombo: ICS); R. Edrisinha & A. Jayakody (Eds.) (2011) *The Eighteenth Amendment to the Constitution: Substance and Process* (Colombo: CPA).

been richly informed by constitutional comparativism.<sup>19</sup> They have also no doubt been influenced by various analytical and normative perspectives, including those provided by liberalism and liberal constitutionalism,<sup>20</sup> socialism and republicanism.<sup>21</sup> Yet, in the main, these institutionalist responses have not been adequately theorised and contextualised to the empirical conditions of the Sri Lankan case, and have followed the dictum articulated by Neelan Tiruchelvam that,

“The quest for a political resolution [of the ethno-national conflict] within a united Sri Lanka must ... relate to the substantive issues relating to the exercise of political power rather than more abstract formulations of political identity.”<sup>22</sup>

This absence of theory has had several consequences, especially for liberal constitutionalism.<sup>23</sup> The lack of descriptive theory has meant that the fullest implications of key political dynamics and empirical factors, including sociological and historical implications of phenomena like nationalism and ethnicity, have not been taken into account in proposing institutional solutions.<sup>24</sup> Liberals have therefore consistently underestimated the power of the past, and by extension, the

---

<sup>19</sup> Edrisinha et al (2008); S. Bastian (Ed.) (2006) *Sri Lanka: The Devolution Debate* (6<sup>th</sup> Ed.) (Colombo: ICES); S. Bastian & R. Luckham (Eds.) (2003) *Can Democracy Be Designed? The Politics of Institutional Choice in Conflict-torn Societies* (London: Zed Books).

<sup>20</sup> R. Edrisinha, ‘Sri Lanka: Constitutions without Constitutionalism, A Tale of Three and a Half Constitutions’ in R. Edrisinha & A. Welikala (Eds.) (2008) *Essays on Federalism in Sri Lanka* (Colombo: CPA): Ch.1; N. Tiruchelvam, ‘The Politics of Federalism and Diversity in Sri Lanka’ in Y. Ghai (Ed.) (2000) *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States* (Cambridge: CUP): Ch.9.

<sup>21</sup> K. David, ‘The Left and the 1972 Constitution: Marxism and State Power’ in A. Welikala (Ed.) *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Colombo: CPA): Ch.8.

<sup>22</sup> Tiruchelvam (2000): p.216.

<sup>23</sup> Elsewhere, Mark Tushnet has identified the problem of ‘bricolage’ in comparative constitutional scholarship, which is similar to the criticism I articulate here in relation to Sri Lankan constitutional practice and discourse. See M.V. Tushnet, ‘The Possibilities of Comparative Constitutional Law’ (1999) *Yale Law Journal* 108: p.1225.

<sup>24</sup> Notable exceptions include C.R. de Silva, ‘Decentralisation, Devolution or Federalism in Sri Lanka: Some Theoretical and Historical Considerations’ in C. Amaratunga (Ed.) (1990) *Ideas for Constitutional Reform* (Colombo: CLD); M. Roberts, ‘Ethnic Conflict in Sri Lanka and Sinhalese Perspectives: Barriers to Accommodation’ (1978) *Modern Asian Studies* 12: pp.353-76; N. DeVotta (2004) *Blowback: Linguistic Nationalism, Institutional Decay and Ethnic Conflict in Sri Lanka* (Stanford: Stanford UP); Wickramasinghe (2006); J. Uyangoda (Ed.) (2013) *State Reform in Sri Lanka: Issues, Directions and Perspectives* (Colombo: SSA). Note that there are three historians and two political scientist in this list; there are no constitutional lawyers.

deep legitimacy of majoritarian ethnic nationalism, however repugnant to the liberal values of choice, tolerance, and pluralism that ethnonationalist majoritarianism might be. Their general critique of ethnic nationalism on civic-rationalist grounds has also been seen as a selective critique of Sinhala-Buddhist nationalism, because the liberal commitment to minority accommodation favours the Tamil claim to territorial autonomy, even though Tamil nationalism is as ethnic-communal and ought to be as unacceptable to liberal values as its counterpart. Flowing from this, the failure to contextualise the normative principles underpinning institutional reform proposals, by means of historical, sociological, or other theoretical arguments, has entailed their easy rejection by nativist nationalists, on the ground that especially liberal democratic norms are ethnocentric Western values, which have as much place in contemporary Sri Lanka as colonial rule.

Nowhere is this manifested more clearly than in the liberals' advocacy of federalism. As Shivaji Felix observed,

“The word ‘federalism’ is greeted with a great deal of hostility by many in this country for more than one reason. Many of those who argue the case against federalism are guilty of the logical fallacy best expressed by the Latin phrase *ignoratio elenchi*. It essentially involves apparently refuting an opponent while actually disproving something not asserted; it refers to any argument which is irrelevant to its professed purpose.”<sup>25</sup>

That anti-federalists and Sinhala-Buddhist nationalists have distorted the notion of federalism into something that is virtually a synonym for separatism in the public imagination is indubitable. But it is equally clear that the methodological weaknesses identified above have contributed significantly to the proliferation of these misrepresentations.

On the other hand, the mechanical comparativism that has characterised institutional reformism so far, together with its indiscriminating adoption of norms developed on

---

<sup>25</sup> S. Felix, ‘Timely Aid to Constitutional Debate’, *The Ceylon Daily News*, 20<sup>th</sup> August 2004.

the basis of radically different empirical conditions elsewhere, has also meant that the Sri Lankan debates have added very little to comparative constitutional law or global constitutionalism. Thus both constitutional reform and reform resistance have been conducted as competing and antagonistic projects of ideological advocacy, with very little light shed on the deeper conceptual implications of how to understand Sri Lanka's constitutional problems of communal pluralism or on the norms that ought to inform their resolution. As noted above, the distinctive features of the Sri Lankan case as a multinational polity require the re-conceptualisation of several key assumptions and organisational principles of the modern nation-state at a deeper and more general level than mere reform of the state's institutional framework. One of the main aims of this thesis is therefore to approach the constitutional problem of national pluralism in Sri Lanka from a specifically theoretical rather than an institutional standpoint, and to offer both an explanatory account of it and a possible normative framework in resolving it. It is my hope that this attempt at clearing the theoretical ground would in some measure clarify both the empirical and the normative contexts of constitutional reform, so that future debates about what institutional structures are best suited for Sri Lanka's multinational and communally plural polity are better informed and better contextualised than they have been in the past.

More generally, the exploration of ethnonationalism, the pre-colonial state form and non-liberal democracy is intended to expand the scope of the explanatory, normative and substantive theses of Western plurinational constitutionalism in the ways outlined above. I will articulate these lessons in a series of constitutional principles that can form the basis of a wider re-conceptualisation of the plurinational state, so that its application and value as a constitutional model for dealing with national pluralism may be extended beyond Western liberal democracies, at least to cases comparable to Sri Lanka.

### 3. Methodology and Technique

The assertion that the discussion to follow is concerned with comparative constitutional law and constitutional theory rather than merely the constitutional problems of Sri Lanka begs the question of method and of technique. As is clear from the foregoing, my technique uses a case study to test the propositions of a theoretical model and to generate new understandings within the case study. With regard to methodology, my approach combines aspects of the historical, normative, functional, and contextual types of methodological approach set out in Vicki Jackson's scheme.<sup>26</sup> More precisely, it relies heavily on Sujit Choudhry's metaphor of 'the migration of constitutional ideas'<sup>27</sup> as the general approach that frames the enterprise as a whole, and more specifically on Stephen Tierney's method of theorising within plurinational constitutionalism, which he has described as 'functional normativity.'<sup>28</sup>

Conceived as a response to the inadequacies of earlier similes such as 'transplantation', 'borrowing' and 'cross-fertilisation' in comparative constitutional law,<sup>29</sup> the metaphor of migration is a much more useful way of understanding the reciprocal influences that characterise the comparative exercise, and is central to the way in which the relationship between the plurinational state and Sri Lanka is envisaged in this thesis. As explained above, the application of a theoretical model to a concrete case is intended to yield 'dialogical' lessons for both.<sup>30</sup> I hope to demonstrate both the migratory potential of the plurinational state as well as the benefits of normative comparativism for Sri Lankan constitutional law. In doing so I draw from another recent metaphor: Cheryl Saunders' notion of a 'global

---

<sup>26</sup> V.C. Jackson, 'Comparative Constitutional Law: Methodologies' in M. Rosenfeld & A. Sajó (2013) *The Oxford Handbook of Comparative Constitutional Law* (Oxford: OUP): Ch.2.

<sup>27</sup> S. Choudhry, 'Migration as a New Metaphor in Comparative Constitutional Law' in S. Choudhry (Ed.) (2006) *The Migration of Constitutional Ideas* (Cambridge: CUP): Ch.1.

<sup>28</sup> S. Tierney (2012) *Constitutional Referendums: The Theory and Practice of Republican Deliberation* (Oxford: OUP): p.2. See also P. Oliver and S. Tierney, Book Review/Response, 'Constitutional Referendums: The Theory and Practice of Republican Deliberation', *I.CONnect Blog*, 25<sup>th</sup> February 2014.

<sup>29</sup> Choudhry (2006): pp.13-19.

<sup>30</sup> Ibid: pp.19-25.

constitutional gene pool.’<sup>31</sup> Saunders has critiqued the North American and European focus and preoccupations of comparative constitutional law, and stressed the contribution that studies of Asian countries in particular could make for our general concerns in the discipline. This echoes the point I have made above concerning the global character of the problem of national pluralism, and suggesting the potential for the expansion of the application of plurinational constitutionalism.

Tierney’s methodological approach, which incorporates both functions and norms, permeates plurinational constitutionalism as a body of constitutional theory, and encompasses the legal within the political and the historical contexts within which constitutions operate, whilst being constantly attentive also to the philosophical principles that articulate the ideals that constitutions strive to achieve. As he observes,

“Constitutional theory is both immanent and functionalist in its focus ... As a way of thinking, constitutional theory differs from political philosophy in that it is not an exercise in ideal theorizing from first, abstract principles. Rather, it is an attempt both to understand constitutionalism as a form of political practice, and to frame evaluations of how this practice works against its own internal logic.”<sup>32</sup>

The fact that constitutional theory is not primarily or exclusively focussed on abstract first principles “does not imply that it operates in a normative vacuum, detached from morally informed political debate”.<sup>33</sup> On the contrary,

“It is the very contingency of constitutional theory, and the centrality of political practice to its essence, that makes inoculation of constitutional analysis from value judgement impossible ... By [functional normativity is therefore] meant a constitutionalist analysis which accepts that even in

---

<sup>31</sup> C. Saunders, ‘Towards a Global Constitutional Gene Pool’ (2009) *National Taiwan University Law Review* 4(3): pp.1-38.

<sup>32</sup> Tierney (2012): p.2.

<sup>33</sup> Ibid.

functional terms any account of constitutional law must recognize that normative presuppositions are inherent within any exercise of constitutional creation, reform, or practice.”<sup>34</sup>

This normatively informed functionalist approach to constitutionalism, or in other words, an approach that is concerned with actual politico-constitutional practice and overarching normative perspectives simultaneously, deliberately fuses two quite distinct ‘styles’ of public law that Martin Loughlin had established previously in relation to the common law tradition.<sup>35</sup> The normativist style (within which there are two broad conservative and liberal variants), according to Loughlin,

“is rooted in a belief in the ideal of the separation of powers and in the need to subordinate the government to law. This style highlights law’s adjudicative and control functions and therefore its rule orientation and its conceptual nature. Normativism essentially reflects an ideal of the autonomy of law.”<sup>36</sup>

By contrast, the functionalist style,

“views law as a part of the apparatus of government. Its focus is upon law’s regulatory and facilitative functions and therefore is orientated to aims and objectives and adopts an instrumentalist social policy approach. Functionalism reflects an ideal of progressive evolutionary change.”<sup>37</sup>

Loughlin’s aims in constructing these two ideal-types were of course entirely analytical and explicatory, whereas the use to which I put theory in this thesis is more in line with Tierney’s concerns. Thus constitutional theory here serves four distinct yet interrelated purposes: first, to explain a particular constitutional problem in terms of a concrete experience of functional politico-constitutional practice (i.e.,

---

<sup>34</sup> Ibid.

<sup>35</sup> M. Loughlin (1992) *Public Law and Political Theory* (Oxford: OUP): Ch.4.

<sup>36</sup> Ibid: p.60.

<sup>37</sup> Ibid.

constitutionally unresolved national pluralism in Sri Lanka); second, to evaluate it from a particular normative conception of the good (i.e., plurinational democracy); third, to articulate theoretically defensible principles of constitutional change discovered by the application of the plurinational normative model to the functional reality of the case study; finally, and conversely to the last point, to suggest what changes the model itself must undergo in order to be applicable to the empirical category of cases represented in this thesis by Sri Lanka.

It will be noted that the first element of this methodology relates to descriptive analysis of the case study, the second to evaluation, and the third and the fourth elements concern the distinct substantive normativity of plurinational constitutionalism itself. In respect of each of these tasks, constitutional theory can be further distinguished from constitutional law *simpliciter* in terms of its broader empirical focus and its interdisciplinary character, as opposed to the institutionalist and doctrinal focus and the analytical positivism that characterises the latter discipline, particularly in traditional accounts of Sri Lankan constitutional law. Consequently, the discussion in this thesis traverses disciplinary boundaries quite freely, and in particular, engages historical anthropology and political sociology (in relation to nationalism and the pre-colonial state) and political geography (in relation to the post-colonial state), in addition to sub-disciplines of political philosophy (in this case, democracy theory) that are more conventionally to the concerns of constitutional theory. Given the centrality of ethno-culture in places like Sri Lanka (an issue that, rightly or wrongly, Western constitutional lawyers can get away with paying little attention to), functionalism therefore also demands a strongly contextualist and hermeneutic approach in this project. By this I hope to avoid the methodological and substantive weaknesses that I have identified in Sri Lankan liberal constitutionalism, above.

Finally, while the functionalism of this method pays close heed to the historical and socio-political realities of Sri Lanka – and my substantive argument rests on the fundamental conviction that a plurinational constitutional settlement is demanded by requirements of both political justice (fairness) as well as political management

(efficiency) – I am not concerned with the political viability of what is proposed here in immediate terms. Indeed, in the current political context of that country, even much less radical proposals for the accommodation of ethnic and religious pluralism seem to find little acceptance. Neither am I concerned with suggesting strategic, tactical, or substantive change for nationalist actors both Sinhala and Tamil. Put another way, therefore, the thesis is an academic exercise of constitutional theorising that may inform future attempts at addressing the issue of national pluralism, but it is not a liberal manifesto for constitutional reform, which means that it does not provide a political programme, or an advocacy strategy, or a process roadmap, or an institutional blueprint for constitutional change. Those remain separate projects.

#### **4. The Structure of the Thesis**

The argument proceeds according to the following chapter structure. Before getting into the merits of plurinational constitutionalism and its relevance to Sri Lanka, an elucidation of the main positions of ideology and ethno-political interest in the current constitutional reform debate seems necessary. While setting out the basic narrative background to the theoretical discussions to follow, Chapter 2 delineates four major positions according to a typology based on the traditional unitary/federal dichotomy, which is the frame within which constitutional reform debates have generally been conducted in post-colonial Sri Lanka. These are: the Sinhala-Buddhist and Tamil nationalist positions *vis-à-vis* the Sri Lankan state representing the dominant nation in control of the state and the sub-state national challenge; and two variant positions informed by modernist Jacobinism and traditional liberal federalism. For the first time in nearly four decades, following the military defeat of the Tamil Tigers in 2009, this does not include an explicitly secessionist position. Since the two dominant positions with regard to the constitutional form of the state on the unitary-federal axis are associated with the two major ethnic nationalisms, a fuller appreciation of the unitary state and federalist positions, and the monistic and pluralist discourses that underpin those positions, can only be had through an

understanding of the ethno-cultural, historical, and territorial claims asserted by these two nationalisms.

A further word on Sinhala-Buddhist nationalism and its conception of the post-colonial state is needed. In addition to a new theoretical reconstruction of the Sri Lankan conception of the unitary state, I also discuss the form and nature of the pre-colonial Sinhala-Buddhist state at some length in Chapter 2. At an earlier stage of work on this thesis, I had intended to address the pre-colonial state in a separate chapter, taking a methodological cue from plurinational constitutionalism in re-grounding contemporary constitutional responses to national pluralism in more pluralistic historic constitutional forms that came before the homogenisation and the centralisation of the modern (colonial) state. Although well known to historical anthropology as the ‘galactic polity’ or the ‘mandala-state’, the potential of this state form to provide a more conducive historical context to pluralistic constitutional reform arguments of the present has never been explored in Sri Lankan constitutional law. But an important step in this direction has now been taken by the recent publication of Roshan de Silva Wijeyeratne’s *Nation, Constitutionalism and Buddhism in Sri Lanka* (2014).<sup>38</sup> While still heavily a work of historical anthropology, it makes a serious attempt to introduce and resituate the issues of pre-colonial history, state form and collective identity in contemporary constitutional discourse. Substantively, it serves to expose a major fallacy of Sinhala-Buddhist nationalist arguments in favour of the ethnocratic centralisation of power in the unitary state. The unitary state and constitutional centralisation are relatively recent products of colonialism, whereas the pre-colonial state form, with a much longer pedigree, was by contrast highly devolutionary and asymmetric. My task in this thesis therefore is to apply these insights to a distinctively plurinational re-conceptualisation of the Sri Lankan state.

---

<sup>38</sup> R. De S. Wijeyeratne (2014) *Nation, Constitutionalism and Buddhism in Sri Lanka* (London: Routledge). The book itself is the product of a lengthy process of gestation and refinement. See e.g., R. De S. Wijeyeratne, ‘Galactic Polities and the Decentralisation of Administration in Sri Lanka: The Buddha Does Not Always Have to Return to the Centre’ (2003) *Griffiths Law Review* 12: p.215; R. De S. Wijeyeratne, ‘Buddhism, the Asokan Persona and the Galactic Polity: Re-Thinking Sri Lanka’s Constitutional Present’ (2007) *Social Analysis* 51(1): pp.156–178.

Both the unitary and federal perspectives are also supported in Sri Lankan constitutional discourse on grounds other than ethnonationalism, but because they are politically less dominant, they are included in the typology as ‘variants’ to the dominant positions. While the two major ethnic nationalisms are the main focus of this thesis, not only would the typology be incomplete without the inclusion of the variant positions, but they also represent certain modernist perspectives with regard to the nation and the state that I assert need to be rethought in the context of national pluralism. Later in the discussion (in Chapter 5) I argue that all except the ethnocentric Sinhala-Buddhist nationalist position, which accept some form of pluralism as the basis of constitutional order, however conceptually opposed to each other they may seem, are united by a common subscription to the type of normative order associated with the traditional Westphalian nation-state. I argue further that this model of internal constitutional organisation is inadequate to the task of addressing the national pluralism of Sri Lanka’s polity, although if meaningfully implemented, it might be perfectly adequate for addressing less fundamental forms of communal pluralism. In the context of the consistent tendency since independence of the Sinhala-Buddhist majority to construct an ethnocentric state that excludes and subordinates the minority nation and other minority communities, and the equally consistent assertion of a nationality claim by the Tamils of the north and east at every election since 1956, it is clear that classical modernist post-colonial nation-state building has been an historic failure in Sri Lanka. The main question I therefore ask is: what is the utility of continued subscription to this model, when other models of state have emerged that may provide better answers in terms of both norms and structures to the central constitutional problem of national pluralism in Sri Lanka?

Based on the typology of major constitutional perspectives set out in Chapter 2, Chapter 3 outlines the alternative approach drawing upon the principles of plurinational constitutionalism, relating these to the Sri Lankan case in two ways. First, it offers a new *analytical* understanding of the sociological nature of the Sri Lankan polity as one characterised by national pluralism, rather than one of mere ethno-cultural pluralism, which while attentive to the three grounds of empirical

divergence mentioned above, applies plurinational constitutionalism's methodological attention to history and historiography to the Sri Lankan case. Second, it articulates the *normative* propositions that must inform constitutional approaches to national pluralism, in particular to expose the conceptual inadequacy of the monistic conception of the nation in the modern nation-state, the pluralisation of sovereignty into a more relational understanding, and the need to disaggregate the nation from the state. This chapter therefore sets out the substantive theoretical framework of plurinational constitutionalism that forms the basis for the chapters to follow, in which each of these issues will be explored in detail.

Chapter 4 takes up the narrative account of the two nationalisms in Chapter 2, to explore their theoretical implications at more depth. In relation to nationalism theory, it discusses the civic/ethnic and tradition/modernity dichotomies, the distinction between nations and nationalisms, and the performative theory of nationalism and nationalist mobilisation, as well as more specific theoretical explanations of the Sinhala-Buddhist and Tamil nationalisms, in establishing the proposition that ethnically defined national pluralism could be made susceptible to the plurinational logic of constitutional accommodation.

Chapter 5 continues this argument in the closely related issues surrounding the form and content of democracy in a post-colonial state. It identifies the distinct set of constitutional issues in regard to democracy in (British) post-colonial states that makes the Sri Lankan case distinguishable from Western states, and seeks to articulate an analytical understanding of it as redefined by Sinhala-Buddhist nationalism as a specific instance of an 'ethnocracy', a form of state that is distinguishable from the modernist nation-state by virtue of the dominance of ethnicised democracy. It then establishes an alternative theoretical framework for democracy, drawing on the concept of 'comprehensive pluralism' rather than the norms of political liberalism that inform Western plurinational constitutionalism, which can meet the normative challenge of the constitutional reordering necessitated by national pluralism. It also sets out a scheme for the accommodation of multiple conceptions of the nation within the overall context of ethnic and religious

pluralism, by drawing upon the concept of the ‘state-nation’ in a way that allows the co-existence of the two major ethnic nations together with the other minority non-national communities, within an overall civic conception of a ‘Sri Lankan’ statal nation.

Chapter 6 develops the norm of asymmetry through which this re-conceptualisation of multiple national spaces within the state can be accommodated in a constitutional hierarchy that meets the normative requirements of pluralism, tempered by the constraints of constitutional history and political reality. This represents a departure from a central feature of Western plurinational constitutionalism, where the major concern is to accommodate multiple nations on a footing of equality. It concludes by proposing a set of principles for the structural organisation of the Sri Lankan state, including the principles of autonomy, recognition, representation, and reciprocity, that are necessary to the constitutional accommodation of national pluralism according to a specifically plurinational logic within a united state. These principles are also important in that they describe the ways in which the principles of Western plurinational constitutionalism would require change and re-articulation, if they are to apply to the Sri Lankan context, and to similar cases. Conclusions are set out in Chapter 7.

## CHAPTER 2

### THE SRI LANKAN CONSTITUTIONAL REFORM DEBATE: A TYPOLOGY OF POSITIONS

1. Introduction
2. The Unitary State Perspective
  - 2.1 Sinhala-Buddhist Nationalism and the Unitary State
  - 2.2 The Jacobin Variant
3. The Federal State Perspective
  - 3.1 The Sub-State Tamil National Challenge
  - 3.2 The Liberal Variant
4. Concluding Remarks

#### 1. Introduction

In what has become something of an aphorism in Sri Lankan debates, the historian K.M. de Silva once remarked that the Sinhalese are ‘a majority with a minority complex’ while the Tamils are ‘a minority with a majority complex.’<sup>1</sup> As the social psychologist Gustav Ichheiser had observed earlier, such popular beliefs are oversimplifications coloured by prejudice, but they do often reflect a kernel of truth.<sup>2</sup> In the Sri Lankan case, it underlines what time and again seems a fundamental incommensurability between the political worldviews of the two communities that has rendered Sri Lanka’s national pluralism such a vexed constitutional problem. For the Sinhala-Buddhists hedged in by millions of Tamils in South India, the little island is their only home and refuge in the world, which in turn justifies their claims to

---

<sup>1</sup> K.M. de Silva (1986) *Managing Ethnic Tensions in Multi-Ethnic Societies: Sri Lanka 1880-1985* (Lanham, MD: Univ. Press of America): p.368. See also, A.J. Wilson (2000) *Sri Lankan Tamil Nationalism: Its Origins and Development in the 19<sup>th</sup> and 20<sup>th</sup> Centuries* (New Delhi: Penguin): p.55; T.J. Bartholomeusz (2005) *In Defense of Dharma: Just War Ideology in Buddhist Sri Lanka* (London: Routledge): pp.96-7; A. Bandarage (2008) *The Separatist Conflict in Sri Lanka: Terrorism, Ethnicity and Political Economy* (London: Routledge): p.22; K.N.O. Dharmadasa (1992) *Language, Religion and Ethnic Assertiveness: The Growth of Sinhalese Nationalism in Sri Lanka* (Ann Arbor: Univ. of Michigan Press): p.141; S.J. Tambiah (1986) *Sri Lanka: Ethnic Fratricide and the Dismantling of Democracy* (Chicago: Chicago UP): pp.58, 92-3.

<sup>2</sup> G. Ichheiser, ‘Misunderstandings in Human Relations: A Study in False Social Perception’ (1949) *American Journal of Sociology* LV: pp.1-70.

constitutional supremacy.<sup>3</sup> The Tamils, on the other hand, see themselves as nothing less than “*equal partners* in [the] island polity”,<sup>4</sup> a claim that inflames Sinhala insecurities and self-perception as a ‘threatened majority.’ As Arjun Appadurai has noted, “This kind of mobilization is the key step in turning a benign social identity into a predatory identity.”<sup>5</sup>

In this chapter, I provide a descriptive overview of the main positions or approaches to the constitutional organisation of the island, set out in terms of the classificatory scheme of the unitary/federal dichotomy. This is both convenient and follows the taxonomy that is most often used in the Sri Lankan literature. The unitary state perspective is represented dominantly by Sinhala-Buddhist nationalism, whereas the federal state perspective is reflected mainly by Tamil nationalism. Either perspective with regard to the form of the state is also defended by approaches other than ethnic nationalism – respectively by modernist or Jacobin nation-statists and liberal federalists – but because these are conspicuously less dominant in political life, I refer to them here as ‘variants.’<sup>6</sup> The chapter is intended to serve as the basic narrative of the two competing nations and nationalisms as they relate to the constitutional form of the state, and matters highlighted here in relation to the specific constitutional problem of national pluralism will be taken up in succeeding chapters.

## **2. The Unitary State Perspective**

When Ceylon, as Sri Lanka was then called, gained independence from the British Empire in 1948, it was, together with India, Pakistan and Burma, in the first wave of Asian colonies that inaugurated the global process of decolonisation that would

---

<sup>3</sup> See U. Gammanpila, ‘*The Constitutional Form of the First Republic: The Sinhala-Buddhist Perspective*’ in A. Welikala (Ed.) (2012) *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Colombo: CPA): Ch.23.

<sup>4</sup> Wilson (2000): p.55. Emphasis in original.

<sup>5</sup> A. Appadurai (2006) *Fear of Small Numbers: An Essay on the Geography of Anger* (Durham, NC: Duke UP): p.51.

<sup>6</sup> For the same reason, the main ethnonationalist approaches are discussed at more length than the variants.

radically change the shape of the international order over the next three decades. Within these newly independent polities in Asia and Africa, the legal establishment of the state in the image of the Westphalian model having preceded the construction of a 'nation' to bind the polity and territory together, 'nation-building' would become the major post-independence concern of governments and political elites.<sup>7</sup> In an era when the model of the Westphalian nation-state was unquestioned as the harbinger of modernity, progress and development to post-colonial societies, nation-building constituted the highest aspiration of the nationalist elites that succeeded to the government of these newly independent states. Key among the political and conceptual dilemmas that had to be resolved in many of these nation-building efforts was the need to reconcile the 'nation of intent'<sup>8</sup> – the modern, territory-based national polity defined by normative values of citizenship – with pre-colonial ethnic identities and collective loyalties that enjoyed greater cultural resonance within these polities. As Anthony D. Smith observed in relation to elite-led post-colonial nation-building projects in Asia and Africa,

“...standing in blatant opposition to the pretensions of the territorial state and its panoply of administrative organs, are the serried ranks of ethnic communities and nations that compose it. There is no 'nation' that is, in any way, co-extensive with the state's boundaries, or congruent with the state's culture. Such a congruent and co-extensive nation is a mere project today, a 'nation of intent' to be forged out of the territorial state. As in Western Europe, African [and Asian] rulers and intelligentsia aim to create such nations, and merge the political culture of the state with the several ethnic cultures of the peoples that compose it. But, unlike their Western absolutist counterparts, they are handicapped not only by the time factor, but by the later historical period in which they must act, a democratic era in which the

---

<sup>7</sup> S. Arasaratnam, '*History, Nationalism and Nation Building: The Asian Dilemma*' an Inaugural Lecture at the University of New England, Armidale, cited in M. Roberts (1994) *Exploring Confrontation. Sri Lanka: Politics, Culture and History* (Chur: Harwood Academic Publishers): p.249.

<sup>8</sup> R. Rotberg, '*African Nationalism: Concept or Confusion?*' (1967) *Journal of Modern African Studies* IV: pp.33-46.

twin ideals of national dignity and development must be reconciled and attained.”<sup>9</sup>

By ‘Western absolutism’ Smith was referring to the processes of state consolidation – usually following military conquest and preceding the age of mass democracy – in Western European and European settler polities in North America and Australia, in which the construction of modern and cohesive statal nations entailed, in effect, the imposition of the societal culture of one dominant nation over the unified territory as a whole. In Ceylon, independence brought about a *de jure* territorial state, but a cohesive nation congruent with the territorial state was at best an elitist aspiration. Amidst an increasing sub-state challenge from the minority Tamil nationalism, a dynamic of sectional hegemony was set in motion by Sinhala-Buddhist nationalism through a nation-building process combining procedural majoritarianism with a potent ethno-religious historiography.<sup>10</sup> This paradoxical combination of advanced democracy and atavistic nationalism made the Sri Lankan experience distinctive from African and Middle Eastern post-colonial states in which nation-building was attempted through military-bureaucratic authoritarianism,<sup>11</sup> or from examples such as India, where a self-consciously modernist nation-building process was undertaken through the constitutional enshrinement of secular and pluralist values combined with the stabilising intermediation of a *de facto* single party democratic system.<sup>12</sup>

The transfer of power in Ceylon was seen at the time as a model process.<sup>13</sup> The transition was smooth, peaceful and entirely constitutionally negotiated between the imperial power and a Ceylonese political elite, in a polity that had enjoyed adult

---

<sup>9</sup> A.D. Smith (1983) *State and Nation in the Third World* (London: Wheatsheaf): pp.125-6. See also H. Alavi, ‘The State in Post-Colonial Societies: Pakistan and Bangladesh’, (1972) *New Left Review* No.74: pp.145-173; J. Uyangoda, ‘The United Front Regime of 1970 and the Post-Colonial State of Sri Lanka’ in T. Jayatilaka (Ed.) (2010) *Sirimavo: Honouring the World’s First Woman Prime Minister* (Colombo: The Bandaranaike Museum Committee): pp.31-34

<sup>10</sup> This process is described further below, and is more deeply theorised in Chapter 6, *infra*.

<sup>11</sup> Smith (1983): Ch.7

<sup>12</sup> G. Austin (2004) *The Indian Constitution: Cornerstone of a Nation* (New Delhi: OUP): Chs.1,2; P.R. Brass (1991) *The Politics of India Since Independence* (2<sup>nd</sup> Ed.) (Cambridge: CUP): Ch.3; A. Stepan, J.J. Linz & Y. Yadav (2011) *Crafting State-Nations: India and other Multinational Democracies* (Baltimore: JHU Press): Ch.2.

<sup>13</sup> J. Darwin (1988) *Britain and Decolonisation: The Retreat from Empire in the Post-War World* (London: Macmillan): pp.101-6.

universal franchise and a substantial measure of representative democracy and self-government since 1931.<sup>14</sup> It created an independent Dominion within the Commonwealth with a Westminster-type constitution that was economically prosperous and politically literate.<sup>15</sup> Implicit in this elite-led process, and the constitution that was granted just prior to independence, was a vision of a unifying ‘Ceylonese’ nation transcending subliminal divisions based on ascriptive factors such as ethnicity, religion, caste, and geographic region. In K.M. de Silva’s description, this conception of civic nationalism,

“...emphasised the common interests of the island’s various ethnic and religious groups. It had as its basis an acceptance of the reality of a plural society and sought the reconciliation of the legitimate interests of the majority and minorities within the context of an all-island polity...In 1948, this version of nationalism seemed to be a viable alternative to the narrower [ethnic] sectionalisms...and held out the prospect of peace and stability in the vital first phase of independence. It was based on a double compromise: the softening of Sinhalese dominance by the establishment of an equilibrium of political forces, the keynote of which was moderation, and an emphasis on secularism, a refusal to mix state power and politics with religion, even though the concept of a special responsibility for Buddhism was tacitly accepted.”<sup>16</sup>

The constitutionalist, civic nationalist elite was represented in the United National Party (UNP) led by D.S. Senanayake that succeeded the imperial power in 1948. The political viewpoint broadly represented in the UNP was one that was previously represented by the Ceylon National Congress (CNC), and the Ceylon Reform

---

<sup>14</sup> H. Kumarasingham (2013) *A Political Legacy of the British Empire: Power and the Parliamentary System in Post-Colonial India and Sri Lanka* (London: I.B. Tauris): Ch.5.

<sup>15</sup> A. Welikala, ‘The Failure of Jennings’ Constitutional Experiment in Ceylon: How ‘Procedural Entrenchment’ led to Constitutional Revolution’ in Welikala (2012): Ch.3; H. Kumarasingham, ‘The ‘Tropical Dominions’: The Appeal of Dominions Status in the Decolonisation of India, Pakistan and Sri Lanka’ (2013a) *Transactions of the Royal Historical Society* 23: pp.223-45 at pp.242-45.

<sup>16</sup> K.M. de Silva (2005) *A History of Sri Lanka* (Colombo: Vijitha Yapa): p.609. See also Kumarasingham (2013): Ch.7.

League.<sup>17</sup> Indirectly, it was a school of thought that could be traced back to the ‘Young Ceylon’ movement of the mid-nineteenth century, which first articulated a modernist, secular Ceylonese nationalism in line with contemporaneous political thought and intellectual currents in Europe.<sup>18</sup> Members of this elite belonged to the English-educated, professional and landowning upper classes, and were broadly committed to gradual and constitutional methods of securing political representation, first, in the institutions of the colonial state, and later, in the progress towards independence through incremental self-government.

However, as de Silva observed, “This Sri Lankan nationalism had a crucial flaw. It was basically elitist in conception and it had little popular support extending beyond the political establishment.”<sup>19</sup> Beneath the secular and civic-national constitutional façade of independence in Ceylon was a powerful Sinhala-Buddhist nationalist movement, which would become more politically organised and compelling as a democratic force within a decade of independence, and completely unravel both the civic nation-building project and the constitutional framework put in place to achieve it.<sup>20</sup>

## 2.1 Sinhala-Buddhist Nationalism and the Unitary State

As a political movement, the form of Sinhala-Buddhist nationalism that was beginning to emerge at the time of independence and which from the 1950s onwards would come to dominate electoral politics and constitutional discourse, had its origins in the religious, linguistic and cultural revivalist movements of the late

---

<sup>17</sup> M. Roberts, ‘Introduction’, in M. Roberts (Ed.) (1977) *Documents of the Ceylon National Congress and Nationalist Politics in Ceylon, 1929-1950* (Colombo: Dept. of National Archives): pp.xxvii-ccxxii

<sup>18</sup> H. Candidus, ‘A Desultory Conversation between Two Young Aristocratic Ceylonese’ in M. Roberts (Ed.) (1998) *Collective Identities Revisited*, Vol.2 (Colombo: Marga): Ch.1; M. Roberts, I. Raheem & P. Colin-Thomé (1989) *People In-between: The Burghers and the Middle Class in the Transformations within Sri Lanka, 1790s-1960s* (Colombo: Sarvodaya): p.147 et seq.

<sup>19</sup> De Silva (2005): p.609. See also H. Kumarasingham, ‘A Democratic Paradox: The Communalisation of Politics, 1911-1948’ (2006) *Asian Affairs* 37(3): pp.342-352.

<sup>20</sup> H. Kumarasingham, ‘The Jewel of the East yet has its Flaws’: *The Deceptive Tranquillity surrounding Sri Lankan Independence* (2013b) Working Paper No.72, Heidelberg Papers in South Asian and Comparative Politics (Heidelberg: Univ. of Heidelberg).

nineteenth century. As I will discuss later in this thesis, this revival itself tapped into a nascent collective Sinhala-Buddhist consciousness from the pre-colonial past that approximated to a statal nationalism in modern terms.<sup>21</sup> The Buddhist revival of the nineteenth century was a response in particular to aggressive Christian missionary activities under the auspices of the colonial dispensation. Within the broader context of the Sinhalese encounter with British colonialism, it also served as a catalyst for a resurgence in Sinhala consciousness in distinctively anti-colonial nationalist terms.<sup>22</sup> The Buddhist revival inaugurated the tradition of a politically engaged Buddhism and monkhood in the modern era, by reinterpreting both traditional Buddhist doctrine and historical legends of Sinhala historiography in the light of anti-British and anti-Christian protest. This movement and its doctrinal, cultural, socio-economic and political dimensions have been theorised as ‘Buddhist Modernism’ (*‘Buddhistischer Modernismus’*) by Heiz Bechert and as ‘Protestant Buddhism’ by Richard Gombrich and Gananath Obeyesekera.<sup>23</sup> The originators of Protestant Buddhism were charismatic monks who took on Christian missionaries in public theological debates, and the movement was given an institutional form for some time by the Buddhist Theosophical Society, but it reached its height in the life and work of Anagarica Dharmapala (1864-1933) at the turn of the nineteenth and twentieth centuries. This tradition was resuscitated in the approach to independence in the 1940s and in the early post-colonial period, by the radical monks of the Vidyalkara and Vidyodaya Pirivenas, and through such polemical tracts as *The Heritage of the Bhikkhu* and *The Revolt in the Temple*.<sup>24</sup>

The political nature of this Buddhism has two aspects, both of which constitute a robust repudiation of the secular separation between the political and religious

---

<sup>21</sup> See Chapter 4, *infra*.

<sup>22</sup> Tambiah (1992): Ch.2

<sup>23</sup> H. Bechert (1966-1972) *Buddhismus, Staat und Gesellschaft in den Ländern des Theravada Buddhismus*, Vol.1 (1966) (Frankfurt and Berlin: Alfred Metzner), Vol.2 (1967) (Wiesbaden), Vol.3 (1973) (Wiesbaden); R. Gombrich & G. Obeyesekera (1988) *Buddhism Transformed: Religious Change in Sri Lanka* (Princeton: Princeton UP): Chs.1, 6. Cf. for a recent critique of these scholars, A.M. Blackburn (2010) *Locations of Buddhism: Colonialism and Modernity in Sri Lanka* (Chicago: Univ. of Chicago Press): pp.xi-xiv, Ch.6.

<sup>24</sup> W. Rahula (1974) *The Heritage of the Bhikkhu: A Short History of the Bhikkhu in the Educational, Cultural, Social, and Political Life* (New York: Grove Press), originally published in Sinhalese as *Bhikshuvage Urumaya* in 1946; D.C. Vijayawardhana (1953) *Dharma Vijaya, or the Revolt in the Temple* (Colombo: Sinha Publications).

spheres. The first aspect envisions Buddhism not merely as a religion and therefore an essentially individual concern of the private sphere, but as a rational philosophy that provides a comprehensive normative system for the government of a Buddhist society. As the Sinhala Commission recently argued,

“The re-ordering of human consciousness and the re-ordering of human society were the two complementary aspects of the Buddha’s teaching. If in the Pali Canon, it is the re-ordering of human consciousness which receives greater emphasis and has the greater amount of teaching devoted to it, this is because it was *the primary concern of the enlightened ruler, acting in accordance with the general principles of Buddha’s teachings, and in co-operation with the Sangha in order to promote what can be called a Buddhistic society.*”<sup>25</sup>

The Sinhala-Buddhist historical chronicles add powerful force to this quasi-theocratic approach to political organisation through the religio-cultural myth in which the Buddha is said to have observed upon his deathbed that his teachings in the purest Theravada form would be preserved in the island of Lanka. Consequently, Sri Lanka in Sinhala-Buddhist historiography is not only the ‘Sihaladeepa’ (the island of the Sinhalese), but also the ‘Dhammadeepa’ (the island of the dharma).<sup>26</sup> Michael Roberts has pointed out how this cohering “...notion of the island as Dhammadeepa-cum-Sihaladeepa, that is, an island for the Buddhist doctrine and its carriers, the Sinhalese”, buttressed the development of the Sinhala consciousness in opposition to Western imperial intrusions.<sup>27</sup>

---

<sup>25</sup> Report of an Independent and Representative Committee (2003) *A Case against a Federal Constitution for Sri Lanka* (Colombo: National Joint Committee): pp.147-8, emphasis added. This document is better known as the ‘Sinhala Commission Report’, and is discussed in Edrisinha et al (2008): Ch.26.

<sup>26</sup> According to the legend, the Buddha in a final dying injunction to Sakra, the head of the Indic pantheon of gods, said, “In Lanka, O Lord of the gods, will my religion be established...”: see B. Kapferer (1988) *Legends of the People, Myths of State: Violence, Intolerance and Political Culture in Sri Lanka and Australia* (Washington: Smithsonian Institution): pp.53-57. See also B.L. Smith, ‘Kingship, the Sangha, and the Process of Legitimation in Anuradhapura Ceylon’ and R.T. Clifford, ‘The Dhammadipa Tradition in Sri Lanka: Three Models within the Sinhalese Chronicles’ in B.L. Smith (1978) *Religion and Legitimation of Power in Sri Lanka* (Chambersburg, Penn.: Anima Books) Sinhala Commission (2003): pp.73-95, 36-47;

<sup>27</sup> M. Roberts (2004a) *Sinhala Consciousness in the Kandyan Period 1590s to 1815* (Colombo: Vijitha Yapa Publications): p.16. See also K. Malalgoda, ‘Millennialism in relation to Buddhism’

The 'Buddhist modernism' characterised by these two factors has several paradoxical consequences for constitutional discourse. It collapses the modernist separation of church and state in advancing Buddhism as a secular philosophy with a temporal role and in positing the Buddhist monkhood as a social institution with a political role. The ethno-religious nationalist identity it seeks to promote through these two devices is moreover one that looks backward to past glories of blood and soil rather than forward to modernist objectives of individualism, secularism and pluralism.

As noted, the late nineteenth and early twentieth century revival reached its apogee in the person of the 'model Protestant Buddhist'<sup>28</sup> Anagarica Dharmapala, a Sinhalese Buddhist activist who, as a polemicist, ideologue, pamphleteer and propagandist, had an enormous historical influence in articulating the ideological contours of Sinhala-Buddhist nationalism throughout the twentieth century and up to the present.<sup>29</sup> In addition to drawing from what he saw as the scientific and rational progress of European thought, Dharmapala's writings borrowed from contemporaneous European racial theory, which was one of the bases of the claim that the Sinhalese are an Aryan race, in contradistinction to the Tamils, who were regarded as a Dravidian race. The most important element of Dharmapala's revivalist ideology was, as Stanley Tambiah has noted, "...an appeal to the past glories of Buddhism and Sinhalese civilisation celebrated in the *Mahavamsa* and other chronicles as a way of infusing the Sinhalese with a new nationalist identity and self-respect in the face of humiliation and restrictions suffered under British rule and Christian missionary influence."<sup>30</sup> Sinhala-Buddhist nationalist renditions of

---

(1970) *Comparative Studies in Society and History* 12(4): pp.434-441; K. Malalgoda (1976) *Buddhism in Sinhalese Society* (Berkeley: California UP); K. Malalgoda, 'Concept and Confrontations: A Case Study of Agama' in M. Roberts (Ed.) (1997) *Sri Lanka: Collective Identities Revisited*, Vol.1 (Colombo: Marga): pp.55-78; H.L. Seneviratne (1999) *The Work of Kings: The New Buddhism in Sri Lanka* (Chicago: Chicago UP).

<sup>28</sup> Gombrich & Obeyesekera (1988): p.11.

<sup>29</sup> Ibid: Chs.6,7; G. Obeyesekera, 'Personal Identity and Cultural Crisis: The Case of Anagarika Dharmapala of Sri Lanka' in F. Reynolds & D. Capps (Eds.) (1976) *The Biographical Process* (The Hague: Mouton & Co.): pp.221-252.

<sup>30</sup> S.J. Tambiah (1992) *Buddhism Betrayed? Religion, Politics, and Violence in Sri Lanka* (Chicago: Chicago UP): p.7.

‘Sinhala-ness’ even today replicate Dharmapala’s romantic and historicist vision of a people and an island with a proud past and ancient civilisation.<sup>31</sup>

In addition to an intertwining of ancient myths and memories with modern categories of nation and state, this nationalism then has certain key ideological elements, including the conflation of the identity of the entire island and its inhabitants with the nationalist identity and historiography of the Sinhala-Buddhists, and the claim that the Sinhalese are a biological ‘race’, which shares a common language, Sinhala, and religion, Buddhism. This is a reiteration of the central thesis of the *Mahavamsa*, the Great Chronicle of the Sinhala people, which is, “That the island of Sri Lanka is in its entirety the land of the Sinhala and of Buddhism: it is the Sinhala-Buddhist nation. The biological people, its language, religion, culture and territory are all intimately linked.”<sup>32</sup> This totalising and hegemonic approach to culture, territory, polity and the state serves as the foundational basis of the constitutional worldview of modern Sinhala-Buddhist nationalism.

While this revivalist nationalism was conceived in opposition primarily to British colonialism in the nineteenth century, from the outset its exclusive ethno-religious character contained hostile sentiments towards other groups such as Muslims, and from the early twentieth century onwards, the Tamils became the principal ‘other’ to be regarded in antagonistic terms to the Sinhala-Buddhist nation. After independence, and the removal of the British from the political landscape as the focus of discontent, the antagonism with Tamils would become the main driver of Sinhala-Buddhist nationalism to the extent that Tamil nationalist and territorial claims directly challenged the Sinhala-Buddhist nationalist vision of independent statehood. This hostility finds legitimisation once again in the *Mahavamsa*.

The *Mahavamsa* is the primary text, of a corpus of historiographical chronicles of the *vamsa* tradition written by monks in the Pali language, which provides the ideological foundations of Sinhala-Buddhist nationalism, by uniting the people, the

---

<sup>31</sup> For a recent restatement of this position, see Sinhala Commission (2003): p.138.

<sup>32</sup> E. Nissan & R.L. Stirrat, ‘The Generation of Communal Identities’ in J. Spencer (Ed.) (1990) *Sri Lanka: The History and Roots of Conflict* (London: Routledge): Ch.2 at pp.30-31.

religion, the territory, and the kingly state in one historical grand narrative.<sup>33</sup> It was composed by Buddhist monks of the Mahavihara fraternity around the fifth century B.C., and elaborates two major mytho-historical legends, that of the founding Vijaya myth, and the renaissance Dutugemunu legend.<sup>34</sup> As Tambiah says, it “...simultaneously presents the dual destiny of the Sinhalese people to conquer, unite, and rule the island of Lanka for the preservation and glory of the Buddhist religion, and the necessary expulsion of the Tamil invaders who had (temporarily) taken possession of the north.”<sup>35</sup> The Dutugemunu legend in particular, in which these elements find expression, has been brought into service to provide the modern antagonism towards Tamil nationalism with a historical basis and legitimacy, to attack Tamil claims to territorial autonomy as historically baseless, and to reinforce Sinhala-Buddhist supremacy in Sri Lanka. What is also important to remember is that the *Mahavamsa* and other Sinhalese historical chronicles were written as instrumental histories with a political purpose in the context of their times. As Bechert observed,

“The origination of historical literature in Ceylon in the existing form was an intentional act of political relevance. Its object was the propagation of a concept of national identity clearly connected with a religious tradition, i.e., the identity of the Sinhalese Buddhists...without the impact of this idea, the remarkable continuity of the cultural as well as the political traditions in spite of the vicissitudes in the history of the island would be impossible.”<sup>36</sup>

One of the striking characteristics of contemporary Sinhala-Buddhist nationalism as an ideology is its employment of a powerful idiom of centralisation of state power, through an interpolation of the glorious historical paradigm of the ancient Sinhalese monarchy, patron of the people and protector of the faith, onto the institutions of

---

<sup>33</sup> J. Spencer, ‘Introduction: The Power of the Past’ in Spencer (1990): Ch.1 at pp.5-6; S. Kemper (1991) *The Presence of the Past: Chronicles, Politics and Culture in Sinhala Life* (Ithaca, NY: Cornell UP).

<sup>34</sup> Kapferer (1988): pp.53-65.

<sup>35</sup> S. J. Tambiah (1986) *Sri Lanka: Ethnic Fratricide and the Dismantling of Democracy* (Chicago: Chicago UP): p.70; S. Kemper, ‘J.R. Jayewardene: Righteousness and Realpolitik’ in Spencer (1990): Ch.9 at pp.70-71.

<sup>36</sup> H. Bechert, ‘The Beginnings of Buddhist Historiography: Mahavamsa and Political Thinking’ in Smith (1978): pp.1-12 at p.7. See Tambiah (1986): pp.70-71. Cf. Tambiah (1992): p.129.

representative democracy and political independence. According to the *Mahavamsa* legend, reflecting both the empirical and allegorical dimensions of the nationalist ideal-type state order, King Dutugemunu was the heroic Sinhala warrior-king who routed the Tamil King Elara, thereby restoring three things: the territorial integrity of the island ruptured by Elara's Tamil occupation; the Sinhala monarchy to overlordship over the whole island; and the rightful place of Buddhism as the politico-moral basis of society. It is in this way that centralised unity tied to territorial integrity becomes axiomatic in the Sinhala-Buddhist nationalist perspective on the unitary constitutional form of the sovereign state, and explains its resonance in the modern nationalist hostility to any sort of political decentralisation.<sup>37</sup> Decentralisation, devolution, federalism, power-sharing, and autonomy, particularly in relation to the historical 'other', the Tamils, are seen as precursors of an unthinkable certainty, the territorial division of the island, and in total violation of the historic ethos of the island as a Sinhala-Buddhist state.

These legends – the ideologically instrumental 'myths and memories of the nation'<sup>38</sup> – elaborate not only a particular constitutional worldview in terms of the ideal-type kingship as the unifier of the island, protector of the race, and defender of the faith, but also establishes the Tamils, portrayed variously as non-Buddhist, Dravidian, South Indian interlopers, invaders and devils, as the principal 'other' or historic enemy in opposition to whom the uniqueness of the Sinhala-Buddhists, and indeed their island state, is most sharply defined. As Michael Roberts has noted, the "...oversimplified oppositions inscribed within the original *Mahavamsa* in the sixth century" have been reproduced in other, later Pali and Sinhala texts and in traditions of oral history within Sinhala culture in their depiction of later historical events in the same "Manichean terms of the Bad versus the Good."<sup>39</sup>

Roshan de Silva Wijeyeratne has argued persuasively that, "Sinhalese Buddhist nationalism is contingent on its very modernity." The nationalist movement that

---

<sup>37</sup> J. Uyangoda, 'The State and the Process of Devolution in Sri Lanka' in S. Bastian (Ed.) (1994) *Devolution and Development in Sri Lanka* (Colombo: ICES): pp. 69-70.

<sup>38</sup> A.D. Smith (1999) *Myths and Memories of the Nation* (Oxford: OUP).

<sup>39</sup> Roberts (2004a): p.9.

began with Dharmapala's revivalism drew upon "a European colonial historiography" to efface the devolutionary and pluralistic dimensions of the pre-colonial order grounded on the fissiparous cosmology of Buddhism, and "driven by a modern epistemology", to articulate a new, modernist and "non-cosmological understanding of space-cum-territory, race and an Orientalized Sinhalese Buddhism." As he also says, "It is this horizon that has informed the institutional and constitutional history of the island since independence."<sup>40</sup> Sri Lanka registered a deepening post-independence democratic culture when it changed governments peacefully through the electoral process in the general elections of 1956. This achievement, however, was also a portent of the conflicts to come, in that the Mahajana Eksath Peramuna (MEP), which won a resounding victory, was a coalition of Sinhala-Buddhist forces committed to restoring their nationalist ideal of the state.<sup>41</sup> Among a host of other measures designed to restore Sinhala-Buddhist primacy was the centrepiece of policy of 'Sinhala Only': the enactment of Sinhala as the official language. The Tamil protests against this legislation were a watershed in the deterioration of ethnic relations in succeeding years, although the severity of the 'Sinhala Only' policy was ameliorated by later allowance for the reasonable usage of Tamil.

Nonetheless, when the first republican constitution was promulgated in 1972, only Sinhala was recognised by the constitution as an official language.<sup>42</sup> The recognition of a special status for Buddhism was also a cherished Sinhala-Buddhist nationalist demand that evolved and permutated throughout the initial post-colonial years, until it too found constitutional expression in the 1972 constitution. The drafters of the first republican constitution sought to introduce a provision that recognised a 'foremost place' for Buddhism and established a duty of the state to protect and foster Buddhism, while assuring to all other religions more conventional civil rights

---

<sup>40</sup> R. de Silva Wijeyeratne (2014) *Nation, Constitutionalism and Buddhism in Sri Lanka* (London: Routledge): p.xv.

<sup>41</sup> A.J. Wilson (1979) *Politics in Sri Lanka, 1947-1979* (2<sup>nd</sup> Ed.) (London: Macmillan): pp.14-22; K. Loganathan (1996) *Lost Opportunities: Past Attempts at Resolving Ethnic Conflict* (Colombo: CEPRA): Chs.1,2; N. DeVotta (2004) *Blowback: Linguistic Nationalism, Institutional Decay, and Ethnic Conflict in Sri Lanka* (Stanford: Stanford UP): Chs.3,4,5; W.H. Wriggins (1960) *Ceylon: Dilemmas of a New Nation* (Princeton: Princeton UP).

<sup>42</sup> N. Jayawickrama, 'Reflections on the Making and Content of the 1972 Constitution: An Insider's Perspective' in Welikala (2012): Ch.1 at pp.108-111.

to the freedom of religion.<sup>43</sup> This arrangement has been continued in the second republican constitution of 1978.<sup>44</sup> But above all, the constitutional idea that was fundamental to ensuring that Sinhala-Buddhist nationalism became the identity of the republican state was the concept of the unitary state.<sup>45</sup> Its inclusion in the republican constitutions denoted not merely a divisively symbolic rejection of the Tamil demand for federalism, but also in substantive terms, the entrenchment of a source of centralising norms for constitutional adjudication and implementation that would foreclose power-sharing options and restrict the scope of devolution in the future.<sup>46</sup>

### *The Sri Lankan Conception of the Unitary State*

While the decisive influence of Sinhala-Buddhist nationalism on the constitutional character and behaviour of the Sri Lankan state can easily be observed, we still need a coherent theoretical account of the link between this dominant nationalism and the unitary state. In seeking to escape its strictures in the search for a constitutional settlement of ethno-religious pluralism, some liberals have downplayed its significance as a legal principle. In one oft-quoted description, it is dismissed as an “impetuous, ill-considered, wholly unnecessary embellishment”.<sup>47</sup> The problem with such a minimalist view is that it cannot account for the ‘everyday plebiscite’<sup>48</sup> of Sinhala-Buddhist nationalism in Sri Lankan politics, and the strength of the latter’s holistic politico-constitutional commitment to the unitary state. Once Sinhala-Buddhist nationalism succeeded in entrenching the unitary state in the republican constitutional order, the principle has also compelled political, administrative and judicial implementation of those constitutions in a unitary spirit.<sup>49</sup> For example, in

---

<sup>43</sup> B. Schonthal, ‘*Buddhism and the Constitution: The Historiography and Postcolonial Politics of Section 6*’ in Welikala (2012): Ch.4.

<sup>44</sup> The Constitution of Sri Lanka (1978): Article 9.

<sup>45</sup> Ibid: Article 2. I have more fully discussed these issues in A. Welikala, ‘*The Sri Lankan Conception of the Unitary State: Theory, Practice and History*’ in A. Amarasingham & D. Bass (Eds.) (forthcoming, 2014) *Post-War Sri Lanka: Problems and Prospects* (London: Hurst & Co).

<sup>46</sup> Ibid.

<sup>47</sup> Jayawickrama (2012): p.105.

<sup>48</sup> E. Renan (1882) *Qu’est-ce Qu’une Nation?* (Paris: Calmann-Levy).

<sup>49</sup> J. Uyangoda, ‘*Travails of State Reform in the Context of Protracted Civil War in Sri Lanka*’ in K. Stokke & J. Uyangoda (Eds.) (2011) *Liberal Peace in Question: Politics of State and Market*

the Supreme Court's pre-enactment review determination of the constitutional amendment introducing provincial devolution, a distinctively Sinhala-Buddhist nationalist interpretation of the unitary principle was transparent in the dissenting judgments.<sup>50</sup>

A different approach to explaining the unitary state is therefore needed, and it is useful here to adopt a comparative approach. I rely on aspects of Neil Walker's work on the unitary conception of the UK constitution to suggest a number of analytical distinctions that are needed, of which, the initial step is to draw an explicit distinction between the *legal* and *political* discourses of unitary order. Considering these two types of discourse separately has a useful theoretical purpose, in that it allows us to distinguish, firstly, between the different types of power associated with each discourse, and secondly, to analyse more sharply the conceptual opposites within each discourse as between unitary and pluralist conceptions of constitutional order.<sup>51</sup>

In the UK legal discourse, unitary order and authority is of the type Walker associates with Neil MacCormick's theory of 'institutional normative order'.<sup>52</sup> It is the purely formal and non-substantive, and therefore flexible, nature of the legal principle of unitarism reflected in the British constitution that makes it compatible with institutional pluralism under devolution, multiculturalism and traditional competitive and pluralist democracy, and which prevents the authoritarianism associated with politically unitary conceptions of order and authority.<sup>53</sup> The Sri Lankan legal discourse of unitary order is rather different, due to the presence of written constitutional provisions that serve not only the classificatory function, but also to reinforce the formal principle with substantive provisions centralising legal

---

*Reform in Sri Lanka* (London: Anthem Press): Ch.2; Q. Ismail (2005) *Abiding by Sri Lanka: On Peace, Place and Postcoloniality* (Minneapolis: Univ. of Minnesota Press): Ch.2.

<sup>50</sup> *In Re the Thirteenth Amendment to the Constitution and the Provincial Councils Bill* (1987) 2 SLR 312. See esp. R. Coomaraswamy (1997) *Ideology and the Constitution: Essays on Constitutional Jurisprudence* (New Delhi: Konark): Ch.7; Welikala (forthcoming, 2014).

<sup>51</sup> N. Walker, 'Beyond the Unitary Conception of the United Kingdom Constitution' in Welikala (2012): Ch.11 at pp.450-452.

<sup>52</sup> N. MacCormick (1999) *Questioning Sovereignty: Law, State and Nation in the European Commonwealth* (Oxford: OUP): Ch.1.

<sup>53</sup> Walker (2012): pp.450, 456-7.

authority.<sup>54</sup> Political unitarism on the other hand, concerns “...de facto political power in all its forms and manifestations and the type of order that may be produced through the operation of that power”.<sup>55</sup> Sinhala-Buddhist nationalism is clearly such a politically unitary discourse which contextualises its argument for a unitary constitutional form of legal authority on the basis of a culturally monist historiography, and which gains and exercises power through an exclusionary form of ethnicised democratic majoritarianism.

In both British and Sri Lankan legal discourse, the conceptual opposite to the unitary state is the federal state (this is to simplify and stylise the formal conceptual opposites).<sup>56</sup> Conceptually, the pure formalism of the UK unitary state only excludes formal federalism, and is thereby able to accommodate a wide diversity of political discourses including an extraordinary degree of territorial devolution, so long as, formally, ultimate authority rests with the UK Parliament. Sri Lankan legal discourse similarly counter-poses federalism as the conceptual opposite of the unitary state, but here, the unitary state is not merely formal, but is also substantive. The scope for pluralist legal discourses within this unitary order are therefore restricted in proportion to the substantive reach of the unitary state provisions of the constitution (the scope of which are not confined to the interpretational possibilities of concrete textual provisions, and may include meta-constitutional meanings).<sup>57</sup>

In political discourse, the “unitary conception of political authority...like its legal counterpart, identifies and/or advocates one dominant centre of political power”,<sup>58</sup> and its conceptual opposites are the various pluralist conceptions: “Pluralism is a broad umbrella covering both any explanatory thesis which accounts for the political order in terms of a diversity of authorities and influences and any normative thesis which advocates a diffusion of power between different groups, mechanisms or sites

---

<sup>54</sup> See e.g., Constitution of Sri Lanka (1978): Articles 2, 3, 4, 30 (1), 31, 33, 35, 43, 44, 45, 46, 47, 54, 75, 76, 85, 86 and 154G (10).

<sup>55</sup> Ibid: pp.450-1.

<sup>56</sup> Ibid: pp.451-2

<sup>57</sup> See the ‘basic structure’ arguments in the *Thirteenth Amendment Case* discussed in Welikala (forthcoming, 2014).

<sup>58</sup> Walker (2012): p.452.

of authority”.<sup>59</sup> Sri Lankan political discourse includes a variety of pluralist discourses, including the Tamil national challenge, other minority claims such as those of the Indian Tamils, Muslims and Christians, and ideologically liberal approaches to federalism.<sup>60</sup> But the comparative difference is that, under the dominant influence of the politically unitary discourse of Sinhala-Buddhist nationalism in the form of an ethnocratic state, the space for pluralist discourses (both explanatory and normative) is commensurately restricted.<sup>61</sup>

We can thus sum up these insights as follows. The unitary state in Sri Lanka’s Sinhala-Buddhist nationalism dominated constitutional discourse (both legal and political) must be understood as both a formal as well as a substantive concept, going beyond its usual function in positivist constitutional law as a formalistic classificatory concept. Its classificatory and descriptive function is important in symbolic terms and as such it finds textual expression in the constitution, but the unitary state is also given substantive legal meaning in provisions of the constitution that centralise legislative, executive and judicial powers. Below (or perhaps above) the legal realm, the political force of the unitary state derives from its linkage to the normative claims with regard to the state order inhering in Sinhala-Buddhist nationalism. The positivist unitary state in its most literal sense, as one in which all power within the territorial state is concentrated in a single, unitary authority, is thus transmuted by the hegemonic monism of Sinhala-Buddhist nationalism in relation to territory, polity and power into both a descriptive assertion about the nature of the state as well as denoting a specific institutional and normative understanding of its structure. This tendency to centralisation is seen both in the antipathy to territorial devolution and in the reproduction of the ancient kingship in modern forms of monarchical presidentialism.<sup>62</sup> By virtue of its historiographically and ethno-religiously contextualised nature through its enmeshment with Sinhala-Buddhist

---

<sup>59</sup> Ibid; J.S. Dryzek & P. Dunleavy (2009) *Theories of the Democratic State* (Basingstoke: Palgrave Macmillan): Ch.2.

<sup>60</sup> See Section 3.2, *infra*.

<sup>61</sup> See Chapter 5, *infra*.

<sup>62</sup> Kemper (1990); A. Abeysekera (2002) *Colors of the Robe: Religion, Identity, and Difference* (Columbia, SC: Univ. of South Carolina Press): Ch.5.

nationalism, the unitary state is thus more deeply resonant than, and its performative meaning extends beyond, mere words on the paper constitution.

*The Historical Fallacy of the Unitary State: The Pre-Colonial Sinhala-Buddhist State Reconsidered*

Sinhala-Buddhist nationalist historiographical arguments typically focus on the encompassing and hierarchical aspects of the pre-colonial monarchical state, with a view to investing the unitary character of the modern nation-state with the substance of historical continuity: “In Sri Lanka, we never had separate states – we only have had Sri Lanka. Therefore, the state has to be unitary.”<sup>63</sup> In denouncing a very limited decentralisation measure introduced by the government in response to Tamil demands in the early 1980s,<sup>64</sup> Siri Perera, Q.C., made the following observation which typifies the Sinhala-Buddhist nationalist *argumentum ad antiquitatem* in terms of asserting a particular historical view of the state and the perceived consequences that are feared if the state is unmoored from that view.

“Since time immemorial this country has had a unitary system of government and the people [have] all along regarded this [as] one country, and [...] a Buddhist country. If these development councils are set up, the Buddhists have great fears not only as to the loss of their rights and privileges as citizens of the land, [but] also for their survival.”<sup>65</sup>

---

<sup>63</sup> An unnamed Buddhist monk cited in I. Frydenlund (2005) *The Sangha and its Relation to the Peace Process in Sri Lanka* (Oslo: PRIO): p.21.

<sup>64</sup> See for a discussion of the District Development Councils Act, No.35 of 1980, R. Edrisinha, M. Gomez, V.T. Thamilmaran & A. Welikala (Eds.) (2008) *Power Sharing in Sri Lanka: Constitutional and Political Documents, 1926-2008* (Colombo: CPA): Ch.14.

<sup>65</sup> Cited in H.J. Whall (1995) *The Right to Self-Determination: The Sri Lankan Tamil National Question* (London: TIC): p.168. For other views in the same vein, see e.g., K.H.J Wijayadasa (2005) *The Betrayal of the Sinhala Nation* (Colombo: Dayawansa Jayakody): Ch.3; Madihe Pannaseeha (1979) *Eelam – The Truth*, being a Memorandum by the Ven. Madihe Pannaseeha Maha Nayaka Thero submitted to the Sansoni Commission (Colombo: Swastika Press); Ministry of State (1983) *Sri Lanka – Who Wants a Separate State?* (Colombo: Dept. of Information); A. Sivanandan & H. Waters, ‘*The Mathew Doctrine*’ (1984) *Race & Class* XXVI:1, 129-138.

In making these claims, Sinhala-Buddhist nationalists either disregard, or actively reject, two important dimensions that require acknowledgement in considering pre-colonial history in the context of contemporary national pluralism. Empirically, the evidence relating to the existence of autonomous Tamil-speaking entities at various historical junctures during the pre-colonial past is ignored. This included an independent Tamil kingdom at Jaffna between the thirteenth and early seventeenth centuries,<sup>66</sup> and less exceptionally but equally importantly, extended periods in which Tamil chieftaincies in the Vanni<sup>67</sup> functioned with relative autonomy from the monarchical centre of the Sinhala-Buddhist state, albeit under the overall suzerainty of the Sinhala king acknowledged in elaborate – but in a material sense, not especially exacting – rituals, customs and practices.

It is this latter aspect of the ancient to early modern history in particular that raises the normative questions of political organisation that are relevant to contemporary constitutional questions. While in these pre-colonial polities the notions of encompassment and hierarchy were central in ideational terms, an ideologically unprejudiced account would also note the complex, fissiparous and asymmetric process of involution between moments of centralisation and decentralisation that was the hallmark of the governmental ethos of the Sinhala-Buddhist kingdoms. As Ronald Inden remarks, this type of South Asian polities comprised of “continually reconstructed and reconstructing agents with both dispersed and unitary moments.”<sup>68</sup> This ‘pulsating’ mode of operation allowed an autonomous sphere at the periphery that is incongruent with the rigid organisational principles that are generally associated with the modern unitary state.<sup>69</sup> De Silva Wijeyeratne’s re-conceptualisation of the nature of the Sinhala-Buddhist nationalist constitutional worldview – one that places an appropriate emphasis on the dynamic relationship

---

<sup>66</sup> S. Pathmanathan (1978) *The Kingdom of Jaffna* (Colombo: Arul M. Rajendra).

<sup>67</sup> S. Arasaratnam, ‘*The Vanniar of North Ceylon: A Study of Feudal Powers and Central Authority*’ (1966) *Ceylon Journal of Historical and Social Studies* 9: pp.101-111; S. Pathmanathan, ‘*Feudal Polity in Medieval Ceylon: An Examination of the Chieftaincies of the Vanni*’ (1972) *Ceylon Journal of Historical and Social Studies* 2: pp.118-130; L.S. Dewaraja, S. Arasaratnam & D.A. Kotelawele, ‘*Administrative Systems: Kandyan and Dutch*’ in K.M. de Silva (Ed.) (1995) *History of Sri Lanka*, Vol. II (Colombo: Sridevi): pp.321-74.

<sup>68</sup> R. Inden (1990) *Imagining India* (London: Blackwell): p.138 and Ch.6, also p.267.

<sup>69</sup> S.J. Tambiah (1976) *World Conqueror and World Renouncer: A Study of Buddhism and Polity in Thailand against a Historical Background* (Cambridge: Cambridge University Press): p.112.

between the modern and the pre-modern in this worldview – is particularly useful here.

“The imaginary of modern Sinhalese Buddhist nationalism is mediated through the horizon of premodern Sinhalese Buddhism, as revealed in much of the Pali and Sinhala *vamsa* literature. However, the myth and the consciousness of the premodern undergo reevaluation through a radical remythologization initiated by the bureaucratic state in the late colonial and postcolonial periods. Such remythologization reveals its dynamic force in the constitutional imaginary of the postcolonial bureaucratic state.”<sup>70</sup>

It is this process that enables Sinhala-Buddhist nationalism to be pre-modern and modern at the same time. It therefore selectively appropriates the centralising and homogenising aspects of the modern nation-state, as well as the hierarchical and encompassing aspects of the pre-colonial state, while discarding the civic and egalitarian character of the former, and the devolutionary and pluralistic nature of the latter. I will discuss plurinational constitutionalism’s critique of the modern nation-state as inadequate to the task of accommodating national pluralism later in this thesis,<sup>71</sup> but here my contention is that we need to rebalance our understanding of the pre-colonial state in contradistinction to Sinhala-Buddhist nationalist historiography, so that we might both dispute these historical claims in favour of the unitary state, and restore the pluralistic aspect of the pre-colonial past to the task of meeting the constitutional challenges of national pluralism in the present. If modern Sinhala-Buddhist nationalism can draw on the pre-colonial state’s centralising aspects in justifying unitary order in the present, then an attempt to re-historicise its pluralistic potential is at least equally methodologically valid, and indeed is normatively superior in that it is meant to historically reinforce the modern values of democratic pluralism (in this case, a specific argument for plurinational democracy).

The type of state that prevailed in the ancient Sinhala-Buddhist kingdoms (until the last such Kingdom of Kandy was ceded to British sovereignty in 1815) has been

---

<sup>70</sup> De Silva Wijeyeratne (2014): p.4.

<sup>71</sup> See Chapters 3-5, *infra*.

extensively theorised in historical anthropology and performance studies, commencing with Stanley Tambiah's seminal articulation of the concept of the 'galactic polity' (also known as the 'mandala-state').<sup>72</sup> This dominant pre-European state form that existed in large parts of South and Southeast Asia in the countries around the Bay of Bengal is the subject of a substantial literature, with robust debates on such matters as its conception of collective identity and territorial space, its economic model, the relative extents of centralisation and decentralisation that it permitted, the nature of its sovereignty and model of kingship, and the role of religion and cosmology. I do not intend to rehearse these debates, except to briefly summarise issues salient to the present discussion as follows.

To the extent categories like 'nation' and 'state' had relevance in this kind of polity, there was a conflation of nation and state in the institution of the righteous monarch, which was seen as the fount of authority and order in the temporal realm, as well as the personification of the collective identity of the people. This paradigm of Theravada Buddhist kingship is encapsulated in the analytical construct known as the 'Asokan Persona'.<sup>73</sup> The legitimacy of this type of political order was secured through the subscription of both rulers and ruled to the religio-moral injunctions of Buddhism (i.e., pre-modernist Buddhism), and political sovereignty was exercised through ritual and performance: "It was the rituals of state that functioned as the symbolic capital which not only held the centre, periphery and semi-periphery of the

---

<sup>72</sup> Tambiah (1976): Ch.7. Other important contributions include G. Tucci (1971) *The Theory and Practice of the Mandala* (London: Rider & Co.); H.L. Seneviratne, 'Religions and Legitimacy of Power in the Kandy Kingdom' in B. Smith (Ed.) (1978b) *Religion and Legitimation of Power in Sri Lanka* (Chambersburg, PA: Anima Books): pp.177-87; H.L. Seneviratne (1978) *The Rituals of the Kandy State* (Cambridge: CUP); S.J. Tambiah (1985) *Culture, Thought, and Social Action* (Cambridge, Mass: Harvard UP): p.258; S.J. Tambiah (1986) *Sri Lanka: Ethnic Fratricide and the Dismantling of Democracy* (Chicago: Chicago UP): p.96; B.L. Smith & H.B. Reynolds (Eds.) (1987) *The City as Sacred Centre: Essays on Six Asian Contexts* (Leiden: E.J. Brill); R. Inden (1990) *Imagining India* (London: Blackwell); J.S. Duncan (1990) *The City as Text: The Politics of Landscape Interpretation in the Kandy Kingdom* (Cambridge: CUP); S.J. Tambiah (1992) *Buddhism Betrayed? Religion, Politics, and Violence in Sri Lanka* (Chicago: Chicago UP): pp.173-175; Roberts (2004a): Chs.3,4,5; G. Obeyesekere, 'Buddhism, Ethnicity and Identity: A Problem in Buddhist History' in M. Deegalle (ed.) (2006) *Buddhism, Conflict and Violence in Modern Sri Lanka* (New York: Routledge): Ch.9; De Silva Wijeyeratne (2014): Ch.4. See also, A. Reid (Ed.) (1997) *The Last Stand of Asian Autonomies: Responses to Modernity in the Diverse States of Southeast Asia and Korea, 1750-1900* (Basingstoke: Macmillan); T. Day (2002) *Fluid Iron: State Formation in Southeast Asia* (Honolulu: Univ. of Hawai'i Press); V. Lieberman (2003) *Strange Parallels: Southeast Asia in Global Context, c.800-1830* (New York: CUP).

<sup>73</sup> Tambiah (1976): Ch.5; Roberts (1994): Ch.3; De Silva Wijeyeratne (2014): Ch.2.

Kandyan polity together, but also provided the *virtual* nature of *galactic sovereignty* with its performative structure.”<sup>74</sup> This notion of sovereignty – variously conceptualised as the ‘rites of *däkum*’,<sup>75</sup> ‘ritual sovereignty’,<sup>76</sup> ‘tributary overlordship’,<sup>77</sup> and ‘virtual sovereignty’<sup>78</sup> – is fundamentally different from the absolute *potestas* of the sovereign ruler that emerged in early modern Europe (and has subsequently informed doctrines of the Westphalian nation-state and global order).<sup>79</sup>

In Tambiah’s conceptualisation, these Buddhist polities were modelled “on the basis of parallelism between the suprahuman macrocosmos and the human microcosmos.”<sup>80</sup> In this way, “The kingdom was a miniature representation of the cosmos, with the palace at the centre being iconic of Mount Meru, the pillar of the universe, and the king, his princes, and ruling chiefs representing the hierarchy” of the pantheon of gods.<sup>81</sup> This mirroring of the cosmos by *mandala*-type states occasioned a particular topographical form for such states, in which power radiated in “a scheme of activation from the centre to the periphery in successive waves.”<sup>82</sup> Such a cosmo-topographical approach to state form has certain implications for conceptions of territory and jurisdiction, implications which assume even greater significance by the apparent distance between them and modernist understandings of those concepts within the paradigm of a unitary nation-state. The fulcrum of the geometric design underlying *mandala*-states is the capital, the location of the *cakkavatti* court, which Tambiah describes as “centre-oriented space (as opposed to bounded space).”<sup>83</sup> This implies that the exemplary importance in prestige accorded to the centre was synecdochical, and was not, as in the modern logic of the unitary state, synonymous in practical terms with territorial or jurisdictional control over the

---

<sup>74</sup> De Silva Wijeyeratne (2014): p.72. Emphasis in original.

<sup>75</sup> G. Obeyesekere (1967) *Land Tenure in Village Ceylon* (Cambridge: CUP): p.216.

<sup>76</sup> C.R. De Silva, ‘Sri Lanka in the Early 16<sup>th</sup> Century: Political Conditions’ in K.M. De Silva (Ed.) (1995) *University of Peradeniya History of Sri Lanka*, Vol.II (Colombo: Sridevi): p.11. See also N. Dirks (1987) *The Hollow Crown: An Ethnohistory of an Indian Kingdom* (New York: CUP).

<sup>77</sup> Roberts (2004a): p.59-63, 75-84.

<sup>78</sup> De Silva Wijeyeratne (2014): pp.69-74.

<sup>79</sup> M. Loughlin (2010) *Foundations of Public Law* (Oxford: OUP): p.184.

<sup>80</sup> Tambiah (1976): p.109.

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*, p.111.

<sup>83</sup> *Ibid.*: p.112; Duncan (1990).

peripheries: “This concept of territory as a variable sphere of influence that diminishes as royal power radiates from a centre is integral to the characterisation of the traditional polity as a *mandala* composed of concentric circles.”<sup>84</sup>

Typically, there were three such concentric circles, representing centre-periphery relations, although there could be more in larger polities. At the centre was the Asokan *cakkavatti* (ruling the capital region directly); then the polities of lesser princes or governors, and in the outer circle were “more or less independent ‘tributary’ polities.”<sup>85</sup> The capital itself was physically ordered according to the *mandala* arrangement, with the royal palace at the centre; and so was each polity in each undulating concentric circle, so that despite differences in size, power and prestige, the lesser unit was a “reproduction and imitation” of the larger.<sup>86</sup> Relations between the units within a *mandala*-type state, and indeed between neighbouring polities organised in a similar way, were constantly changing according to vagaries of political and economic power and battlefield fortunes.<sup>87</sup> Tambiah portrays a vivid image of this type of polity:

“Thus we have before us a galactic picture of a central planet surrounded by differentiated satellites, which are more or less ‘autonomous’ entities held in orbit and within the sphere of influence of the centre. Now if we introduce at the margin other similar competing central principalities and their satellites, we shall be able to appreciate the logic of a system that is a hierarchy of central points continually subject to the dynamics of pulsation and changing spheres of influence.”<sup>88</sup>

---

<sup>84</sup> Ibid.

<sup>85</sup> Ibid. De Silva Wijeyeratne refers to this as ‘semi-periphery’ and ‘periphery’: De Silva Wijeyeratne (2007): p.170. In a Marxist sociological analysis of the ‘Kandyan social formation,’ Newton Gunasinghe seems to have the same distinction in mind when he speaks of ‘core-land’ and ‘peripheral area’: N. Gunasinghe (1990) *Changing Socio-economic Relations in the Kandyan Countryside* (Colombo: SSA): pp.33-35; see also Roberts (2004a): p.40, n.3.

<sup>86</sup> Tambiah (1976): p.113; Duncan (1990); De Silva Wijeyeratne (2007): pp.166-172.

<sup>87</sup> Tambiah (1976): pp.121-131.

<sup>88</sup> Ibid: p.113.

These frequently “expanding and shrinking”<sup>89</sup> organisational arrangements and the ‘pulsating’ process of intra-state and inter-state political relations they framed, mirrors the Buddhist cosmological ethos of constant and perpetual movement between order, fragmentation and reordering. In mundane terms, within the possibilities and constraints of everyday politics, different rulers within these systems made different uses of their ‘potentialities’: “The galactic polity was no effective cybernetic system; it lacked finely fashioned regulative and feedback mechanisms that produced homeostasis and balance.”<sup>90</sup> This therefore is the system that allowed substantial autonomy at the periphery, including the Tamil-speaking periphery in especially the north of the island.<sup>91</sup>

Notwithstanding this, the notion of *Sinhalē* – which was a categorically Sinhalese and Buddhist, and *not* a modern or egalitarian collective consciousness – served as a real and meaningful form of ideational coherence within a state form that did not derive its integrity from the norm of bounded territory.<sup>92</sup> Tamil-speaking residents of the physically remote, autonomous chieftaincies in the northern Vanni region might not have subscribed to the idea of *Sinhalē*, but did acknowledge Sinhala suzerainty by paying homage and tribute (although Tamil-speaking communities in the eastern seaboard of the island did both). But the more important point for present purposes is that the dynamism of the galactic polity allowed for such spatial autonomy at the periphery as a quotidian reality, and with none of the conceptual constraints associated with the centralised, bureaucratised, modern unitary nation-state.

In sum then, the pre-colonial Sinhala-Buddhist state was hierarchical and encompassing in intent, but pulsating, fissiparous and asymmetrical in practice, as ordained by the principles of Buddhist cosmology. This cosmic tension was reflected in the *mandala*-type organisation of the pre-British monarchical polities of Sri Lanka, in which the principles of hierarchy and encompassment reflected in the rituals of Buddhist kingship and in the idea of *Sinhalē* were countervailed, not only

---

<sup>89</sup> Ibid: p.112.

<sup>90</sup> Tambiah (1976): p.123.

<sup>91</sup> Cf. esp. Roberts (2004a): Ch.5.

<sup>92</sup> Ibid: Ch.4. *Sinhalē* is one of the terms for the Sinhala-Buddhist collective consciousness that Roberts argues approximated to a state-nationalism in Kandyan kingdom.

by the decentralised structures and practices of government dictated by the galactic logic of the *mandala*, but by practical constraints of mobility, communications, geography and *realpolitik*. This not only makes for a radical contrast between the pre-colonial state form and post-colonial ethnocentric nation-state, but also negates the alleged provenance of the unitary state in the pre-colonial history of the island. The resulting position is one in which Sinhala-Buddhist nationalism is able to enforce its commitment to the unitary state and attendant refusal to countenance Tamil autonomy through the power and populist politics of democratic majoritarianism, but it cannot legitimate its historiographical justifications in favour of the unitary state through deliberative historiographical arguments.

On the other hand, notwithstanding the operational reality of peripheral autonomy, what also emerges from this picture is the predominant influence of the Sinhala-Buddhists throughout the history of the island. The Tamils can demonstrate their presence and their *de facto* autonomy (and for a brief period even an independent Jaffna kingdom), but in the larger scheme of this particular island story, their situation cannot be compared to the strengths of the historical and territorial claims that sub-state nations like the Scots, the Catalans, or the Quebecois are able to plausibly present against their host states.<sup>93</sup> This is a crucial difference between the Western plurinational states and Sri Lanka, which must be at the heart of any realistic attempt at conceptualising a plurinational constitutional dispensation for Sri Lanka. It is thus the critical historical fact that informs both the normative foundations and the organisational principles for a Sri Lankan plurinational constitution that I propose, respectively, in Chapters 5 and 6, which foreground a norm of ‘asymmetric pluralism’ rather than equality between the majority and minority ethnic nations.

---

<sup>93</sup> See further, Section 3.1 and Chapter 4, *infra*.

## 2.2 The Jacobin Variant

The unitary state is also defended by a position in the constitutional reform debate that is opposed to Sinhala-Buddhist chauvinism and is instead grounded in the political theory and philosophy of modernism, secularism, and civic nationalism, albeit with a strong emphasis on state sovereignty, non-intervention in the domestic affairs of states, and 'Third World' solidarity. For our purposes, this can be described as a 'Jacobin' position because its view of the republican nation-state elides the nation and the state in a unitary discourse of national identity and institutional form (notwithstanding commitments to devolution within the unitary state). The Jacobin variant builds upon the conventional discourse of post-colonial nation-building to promote a modern Sri Lankan political community that is synonymous with the Sri Lankan state. It concedes that in a multi-ethnic, multi-religious polity, some concessions may have to be made to cultural particularity. Thus the traditional Jacobin commitment to strict state ethnic and religious neutrality is mitigated by an openness to policies of multiculturalism, official multilingualism, affirmative action, and even a measure of territorial devolution, to the extent devolution is consistent with the centralisation of political power and legal authority in the unitary state and the mono-national identity of the state. Exponents of this view would therefore support the structural framework of the current Sri Lankan constitution together with its level of provincial devolution, while critiquing the ethnocratisation of the state by Sinhala-Buddhist nationalists. Its attitude to the competing claims of ethno-cultural pluralism moreover is governed by structural realism both in terms of internal political management as well as external relations, rather than by any strong *a priori* normative commitments to the recognition of pluralism. As Dayan Jayatilleka notes:

Sovereignty cannot be successfully defended by a state acting as a mono-ethnic straightjacket on the country's stubbornly diverse, irreducible and colliding identities. It is best defended by a Sri Lankan state which represents all its peoples, acts as neutral umpire providing and guaranteeing adequate space for all ethnicities on the island. Sovereignty is secured by a Sri Lankan identity which accommodates all the country's communities, paving the way

for a broadly shared sense of a multi-ethnic yet single Sri Lankan nationhood.<sup>94</sup>

Quite clearly therefore, this vision of the nation-state accommodates pluralism to the extent that minority claims do not seriously challenge the overarching unitary conception of state, nation, and sovereignty. Its accommodative capacity categorically does not extend to the recognition of any sub-state *national* claims. Furthermore, Jacobins would justify the use of force to suppress such sub-state national movements, a fundamental threat to unitary order, as consistent with their conception of the sovereign state. I will return to the critique of all these orthodox nostrums of the nation-state in ensuing chapters.

### **3. The Federal State Perspective**

Opposing the unitary conception of the state in Sri Lankan constitutional debates are the various federalist discourses, of which by far the most prominent is the claim to federal autonomy made by the sub-state nation of Sri Lankan Tamils. Federalism is also advocated by liberals, as a means of meeting the Tamil demand for territorial autonomy as well as on broader non-ethnic rationales such as democratisation. These positions are discussed below.

#### **3.1 The Sub-State Tamil National Challenge**

In constitutional debates prior to independence, Tamil political leaders were focused on communal representation. Neither federal autonomy nor a nationality claim was made in this period, although both were asserted very soon after independence, and have thenceforth remained the basis on which Tamils seek to share power in the Sri Lankan state. Tamil nationalist scholars have retrospectively portrayed the growth of Tamil collective consciousness as an incremental process from the mid-nineteenth

---

<sup>94</sup> D. Jayatileka (2013) *Long War, Cold Peace: Conflict and Crisis in Sri Lanka* (Colombo: Vijitha Yapa): p.485.

century onwards in response to changing political and constitutional challenges, with the nationality claim as the culmination of that progression. The deeper theoretical implications of these accounts will be further discussed in Chapter 4, but here I critically discuss the central politico-legal claims of Tamil nationalism. The basic tenets of Tamil nationalism have remained generally consistent since the late 1940s, and as embodied in the statement subscribed to by a large number of Tamil nationalist parties and militant groups known as the ‘Thimpu Principles’,<sup>95</sup> there are three such fundamental claims: that the Sri Lankan Tamils constitute a nation, with a traditional homeland, on the basis of which they are entitled to the right to self-determination. In what follows, these three aspects are considered in closer detail.

### *The Claim to Nationhood*

The political articulation of Tamil ethnic consciousness as a distinct nation, together with the territorial and self-determination claims, occurred with the formation of the Federal Party in 1949.<sup>96</sup> The first extended exposition of the Federal Party’s conception of the Tamil nation and the means of its constitutional expression were set out in the resolutions of its first convention in 1951. Amongst invocations of history, culture and a desire for self-government in these resolutions, the defining characteristic of Tamil nationhood was the Tamil language, embodied in the formulation ‘Tamil-speaking people of Ceylon’ which sought to encapsulate at least three different groups: the Sri Lankan Tamils, the Muslims and the Indian Tamils;<sup>97</sup> discounting for the moment the intra-community distinctions within the category of Sri Lankan Tamils as between ‘Northern Tamils’ and ‘Eastern Tamils’<sup>98</sup> or the complex spatial relationship between the residents of the Jaffna Peninsula as the

---

<sup>95</sup> Reproduced and discussed in Edrisinha et al (2008): Ch.15.

<sup>96</sup> E.M.V. Naganathan & V. Navaratnam (Eds.), ‘*Presidential Address of Mr S.J.V. Chelvanayagam, K.C., Member of Parliament, Ceylon, delivered at The Inaugural and First Business Meeting of The Ilankai Tamil Arasu Kadchi (The Federal Freedom Party of the Tamil-speaking People of Ceylon) on 18<sup>th</sup> December 1949 at the G.C.S.U. Hall, Colombo*’ (1949) ITAK Booklet Series No.1.

<sup>97</sup> Resolution No.3, in Edrisinha et al (2008): p.213.

<sup>98</sup> See esp. D. Hellmann-Rajanayagam (1990b) ‘*The Concept of a ‘Tamil Homeland’ in Sri Lanka – Its Meaning and Development*’, *South Asia* 13(2): p.79.

political, cultural and historical heartland of Sri Lankan Tamil identity, and Tamils elsewhere in the island.<sup>99</sup>

While the purpose of adopting this formulation was to unite the major non-Sinhala communities around a platform of resistance to imminent Sinhala majoritarian hegemony in the post-independence era, the notion that the three broad groups of Tamil-speaking people could be conceived in terms of an inclusive linguistic homogeneity, and even more so with the high degree of communal unity implied in the idea of a distinct nation, was and remains wishful at best.<sup>100</sup> Even by that time, the Muslim community (itself a heterogeneous category with a number of internal sub-divisions<sup>101</sup>), while mostly Tamil-speaking, regarded themselves as an entity separate from the Sri Lankan Tamils, and this is a schism that has only widened subsequently to the extent that some commentators even regard the Muslims as having a separate nationalism.<sup>102</sup> The Indian Tamil community, which comprised indentured labourers brought down from southern India by British companies to work on tea and coffee plantations from the nineteenth century onwards, was almost entirely located in the central hill country at the time. Their historical and cultural links with the Sri Lankan Tamils were tenuous, and crucially, they had no territorial contiguity with the northern and eastern parts of the island.<sup>103</sup>

---

<sup>99</sup> Wilson (2000): Ch.2. Following the comprehensive military defeat of the armed secessionist movement within the island in 2009, an increasingly prominent arena of developments is the transnational space within which the Tamil diaspora engages in nationalist activism. This dimension, while important, is beyond the scope of this thesis. See L. Vimalarajah & R. Cheran (2012) *Empowering Diasporas: The Dynamics of Post-War Transnational Tamil Politics*, Berghof Occasional Paper No.31 (Berlin: Berghof Foundation).

<sup>100</sup> For a trenchant critique of the Federal Party's notion of a Tamil-speaking people, see H.L. de Silva (2008) *Sri Lanka A Nation in Conflict: Threats to Sovereignty, Territorial Integrity and Democratic Governance and Peace* (Colombo: Visidunu Prakashakayo): pp.331-334.

<sup>101</sup> A.R.M. Imtiyaz & S. R.H. Hoole (2011) 'Some Critical Notes on the Non-Tamil Identity of the Muslims of Sri Lanka, and on Tamil-Muslim Relations', *South Asia: Journal of South Asian Studies* 34(2): p.208; D.B. McGilvray & M. Raheem (2007) 'Muslims Perspectives on the Sri Lankan Conflict', Policy Studies 41 (Washington: East-West Centre); D.B. McGilvray (2008) *Crucible of Conflict: Tamil and Muslim Society in the East Coast of Sri Lanka* (Durham, NC: Duke UP).

<sup>102</sup> Even though politically the Muslims (Sri Lankan Moors) certainly assert a distinctive collective identity, which sometimes includes territorial claims, they have not, (except on one occasion in the 'Olivil Declaration' of 2003, the extent of support for which is doubtful at best), asserted a claim that the Muslims of Sri Lanka constituted a separate nation. See Edrisinha et al (2008): Ch.31. However, some scholars have recently spoken of a Muslim *nationalism*, if not a nation. See Z. Ahmad (2012) 'Contours of Muslim Nationalism in Sri Lanka', *South Asian History and Culture* 3(2): p.269.

<sup>103</sup> P. Devaraj, 'Indian Tamils of Sri Lanka – Identity Stabilisation and Inter-Ethnic Interaction' in Social Scientists Association (1984): pp.146-165. A separate nationalism in respect of this group is

In short, the Federal Party's attempt to expand the membership of the Tamil nation beyond the core Jaffna Tamil identity through the adoption of language as the criterion of inclusion was politically problematic from the outset because the intended constituent sub-groups would not fully subscribe to, or be made to fit within, an 'objectively' defined linguistic community. Indeed, in the first resolution passed at the first national convention of the Federal Party in 1951, this is apparent from its language itself. The explication of 'Tamil-speaking people' in terms of its historical and territorial dimensions seemed to exemplify the situation of the Sri Lankan Tamils of the north and east, rather than that of either the Muslims or the Indian Tamils. Even though Tamil nationalists continue to loosely use the term 'Tamil-speaking people' (or the pluralised 'Tamil-speaking peoples'), this is a formulation that was both empirically untenable and conceptually incoherent, and in the context of the more assertive articulation of the Muslim identity in particular, one that makes little sense nowadays. As Eric Hobsbawm has pointed out, the attempt to set out an "'objective' definition" of the nation in Resolution No.1, while "unusually convenient for propagandist and programmatic, as distinct from descriptive purposes", was "fuzzy, shifting and ambiguous, and as useless for the purposes of the traveller's orientation as cloud-shapes are compared to landmarks."<sup>104</sup>

The conceptual contradictions of the Federal Party's formulation were the result of a political and electoral calculation aimed at encompassing as large a demographic

---

also asserted in some quarters, but this is extremely tenuous: A. Lawrence (2011) *Malayaha Tamils: Power-sharing and Local Democracy in Sri Lanka* (Colombo: SSA): Chs.3,4,8.

<sup>104</sup> E. Hobsbawm (1990) *Nations and Nationalism since 1780: Programme, Myth, Reality* (Cambridge: CUP): pp.6-7 at p.6. Hobsbawm's criticism of Resolution No.1 is an illustration of his broader argument about the futility of attempting objective criteria for defining the concept of the nation, but as he also concedes, "patently propagandist manifestos should not be scrutinised as though they were contributions to the social sciences": p.7. On the whole, however, Hobsbawm's excessively critical view says as much about the limitations of his own analytical framework as about the Federal Party's formulation, because it seems to be a textual critique of a section of Resolution No.1 based on Marxian theoretical assumptions, and without the fullest possible regard to either the Ceylonese political context in and to which the formulation was addressed, or indeed the more culturally contextualised scholarship that has developed in relation to South Asian nationalisms subsequently. The principal Sri Lankan authorities on whom he relies upon for corroboration are likewise Marxist scholars. More broadly, it is in any case instructive to keep Rogers Brubaker's observation that "'Nation' is a category of 'practice', not (in the first instance) a category of analysis" in mind: R. Brubaker (1996) *Nationalism Reframed: Nationhood and the National Question in the New Europe* (Cambridge: CUP): p.10.

group as possible, especially within the Northern and Eastern Provinces claimed as the territorial unit for federal autonomy where Tamil-speakers (i.e., Tamils as well as Muslims) constituted a majority. In the Eastern Province, Tamil-speakers would be a majority only if the Muslims associated themselves with the Tamil nation. In the Northern Province, there were substantial Muslim communities interspersed amongst Sri Lankan Tamils. If therefore the Muslims excluded themselves from the Tamil nation, there would be major consequences for both the territorial extent and the territorial contiguity of the region claimed as a Tamil traditional homeland.

While the broader conception of a Tamil-speaking people might not thus have been an entirely coherent proposition, the claims articulated by the Federal Party with regard to history, territory and ethno-linguistic culture as constituting the foundations of a distinct Tamil nation, have found clear and consistent resonance amongst the core group to whom these arguments are addressed: the Sri Lankan Tamils. This is evidenced in repeated electoral affirmations of these basic principles in every general election since 1956, including, it is important to note, in all state-wide, provincial and local government elections which have been held since the conclusion of the war in May 2009 with the devastating military defeat of the armed secessionist movement.

For present purposes, what is important to note is that the essential elements of Tamil nationalist ideology have found demonstrable support within the in-group, in such a way as to amount credibly to a sub-state national challenge, over and beyond a claim for minority rights.<sup>105</sup> This has analytical, normative and structural implications for the constitutional theory and law of the Sri Lankan state. Analytically, the Tamil sub-state challenge calls for the acknowledgement of a sociological reality of national pluralism within the island polity. Moreover, in the light of the preceding discussion on Sinhala-Buddhist nationalism and the unitary state, it shows that the present Sri Lankan constitutional order is inadequate to the tasks required of it in a plural

---

<sup>105</sup> Tierney (2006): p.4, even though the Tamil claim to a distinct nationhood may not fit entirely with theoretical frameworks combining objective and subjective elements worked out for Western sub-state nations: see Tierney: pp.32-44. This is primarily because Western sub-state nations are projected as civic nationalisms, whereas Tamil nationalism is an ethnic nationalism. In Chapter 4, *infra*, I contend however that the challenge of the civic-ethnic dichotomy is not insurmountable.

democratic society. Beyond practical policy considerations of stability and peace, the anomalous relationship between the sociological character of the polity and the constitutional form of the state in turn raises fundamental normative questions of democracy and pluralism as well as questions of alternative constitutional structures.<sup>106</sup>

### *The Claim to Territory*

Among all the claims associated with the Tamil sub-state national challenge, none has caused greater controversy or attracted more virulent resistance than the claim to a ‘Tamil traditional homeland’ in the north and east of the island. The opposition to the territorial claim concerns both the historiographical arguments adduced in its favour as well as its purported physical boundaries, and extends beyond predictable objections from Sinhala-Buddhist nationalists to those who see in it the makings of an ethnic enclave, and as such, an anti-modern threat to the cohesion of the Sri Lankan nation-state.<sup>107</sup>

Intertwined with the territorial claim is a particularly disputatious debate about the demography of the north and especially the east. One of the original planks of the Federal Party’s political programme was the opposition to Sinhalese ‘colonisation’ of the east through state-aided programmes of agricultural resettlement, on the grounds that this served to alter the established demographic pattern of the area claimed as part of the traditional homeland to the detriment of Tamil-speaking people. Tamil nationalists have seen in colonisation an insidious attempt to consolidate Sinhala-Buddhist hegemony over the whole island by demographic engineering of the north and east so as to render Tamils a minority in Tamil areas as well. Considerable credence can be attached to this claim after the watershed of 1956 when colonisation became a Sinhala-Buddhist nationalist ideological issue. It is less clear, however, whether such ideological motivations formed part of the rationales for the colonisation policy at its inception in the early twentieth century by the British

---

<sup>106</sup> These issues will be dealt with in Chapters 5 and 6, *infra*.

<sup>107</sup> For e.g., see de Silva (2008); Jayatilleka (2013).

colonial administration, and later by Ceylonese politicians and civil servants under the Donoughmore dispensation.<sup>108</sup> As originally conceived, colonisation was meant to develop sparsely populated agricultural lands, and by resettling Sinhala peasants in those areas, to ease the pressure for agricultural land in the southwest and central areas.<sup>109</sup> For (Sinhalese) critics of the homeland argument who stress the economic imperatives of land settlement, population redistribution and agricultural production as the material basis of the colonisation policy, such as the historian K.M. de Silva and the geographer G.H. Peiris, it is a clear case of Tamil nationalist myth-making based on spurious historical authorities and manipulated demographic statistics.<sup>110</sup>

I will return to the historiographical debates concerning competing conceptions of territoriality among the Sinhalese and the Tamils in the pre-British era in Chapter 5 at some length, because these ideas inform ways in which contemporary constitutional law and theory can respond to the challenges of national pluralism in the present. In this section, the focus is on how the territorial claim was articulated (and contested) in the post-independence dynamics of Tamil nationalism, although we need to look slightly further to the debates over communal and territorial representation during the colonial era in order to fully understand the origins of what became a territorial claim on behalf of a distinct nation. In this, there are two facets to the issue that require attention: on the one hand, what is it that Tamil nationalists mean by the concept of a homeland when they deploy the phrase ‘Tamil traditional homeland’ (or its cognate variants); and on the other, what are the physical boundaries of this homeland?

---

<sup>108</sup> Roberts (2004b): pp.106-108; Hellmann-Rajanayagam (1990b): p.95.

<sup>109</sup> Hellmann-Rajanayagam (1990b): pp.93-95, 103-106; C. Manogaran (1987) *Ethnic Conflict and Reconciliation in Sri Lanka* (Honolulu: Univ. of Hawai'i Press): Ch.3; M. Moore (1985) *State and Peasant Politics in Sri Lanka* (Cambridge: CUP); P. Peebles (1990) ‘Colonisation and Ethnic Conflict in the Dry Zone of Sri Lanka’, *Journal of Asian Studies* 49(1): p.30; A. Shastri (1990) ‘The Material Basis for Separatism: The Tamil Eelam Movement in Sri Lanka’, *Journal of Asian Studies* 49(1): p.56.

<sup>110</sup> K.M. de Silva (2013) *The ‘Traditional Homelands’ of the Tamils* (3<sup>rd</sup> Rev. Ed.) (Kandy: ICES); G.H. Peiris, ‘An Appraisal of the Concept of a Traditional Homeland in Sri Lanka’ (1991) *Ethnic Studies Report* IX:1. Roberts notes that Wilson (2000) “simply ignores” the serious critiques presented by de Silva and Peiris: M. Roberts, ‘Narrating Tamil Nationalism: Subjectivities and Issues’ (2004b) *South Asia: Journal of South Asian Studies* 17(1): pp.87-108 at p.106. See, however, a detailed response to de Silva and Peiris in Hellmann-Rajanayagam (1990b): pp.83-88. The colonisation issue is of course is dealt with extensively elsewhere: Moore (1985); Shastri (1990); Peebles (1990); Manogaran (1987).

Dagmar Hellmann-Rajayanagam, who notes that the term ‘homeland’ is “used loosely and is nowhere defined in the literature”,<sup>111</sup> dates its occurrence in English language discourse to legislative debates and memoranda of the 1930s. She suggests that it is an English “translation of a term widely used in the Tamil writings” which literally means “Regions where Tamil-speaking people have traditionally (or from generation to generation) lived.”<sup>112</sup> From the evidence Hellmann-Rajanayagam and others have offered, it seems therefore that the idea of a traditional homeland, even though its exact boundaries were amorphous, was a politically resonant and commonly accepted notion among Tamils, and critically, one that preceded the Federal Party’s presentation of Tamil politico-constitutional claims in terms of a distinct nation from 1949 onwards.<sup>113</sup> Moreover, Sinhalese opposition to a Tamil traditional homeland appears to have intensified only once it was asserted as part of a Tamil *national* claim. As Hellmann-Rajanayagam has pointed out, in the debates over territorial and communal representation in the early twentieth century, the notion that the north and east were not merely areas where Tamil-speakers were a majority, but were ‘Tamil *homelands*,’ seems to have been assumed by Tamils and Sinhalese alike. Indeed, as she further points out, Sinhalese leaders (and their British constitutional advisors like Sir Ivor Jennings<sup>114</sup>) met the Tamil demands for communal representation as an institutional protection against Sinhalese dominance

---

<sup>111</sup> Hellmann-Rajanayagam (1990b): p.81.

<sup>112</sup> Ibid: p.82.

<sup>113</sup> See also generally A.R. Arudpragasam (1996) *The Traditional Homeland of the Tamils* (Colombo: Kanal Publications). While such an approach to territoriality may be consistent with Tamil views of history, territory and space captured in the notion of *Tamilakam* and similar concepts, it often makes Tamil consciousness exceedingly difficult to fit within modernist categories of the nation and the state: D. Hellmann-Rajanayagam (1994) ‘*Tamils and the Meaning of History*’, *Contemporary South Asia* 3(1): p.3; S. Ramaswamy (1997) *Passions of the Tongue: Language Devotion in Tamil India, 1891-1970* (Berkeley: Univ. of California Press); S. Ramaswamy (1994) ‘*The Nation, the Region, and the Adventures of a Tamil Hero*’, *Contributions to Indian Sociology* 24: p.295; S. Ramaswamy (1998) ‘*Language of the People in the World of the Gods: Ideologies of Tamil before the Nation*’, *Journal of Asian Studies* 57(1): p.66; S. Ramaswamy (2000) ‘*History at Land’s End: Lemuria in Tamil Spatial Fables*’, *Journal of Asian Studies* 59(3): p.575.

<sup>114</sup> See W.I. Jennings (1953) *The Constitution of Ceylon* (3<sup>rd</sup> Ed.) (Oxford: OUP): pp.6-8. See also A. Welikala, ‘*‘Specialist in Omniscience’? Nationalism, Constitutionalism and Sir Ivor Jennings’ Engagement with Ceylon*’ in H. Kumarasingham (Ed.) (forthcoming, 2015) *Constitution Making in Asia: Decolonisation and State-Building in the Aftermath of the British Empire* (London: Routledge).

with the argument that they would obtain sufficient representation under territorial democracy because of their preponderance in the north and east.<sup>115</sup>

Notwithstanding its political resonance among Tamils, however, the absence of precisely demarcated boundaries to the homeland has created difficulties for the territorial claim understood in terms of a legal and constitutional proposition. This is evidenced in shifts in the way in which the Federal Party and its successors in the leadership of Tamil nationalism have presented the territorial claim. In its founding manifesto in 1949, the Federal Party merely stated, “The Eelam Tamils are a nation of their own, they have a homeland of their own.”<sup>116</sup> In its First National Convention in 1951, Resolution No.1, while asserting Tamils’ “territorial habitation of definite areas which constitute over one-third of this Island,” nevertheless called for “a plebiscite to determine the boundaries of the linguistic states” of the future federation of Ceylon.<sup>117</sup> The Federal Party was more specific in the Memorandum and Model Constitution which it submitted to the Constituent Assembly in 1971, then drafting what became the first republican constitution of Sri Lanka in 1972. In this document, which set out a federal scheme for the putative republican constitution, the Federal Party proposed that, “The Northern Province and the Trincomalee and Batticaloa Districts of the Eastern Province will form one Unit. This will be a Tamil majority State. The Amparai District [in the southern end of the Eastern Province] will form a Muslim majority State.”<sup>118</sup> In the Vaddukoddai Resolution of 1976, which registered Tamil nationalism’s paradigm shift from federalism to secessionism, the Tamil United Liberation Front (TULF) identified the Northern and Eastern Provinces as the territory of the future state of Tamil Eelam. Since then, Tamil nationalists have generally put forward the Northern and Eastern Provinces as the territorial extent of the Tamil homeland, although more maximalist claims have been made both as to the territorial extent of the Tamil homeland in the north and east, as well as the argument that at some points in the ancient period, Tamil kings ruled the whole of the island.<sup>119</sup>

---

<sup>115</sup> Hellmann-Rajanayagam (1990b): p.83.

<sup>116</sup> Ibid: p.82.

<sup>117</sup> Edrisinha et al (2008): p.212.

<sup>118</sup> Ibid: p.140.

<sup>119</sup> See extracts of two such statements cited in Peiris (1991): p.14. For other statements concerning the territorial claim at various historical moments, see Edrisinha et al (2008): Chs.16,17,27.

However, while it is generally conceded by all except the most recalcitrant Sinhala-Buddhist nationalists that the Jaffna Peninsula and the northern parts of the Northern Province are areas of historic Tamil habitation, it is the Tamil claim to historic habitation in the rest of the area comprising the Northern and Eastern Provinces that has been constantly challenged.<sup>120</sup> To be more specific, the territorial disputes have been concentrated on the areas to the interior of the Eastern littoral and the interior areas between the North-Central Province and the southern end of the Northern Province. This vast area, the whole of which was once known as the Vanni, was until the 1930s universally regarded as a “wild country...covered in jungle, full of wild animals...and malaria-infested swamps.”<sup>121</sup> Notwithstanding this, however, the transition from communal to territorial representation brought home to the Tamils the realisation that, rather than being one of the two founding races in the island as they had hitherto regarded themselves, they too were now a minority in a Sinhala-majority polity.<sup>122</sup> This realisation strengthened the need to preserve the Tamil homeland and to prevent incursions into it, which was the context in which colonisation, even before it became invested with a Sinhala-Buddhist ideological mission to negate Tamil claims to the territory, came to be so strongly resisted. Even though therefore large parts of the area claimed as a homeland were sparsely populated and undeveloped, spatial possession of such a homeland assumed fundamental significance to the Tamil identity and sense of dignity.<sup>123</sup>

While historiographical arguments have been used to contextualise and vindicate a Tamil homeland tradition within the island, territorial control over the Tamil areas has assumed an added measure of political significance and immediacy in the context of the ascendancy of Sinhala-Buddhist nationalist control over the Sri Lankan state, and the consequential deterioration of ethnic relations and descent into armed conflict. Territorial control in this sense is seen as important to ensuring the physical security of Tamils, in addition to the preservation of Tamil language, culture and

---

<sup>120</sup> Hellmann-Rajanayagam (1990b): p.82.

<sup>121</sup> Ibid: p.93,95; Roberts (2004b): pp.102-108.

<sup>122</sup> See further, Chapter 4, *infra*.

<sup>123</sup> Hellmann-Rajanayagam (1990b): p.97.

national consciousness. The constitutional forms that have been advocated since independence for ensuring Tamil control over the Tamil homeland have fallen broadly into two types: either federal-type autonomy within a united Ceylon / Sri Lanka, or a separate state, but at their heart is the assertion of the legal right to self-determination for the Tamil sub-state nation within its territorial homeland.

### *The Claim to Self-Determination*

If the politico-historical claims of Sri Lankan Tamil nationalism with regard to nationhood and territory are both contestable and contested, the legal claim made on those bases to the right to self-determination is no less heavily contested. However, the conceptual framework of the claim is relatively straightforward, being articulated in conventional international law terms in the dominant narrative of Tamil nationalism. While the liberal discourse of international law characterises contemporary Tamil nationalist ideology, during the 1970s and 80s, virtually all Tamil militant groups that had superseded the Tamil parliamentary parties in pursuing an armed struggle against the state closely associated themselves with various strands of Marxist thought. In this period therefore we see the concept of self-determination expressed in terms of socialist doctrine: articulating the Tamil national question as the Tamil social formation's right to self-determination and secession, due to intolerable oppression by the chauvinistic Sinhala nation within the bourgeois unitary state, consistent with the class struggle and proletarian internationalism within the theoretical framework of historical materialism.<sup>124</sup>

The principle of self-determination has been at the heart of Tamil nationalism in both its federalist and secessionist forms. It was invoked by the Federal Party from the inception as the normative foundation for federal autonomy, and once the transformation took place to a secessionist position in the 1970s, self-determination became all the more relevant to the way in which the central collective right of the Tamil nation was expressed. This transformation originated in the complete rejection

---

<sup>124</sup> A. Balasingham (1983) *Liberation Tigers and the Tamil Eelam Struggle* (Political Committee of the LTTE).

of the Federal Party's constitutional proposals by the Constituent Assembly which drafted the first republican constitution of 1972.<sup>125</sup> In the Amirthalingam Trial-at-Bar in 1976 an innovative constitutional argument, which sought to question the very validity of the 1972 Constitution was presented on behalf of the defendant, Appapillai Amirthalingam, a Tamil nationalist politician. The 1972 Constitution had been enacted by recourse to an extra-constitutional legal revolution so as to demonstrate the autochthonous nature of the new republic.<sup>126</sup> As part of this argument, it was submitted that,

“...once there is a break in legal continuity the sovereignties of the inhabitants of the Island until then under eclipse, so to speak, appear once again. Hence the sovereignty of the Tamil Nation which was ethnically, geographically and linguistically separately identifiable and distinct, revived.”<sup>127</sup>

This argument about a restoration and reconstitution of a dormant Tamil sovereignty had also been made in the historic Vaddukodai Resolution a few months earlier.<sup>128</sup> As Helena J. Whall has described it, what was being sought was a revival or restoration of

“...the status of which they were forcibly deprived when the Tamil kingdom was first occupied by colonial forces in the early seventeenth century. Thus, the theoretical basis upon which the Tamils assert their right to self-determination, is that when the legal ties with the United Kingdom were severed, both the Tamil nation and the Sinhalese nation, should have their sovereign rights restored.”<sup>129</sup>

Predictably, such arguments did not find favour with Sri Lankan courts, and since the early 1990s, Tamil nationalists have articulated the self-determination claim in more

---

<sup>125</sup> Edrisinha et al (2008): Ch.11.

<sup>126</sup> L.J.M. Cooray (1971) *Reflections on the Constitution and the Constituent Assembly* (Colombo: Hansa Publishers): Ch.VIII; D.C. Jayasuriya (1982) *Mechanics of Constitutional Change* (Colombo: Asian Pathfinder Publishers): Chs.2,3.

<sup>127</sup> Edrisinha et al (2008): p.268.

<sup>128</sup> Ibid: p.256.

<sup>129</sup> Whall (1995): p.165.

orthodox international law terms. This proceeds on the assumption that international law guarantees to ‘all peoples’ the right to self-determination, and although it is conceded that this does not extend as of right to ethnic minorities within independent states, reliance is placed on the development of the distinction between the internal and external limbs of the principle of self-determination to assert that the denial of internal self-determination would trigger a right to external self-determination.<sup>130</sup> Within this framework, the argument that Tamil nationalists seek to advance is that at first instance, international law entitles the Tamil nation to internal constitutional guarantees of democratic self-government and meaningful political participation within the host-state. The Sri Lankan state has not fulfilled these requirements in its internal constitutional arrangements so far, and if this denial of democratic aspirations continues, they hold that the Tamil nation is imminently entitled to exercise the option of external self-determination.<sup>131</sup>

This was the framework within which the LTTE agreed with the government to the set of principles embodied in the Oslo Communiqué in December 2002 during the peace process of 2002-2006, which set out the following basis for further constitutional negotiations:

“...the parties agreed to explore a solution founded on the principle of internal self-determination in areas of historical habitation of the Tamil-speaking people, based on a federal structure within a united Sri Lanka.”<sup>132</sup>

Following the collapse of the peace process and the LTTE’s defeat in the ensuing final phase of the war, the leadership of Tamil nationalism has devolved back onto the Tamil parliamentary parties, many of which function under the umbrella of the Tamil National Alliance (TNA), and within which the Federal Party is the dominant party. The TNA has repeatedly reaffirmed the basic claims of nationhood, homeland

---

<sup>130</sup> A. Welikala, ‘*The Right to Internal Self-Determination in International Law*’ in Edrisinha & Welikala (2008): Ch.VIII.

<sup>131</sup> Whall (1995): pp.123-124.

<sup>132</sup> Edrisinha et al (2008): p.642; see also A. Balasingham (2004) *War and Peace: Armed Struggle and Peace Efforts of Liberation Tigers* (London: Fairmax Publishing): pp.400-8.

and self-determination, albeit within the framework of a united state in line with the principles of the Oslo Communiqué.<sup>133</sup>

### 3.2 The Liberal Variant

The liberal variant of the federalist perspective on the Sri Lankan state shares much in common with the Jacobins in relation to the normative precepts that underpin the modern nation-state – chief among them the preference for demos over ethnos – although they reject the centralisation immanent in the unitary state on both democratic and pluralist grounds. They would typically subscribe to the classical liberal views on consent and popular sovereignty as constitutive of both the nation as a political community of shared values, and the state as a contractarian instrument of self-government. The commitment to federalism as an institutional form of the state stems from this liberal ideal of the relationship between the political community and government, rather than as an institutional response to the claims of ethnic minorities per se. Thus Chanaka Amaratunga advocated a federal constitution for Sri Lanka, “not so much as a means of resolution of the Tamil problem / ethnic conflict but for its intrinsic merits and as a means of strengthening the liberal democratic process in Sri Lanka.”<sup>134</sup> The intrinsic merits he speaks of are the orthodox liberal propositions of the constitutional entrenchment of individual rights and the division and sharing of sovereignty. Moreover, Amaratunga argues that,

“...while the rights of all individuals including those of minority ethnic groups should be respected, the principal motivation for any constitutional arrangement should *not* be the political promotion of ethnic consciousness but *rather its diminution* by the creation of a truly free and individualist political order.”<sup>135</sup>

---

<sup>133</sup> See R. Sampanthan, ‘The Ilankai Tamil Arasu Katchi (*Federal Party*) and the Post-Independence Politics of Ethnic Pluralism: Tamil Nationalism Before and After the Republic’ in Welikala (2012): Ch.24.

<sup>134</sup> C. Amaratunga, ‘Checking Democracy: A Case for a Federal Sri Lanka’ in C. Amaratunga (Ed.) (1990) *Ideas for Constitutional Reform* (Colombo: Council for Liberal Democracy): p.485.

<sup>135</sup> Ibid: p.414, emphasis in original.

Liberal federalists therefore make the distinction, in both descriptive and normative terms, between civic nations that foster values such as individual liberty, the rule of law, limited government, and economic freedom, and ethnic nations, in which ascriptive attributes of the community take centre stage and both the identity and the rights of the individual are determined by the community rather than vice versa. Thus their willingness to contemplate federal forms of minority accommodation are justified by traditional liberal arguments of counter-majoritarianism, but above all, by the argument that any concession to ethno-territorial autonomy is balanced by the commitment to the overarching civic national identity of the state and rights-based common citizenship.

Amaratunga stakes out the distinctive liberal-federalist position in opposition to both majoritarian and minoritarian perspectives in the following terms:

...the successful operation of a federal constitution leads *not*, as the advocates of the pure unitary state assume, to the establishment of separate states in all but name and eventually, perhaps even to formal separation and *not*, as the ethno-political advocates of federalism believe to the permanent creation of ethnic political units *but* to the decline of ethnic consciousness and the promotion of national unity in the context of diversity.<sup>136</sup>

Thus this type of liberal envisages a functional compromise with ethnicity by accommodating ethno-territorial demands through the expedient of federal autonomy, while promoting demotic nation-building at the level of the state, and urging ethnonationalists to recognise individuals' capacity for multiple identities. The accommodation-as-relegation strategy is built upon the hope that primordial and even anti-modern attachments to ethnic identity will recede in the progressive environment for individual self-development secured by the liberal democratic state, and that federal autonomy would diminish the political force of sub-state ethnic nationalism as a mobilising ideology.

---

<sup>136</sup> Ibid: p.415, emphasis in original.

Many of these assumptions and prescriptions can be shown to be flawed, and worse, inconsistent with the liberal virtues that liberal-federalists claim to uphold. The principal problem here in the context of multiple nations is not so much the normative preference for the civic demos, as the definition of the nation in monistic terms – an infringement of the liberal norm of pluralism. Especially in the formalistic way in which Sri Lankan liberals have tended to deploy it, the problem with federalism as a form of territorial autonomy in particular is that classical conceptions of federalism offer no scope for the accommodation of plural nationhood or nationality; that is, federalism might offer extensive territorial autonomy (self-rule) and representation in central institutions (shared-rule) for sub-state nations, but its accommodative capacity does not usually extend to the recognition of plural *national* identities.<sup>137</sup> Thus federalism could provide the *constitutional form* for a plurinational polity, but only if it follows the deeper interrogation of the normative and organisational precepts of the modern state suggested by plurinational constitutionalism.

The assumption that in a state based on liberal values there can be only one demos (or nation), answers to neither the sociologically ethnic character of collective identity that all but the liberals seem to regard as their primary referent in Sri Lanka, nor does it answer to the fact that the Tamil claim to autonomy is premised, not as an internal minority or a regional identity, but on a distinctive claim to *nationhood*. If we are to address this nationality claim *without* creating a separate state, it would appear that liberalism must meet the challenge of national pluralism with a fundamental re-conceptualisation of its own normative foundations. It would be both theoretically inadequate, and indeed, decidedly *illiberal* to present an either/or response to this challenge, on the blunt assertion that the liberal conception of the good is ineluctably superior to ethnic forms of collective identity.<sup>138</sup>

---

<sup>137</sup> W. Norman (2006) *Negotiating Nationalism: Nation-Building, Federalism and Secession in the Multinational State* (Oxford: OUP): Chs.3,4,5,6. See also S. Tierney, 'Beyond the Ontological Question: Liberal Nationalism and the Task of Constitution-Building' (2008) *European Law Journal* 14(1): pp.128-37.

<sup>138</sup> This critique of the traditional liberal approach is taken up again in Chapter 5, *infra*.

#### **4. Concluding Remarks**

The preceding overview provides an indication of the kind of competing constitutional claims at stake in a consideration of Sri Lanka's unresolved problem of national pluralism. Particularly noteworthy issues include the Sinhala-Buddhist nationalism's conflation of its own collective identity with that of the Sri Lankan state as a whole; the substantive (although not incurable) defects of Tamil nationalist claims; the seemingly essentialist and therefore irreconcilable character of the competing claims; the role of colonial and post-colonial modernism in informing the non-ethnonationalist Jacobin and liberal approaches, and how this impedes even these otherwise progressive approaches in meeting the challenge of national pluralism; and how procedural democracy lends itself to the consolidation of majoritarian nationalism, and therefore to conflict in the context of national pluralism. All of these issues are taken up in the chapters to follow, commencing with Chapter 3 in which I consider more closely how the analytical and prescriptive theses of plurinational constitutionalism can be applied in the Sri Lankan context.

## CHAPTER 3

### NATIONAL PLURALISM BEYOND THE LIBERAL PARADIGM: PLURINATIONAL CONSTITUTIONALISM AND SRI LANKA

1. Introduction
  - 1.1 Departures from the Liberal Paradigm: Three Grounds of Divergence
2. The Liberal Plurinational State: A Conceptual Outline
3. Sri Lanka: Plurinational Constitutionalism as a New Framework of Constitutional Self-Understanding
  - 3.1 The Role and Relevance of History and Historiography
  - 3.2 The Monistic *Demos* Thesis and Host State Societal Dominance
  - 3.3 Relational Sovereignty and the 'Hard State'
  - 3.4 The Disaggregation of Nation and State
4. Concluding Remarks

#### 1. Introduction

Chapter 2 gave an account of the competing nationalisms that make Sri Lanka a sociologically multinational polity. This chapter sets out the conceptual issues that are engaged in applying the principles and insights of plurinational constitutionalism to this case. This excludes certain debates within plurinational constitutionalism, for example, those concerning normative debates of political liberalism on issues of collective and individual identity, or those concerning sub-state nationalism in the context of late-sovereign European states, because these have little relevance to the types of collective identity and nation-state that characterise the case study. Reference will therefore be made only briefly to these issues, and then mainly to distinguish the Sri Lankan situation from the empirical circumstances upon which the norms and structures of the liberal plurinational state have so far been theorised.

Moreover, it will be noticed that throughout this thesis, even though the impetus for considering the plurinational state as a constitutional model stems from the fact of the

sub-state Tamil nationality claim, there is a substantial and even predominant concern with the majority Sinhala-Buddhist nation and on the Sri Lankan state. This is markedly unlike the literature on the Western plurinational state, where scholars are able to focus on the sub-state dimension more fully in the light of the fully evolved liberal democratic modernity that characterises the Western host state. In our case, the state and majority nation need to be considered alongside the sub-state nation with equal emphasis, insofar as plurinational constitutional modernity demands major transformations across all three entities.

With those preliminary points in mind, we need a basic restatement of the concept of the plurinational state as well as the plurinationalist critiques of traditional democratic constitutionalism to serve as the basis for the discussions to follow. Providing this conceptual overview is the purpose of this chapter, commencing with a discussion of the three grounds on which I argue that the case study diverges from the liberal model. These divergences have significance not only for reformulating plurinational principles to non-Western cases like Sri Lanka, but also in highlighting those aspects of the plurinational state that require adaptation and change if it is to serve as a more globally relevant model.

## **1.1 Departures from the Liberal Paradigm: Three Grounds of Divergence**

### *Civic-Societal Nationalism versus Ethnic-Communal Nationalism*

The first key difference relates to the sociological character of nationalism. Nationalisms in the Western liberal democracies at both state and sub-state levels represent ‘civic-societal’ models of nationalism, which are held to have outgrown their pre-modern ‘ethnic-communal’ origins through processes of post-industrial modernity and civic nation-building.<sup>1</sup> By contrast, nationalisms in the Sri Lankan

---

<sup>1</sup> S. Tierney (2006) *Constitutional Law and National Pluralism* (Oxford: OUP): p.6, Ch.2. For the civic-ethnic dichotomy in nationalism studies, see A.D. Smith (1995) *Nations and Nationalism in a Global Era* (Cambridge: Polity Press): pp.97-102; M. Hechter (2000) *Containing Nationalism*

context as we have seen retain their ascriptive character, their ethno-cultural attributes playing a more visible role in both ordinary and constitutional politics than in Western plurinational polities. The comparative question that arises then is the extent to which the plurinational state, as a liberal constitutionalist model built on the foundation of open and inclusive ‘national societies,’<sup>2</sup> is compatible with such conceptions of collective consciousness that are necessarily more exclusivist by nature because membership is determined by birth rather than agency.

I will deal with the civic-ethnic dichotomy at length, and suggest ways in which it can be overcome in reconceptualising the plurinational model to the Sri Lankan case, in Chapter 4. But what is important to underscore at this stage is that ethnic nationalisms and forms of the nation, whatever their historical provenance, today co-exist within and alongside the Westphalian nation-state – the standard state form of the contemporary world order – and are more often than not articulated through its doctrines (such as sovereignty and self-determination) and institutional processes (such as periodic elections). While this is true of both majority and minority nationalisms, it is the former’s access to and control of the state through democratic majoritarianism that has prevented the accommodation of sub-state demands for recognition, representation and autonomy, and led to conflict and instability. The relationship between ethnic-communal models of nationalism and the purported ethnic neutrality of the Westphalian nation-state therefore requires very close consideration in approaching the constitutional accommodation of national pluralism in non-Western contexts.<sup>3</sup>

The ‘ethnic-communal’ characterisation is often accompanied by pejorative connotations of primordialism, essentialism and anti-modernity, not to mention “...the implicit and often self-serving Eurocentric bias of [the civic-ethnic]

---

(Oxford: OUP): p.15; see also J. Pfaff-Czarnecka & D. Rajasingham-Senanayake, ‘Introduction’ in J. Pfaff-Czarnecka, D. Rajasingham-Senanayake, A. Nandy & E.T. Gomez (1999) *Ethnic Futures: The State and Identity Politics in Asia* (New Delhi: Sage): Ch.1.

<sup>2</sup> Tierney (2006): pp.32-44.

<sup>3</sup> J. Coakley, ‘National Majorities in New States: Managing the Challenge of Diversity’ in A-G. Gagnon, A. Lecours & G. Nootens (Eds.) (2011) *Contemporary Majority Nationalism* (Montreal & Kingston: McGill-Queen’s UP): Ch.5.

dichotomy.”<sup>4</sup> Such disapproving views on ethno-cultural nationalism, however, derive from a particular theoretical approach to nationalism – the ‘classical modernist’ account – one of the defining features of which is the conjoining of nationality, nationhood and national identity, apparently divested of ethnicity and reconstructed as equal citizenship, exclusively with the modern state.<sup>5</sup> The critique of this account of state-centred nationalism, derived from the sociological and politico-philosophical discourse of ‘liberal nationalism,’<sup>6</sup> is a central concern of plurinational constitutionalism. Notwithstanding the civic-societal commitments of liberal nationalism itself, which distinguishes it discursively from the dominant models of nationalisms in places like Sri Lanka, these critical perspectives – in particular the Westphalian nation-state’s pretence to cultural neutrality, its hegemonic potential and monistic promotion of homogeneity – are particularly useful as analytical tools in reviewing the Sri Lankan case study in terms of deconstructing the homogeneous nation-state and in suggesting the theoretical and constitutional alternatives to its hegemonic potential in multinational polities.

Moreover, moving beyond the assumption that the modernist vision of the nation-state is the only possible path to progress allows a less prejudiced engagement with the pre-modern, or what is in Sri Lanka the same thing, pre-British history.<sup>7</sup> This enables the consideration of historico-anthropological accounts of collective identity centred around ritual or performative practices that provide not only better

---

<sup>4</sup> Ibid: p.103; M. Ottaway (1994) *Democratization and Ethnic Nationalism: African and Eastern European Experiences* (Washington, DC: Overseas Development Council); M. Ignatieff (1998) *The Warrior’s Honor: Ethnic War and the Modern Conscience* (New York: Metropolitan Books); M. Walzer, ‘*The New Tribalism: Notes on a Difficult Problem*’ in R. Beiner (Ed.) (1999) *Theorizing Nationalism* (Albany: State Univ. of New York Press); T.M. Franck, ‘*Postmodern Tribalism and the Right to Secession*’ in C. Brölmann, R. Lefeber & M. Zieck (Eds.) (1993) *Peoples and Minorities in International Law* (Dordrecht: Martinus Nijhoff). See also, S. Tierney, ‘*The Search for a New Normativity: Thomas Franck, Post-modern Neo-tribalism and the Law of Self-Determination*’ (2002) *European Journal of International Law* 13: pp.941-960 at pp.951-955.

<sup>5</sup> A.D. Smith (1998) *Nationalism and Modernism: A Critical Survey of Recent Theories of Nations and Nationalism* (London: Routledge): Ch.1.

<sup>6</sup> Tierney (2006): p.20, fn.1.

<sup>7</sup> The term ‘pre-modern’ is used very loosely here to denote the ancient Sinhala-Buddhist monarchical state that survived until 1815, and contrast it with the colonial modernity that was introduced by the British, especially following the Colebrooke-Cameron reforms of 1833. The independent Tamil-Hindu kingdom, which came into being in the early thirteenth century, had succumbed to European colonialism earlier, in the early seventeenth century. For a specialist consideration of the issues of periodisation, see R.A.L.H. Gunawardana (2008) *Periodization in Sri Lankan History: Some Reflections with Special Emphasis on the Development of the State* (Colombo: SSA).

explanations of the contemporary dynamics of multiple nationalisms, but also the rediscovery of syncretic traditions of pluralism embedded in pre-colonial state forms that could potentially suggest new avenues for constitutional theorising in the present.<sup>8</sup> The pre-colonial ‘galactic’ state has been discussed in some detail in Chapter 2, and I take up these issues again in Chapter 4.

### *Western Modernity versus Colonial Modernity*

The second ground of divergence between the Western and non-Western contexts of national pluralism concerns the historical differences in the formation of the modern state in these experiences. Modernity in the West is the product of organic historical evolution, with causally connected social, cultural, political, economic, and ideational developments providing a necessary bridge of progression between pre-modern forms of political organisation and modern nation-statehood.<sup>9</sup> This holds true whether modernity has arrived through a revolutionary event or through an evolutionary process of change.<sup>10</sup> Moreover, in the West, this trajectory of political development has continued throughout the modern era, with the Western state and its characteristic elements such as sovereignty being continuously redefined in tandem with the creation of parallel sites of political power and legal authority both above and below the state.<sup>11</sup>

By contrast, as I discuss at more length in Chapters 4 and 5, the institutional apparatus and constitutional doctrines of the modern state and its underlying physical infrastructure were transplanted in societies colonised by the West, which therefore

---

<sup>8</sup> M. Roberts (2004a) *Sinhala Consciousness in the Kandyan Period: 1590s to 1815* (Colombo: Vijitha Yapa): Ch.4.

<sup>9</sup> D. Ziblatt (2008) *Structuring the State: The Formation of Italy and Germany and the Puzzle of Federalism* (Princeton: Princeton UP): Ch.1; J. Loughlin, ‘The Transformation of the Democratic State in Western Europe’ in F. Requejo & M. Caminal (Eds.) (2011) *Political Liberalism and Plurinational Democracies* (London: Routledge): Ch.4 at pp.44-47; M. Roberts, ‘Ethnic Conflict in Sri Lanka and Sinhalese Perspectives: Barriers to Accommodation’ (1978) *Modern Asian Studies* 12(3): pp.353-376.

<sup>10</sup> M. Loughlin (2013) *The British Constitution: A Very Short Introduction* (Oxford: OUP): Ch.1; see also C. Bell, ‘Constitutional Transitions: The Peculiarities of the British Constitution and the Politics of Comparison’ (2014) *Public Law*, July 2014: pp.446-471.

<sup>11</sup> Loughlin (2011); M. Keating (2001) *Plurinational Democracy: Stateless Nations in a Post-Sovereignty Era* (Oxford: OUP): Chs.3,5; Tierney (2006): pp.82-91.

have not in most cases experienced similar processes of historical evolution before or after colonialism.<sup>12</sup> Neither the colonial state nor its post-colonial successors notionally anchored in modernist concepts of national identity have as a result enjoyed much social resonance or commanded spontaneous patrimonial loyalty among the people (or peoples) whose collective selfhood the nation-state is supposed to reflect. Some pluralistic states have managed to build upon what were merely ‘nations of intent’<sup>13</sup> on the cusp of independence into socially resonant conceptions of state-national identity better than others, but many others have failed.<sup>14</sup> Nevertheless, classical modernist orthodoxies with regard to homogeneous and unitary conceptions of nation and state have proved to be remarkably resilient in the post-colonial world. In conditions of national pluralism, they have served to provide a convenient set of doctrinal and institutional devices for the advancement of the vested interests of majority or otherwise dominant groups, and to conceal ethnic majoritarian or hegemonic projects of state-capture behind a veneer of positivist constitutional universalism, to the disadvantage and exclusion of minority nations. In the resulting conflicts over minority national self-government within and sometimes outwith the state, the dominant group’s commitment to the ‘hard state’ has only become further entrenched.<sup>15</sup>

### *Substantive Constitutional Democracy versus Procedural Majoritarian Democracy*

Thirdly, whereas the political practices and constitutional cultures of Western plurinational states are normatively defined by liberal democracy, the substantive content of the political and electoral cultures of non-Western multinational polities tend to be informed by ideological discourses that are far removed from liberalism.

---

<sup>12</sup> P. Saravanamuttu, ‘*Governance and Plural Societies: Sri Lanka*’ in P.R. Chari (Ed.) (2001) *Security and Governance in South Asia* (Colombo: RCSS): Ch.6 at pp.130-4; P. Saravanamuttu, ‘*Sri Lanka: The Intractability of Ethnic Conflict*’ in J. Darby & R. MacGinty (Eds.) (2000) *The Management of Peace Processes* (London: Macmillan): pp.195-227; P. Robb (2007) *Empire, Identity and India: Liberalism, Modernity and the Nation* (Oxford: OUP).

<sup>13</sup> R. Rotberg, ‘*African Nationalism: Concept or Confusion?*’ (1967) *Journal of Modern African Studies* IV: pp.33-46.

<sup>14</sup> J. Bertrand & A. Laliberté, ‘*Introduction*’ and ‘*Conclusion*’ in J. Bertrand & A. Laliberté (Eds.) (2010) *Multination States in Asia: Accommodation of Resistance* (Cambridge: Cambridge University Press): Chs.1,11; A. Stepan, J.J. Linz & Y. Yadav (2011) *Crafting State-Nations: India and other Multinational Democracies* (Baltimore: JHU Press): Ch.1.

<sup>15</sup> These issues are further discussed in Section 3.3, *infra*.

This is certainly the case in Sri Lanka. The deep-seated commitment to political liberalism provides not only a shared language of political intercourse and constitutional negotiation between the state and sub-state levels in the West, but also a liberal tendency to accommodation and compromise. Indeed, the limits placed on the sphere of the state in liberal societies promote civic life, including sub-state nation-building and social interrelationships between multiple national societies within the plurinational state, in ways that have not been possible in many Asian and African contexts where the state is omnipresent in civil society.

In Sri Lanka, while traditions of procedural democracy are deeply entrenched, the substantive content of democracy is informed by dominant discourses of ethnic nationalism, as seen in Chapter 2, or by state-led and state-oriented ideologies such as socialist developmentalism in the 1970s, both of which run counter to liberal democratic approaches to the constitutional management of pluralism, as well as to the tolerance of non-state civic or ethnic social spaces.<sup>16</sup> The ‘overdeveloped’<sup>17</sup> character of the state politicises many forms of ethnic relations that would otherwise belong in the private sphere (e.g., ownership and transfer of land), at the same time as the underdeveloped nature of a civic state nation transforms even routine processes of normal politics into fraught negotiations between ethnicised collectivities.

While these issues await more extensive treatment in Chapter 5, it is perhaps useful to make clear what I mean when I make a distinction between ‘liberal democracy’ and ‘democracy’ for the purposes of this thesis. Circumventing major normative debates within democratic theory, I proceed on a purely functional basis. If ‘democracy’ is understood as purely a procedural concept, and without the substantive limitations on majoritarianism through the rule of law, civil and political rights, and crucially, the

---

<sup>16</sup> G. Gunatilleke, N. Tiruchelvam & R. Coomaraswamy, ‘*Violence and Development in Sri Lanka: Conceptual Issues*’ in G. Gunatilleke, N. Tiruchelvam & R. Coomaraswamy (Eds.) (1983) *Ethical Dilemmas of Development in Asia* (Lexington, Mass.: Lexington Books): Ch.5; J. Uyangoda, ‘*The United Front Regime of 1970 and the Post-Colonial State of Sri Lanka*’ in T. Jayatilaka (Ed.) (2010) *Sirimavo: Honouring the World’s First Woman Prime Minister* (Colombo: The Bandaranaike Museum Committee): pp.31-34; R. Edrisinha, M. Gomez, V.T. Thamilmaran & A. Welikala (Eds.) (2008) *Power Sharing in Sri Lanka: Constitutional and Political Documents, 1926-2008* (Colombo: CPA): Ch.11 at pp.235-36.

<sup>17</sup> H. Alavi, ‘*The State in Post-Colonial Societies: Pakistan and Bangladesh*’ (1972) *New Left Review* 1(74): pp.59-81.

principle of minority protection (all values associated with liberalism), it would seem that the kind of constitutional arguments to be canvassed in this thesis would fall on rather infertile ground. This therefore cannot be the definition of democracy on which we can proceed. However, notwithstanding the provenance of human rights norms and the rule of law in classical liberalism, ‘democracy’ is now widely understood and reflected in United Nations and international practice as unequivocally including these substantive values, without at the same time invoking the ideological adjective ‘liberal’.<sup>18</sup> It is this wider conception of democracy that I deploy for analytical, evaluative and prescriptive purposes in relation to the Sri Lankan state. Moreover, when we speak of liberalism in relation to the current theoretical work in plurinational constitutionalism, the reference is also to the reliance on ‘liberal nationalist’ accounts of national identity and to the normative arguments conducted within liberal theory regarding the obligations of the host state in the context of national pluralism. One of the aims of this thesis is to widen the theoretical scope of these debates, to include performative models of nationalism, and democratic states more generally, as opposed to only liberal democratic states.

§§§

The response of states to national pluralism dictated by these divergent circumstances in Asia and Africa have demonstrated a vehemence of resistance to sub-state national constitutional claims that is largely absent in the experience of Western plurinational polities.<sup>19</sup> As a multinational post-colonial Asian state, the foregoing observations are

---

<sup>18</sup> See for e.g., E. Newman & R. Rich (Eds.) (2004) *The UN Role in Promoting Democracy: Between Ideals and Reality* (Tokyo: UN Univ. Press); G. Fox & B. Roth (Eds.) (2000) *Democratic Governance and International Law* (Cambridge: CUP); T. Franck, ‘The Emerging Right to Democratic Governance’ (1992) *American Journal of International Law* 86(1): p.46; S. Marks (2000) *The Riddle of All Constitutions: International Law, Democracy and the Critique of Ideology* (Oxford: OUP).

<sup>19</sup> For e.g., in the UK, even before devolution formally established a sub-state level of governance, sub-state *national* identities were informally acknowledged in a variety of political and constitutional practices, enabled by ‘a federalism of political management’: N. MacCormick (1999) *Questioning Sovereignty: Law, State and Nation in the European Commonwealth* (Oxford: OUP): p.60, and a governmental culture of ‘pragmatic empiricism’: C. McCrudden, ‘Northern Ireland and the British Constitution’ in J. Jowell & D. Oliver (Eds.) (1994) *The Changing Constitution* (3<sup>rd</sup> Ed.) (Oxford: OUP): p.326. Compared to other Western plurinational state, the UK is also adept at the ‘politics of symbols’: Keating (2001): pp.104-7. See also, N. Walker, ‘Beyond the Unitary Conception of the United Kingdom Constitution’ (2000) *Public Law*: p.384.

amply borne out in the experience of our case study, as we have seen in the discussion in preceding chapters. To be sure, even in the West, plurinational reinterpretations of dominant constitutional self-understandings have begun to be taken seriously only recently. However, it is now increasingly clear that the explanatory, normative and substantive constitutional arguments presented by sub-state nations are becoming instantiated within the mainstream theory and practice of liberal constitutionalism in Western plurinational democracies. It seems a worthwhile enquiry therefore to explore how the benefits of plurinational constitutional ideas could be gained for non-Western contexts as well through the case study of Sri Lanka; and conversely, what insights the extension of the model beyond the liberal paradigm would yield for its existing theoretical foundations. Key among the latter set of issues would be questions like whether the plurinational state can accommodate performative, as opposed to liberal nationalist, models of nationalism, and whether it is capable of taking root in cultures of democracy that do not necessarily derive their substantive content from political liberalism.

The rest of this chapter comprises two substantive sections, and a final section of concluding remarks. In the next section, a brief outline is given of the liberal plurinational state as a theoretical construct. There is a sophisticated and growing literature on this constitutional model and there is neither the need nor the space to regurgitate that work here, but it is useful to have an articulation of its main concerns and rationales at the outset. In the following section, some of the specific critiques and claims associated with plurinational constitutionalism against traditional constitutional law and liberal democracy are explored in greater detail, in the context of how these constitutional propositions can be understood in application to the Sri Lankan case. The main purpose of this chapter therefore is to lay the introductory groundwork for the chapters to follow, which deal with the issues of historiography and pre-modernist state form, nationalism, democracy and the state, and finally the prescriptive constitutional principles necessitated by a plurinational approach to the reform of the Sri Lankan state in appreciation of its national pluralism.

## 2. The Liberal Plurinational State: A Brief Introduction to its Theoretical and Constitutional Concerns

The term ‘plurinational state’ derives from the Spanish (Castilian) *estado plurinacional* and has been adopted by English-language theorists “...in place of the more common ‘multinational’ in order to express the plurality not merely of nations, but conceptions of nationality itself.”<sup>20</sup> Likewise, Ferran Requejo and Miquel Caminal explain the preference in the following terms:

“First, ‘plurinational’ refers both to the descriptive side of the concept (the fact that some democracies include different national societies within them) and to the prescriptive side of the concept (the claim for recognition and protection of plurination in liberal democracies – national pluralism in this case). In contrast, the term ‘multinational’ only covers the descriptive side of the concept.”<sup>21</sup>

The plurinational state is thus a model of constitutional accommodation in contexts in which there is more than one claim to nationhood, and more than one conception of nationality – ‘national pluralism’ – within the territorial space of an existing state. It is distinct from other models of pluralism such as the discourses of multiculturalism and minority rights, or the movement of decentralisation or regionalism in liberal democracies, in terms of the political phenomenon that it seeks constitutionally to accommodate. The sub-state challenge is one conceived in specifically *nationalist* terms, which is to say that assertions of socio-cultural identity, or perhaps more accurately in relation to contemporary liberal democratic sub-state nations, assertions of *societal* distinctiveness,<sup>22</sup> grounded on a ‘historically contextualised territorial space,’ carry with them normative claims to recognition, autonomy and representation that are more fundamental than claims made by ‘minority’ groups. These stateless nations seek the expression of those claims in the constitutional order

---

<sup>20</sup> Keating (2001): p.x.

<sup>21</sup> F. Requejo & M. Caminal, ‘*Liberal Democracies, National Pluralism and Federalism*’ in Requejo & Caminal (2011): Ch.1 at p.1, n.1.

<sup>22</sup> Tierney (2006): p.4, fn.6.

and governing arrangements of the state within which they are located, and indeed within broader supra-state or international orders.

Although sub-state nations in plurinational states actively address themselves to legal and political orders over and above the state, they are distinct from traditional separatist models of nationalism in that there is no necessary teleological commitment to secession *per se*, understood in orthodox international law terms. As in the democratic process of statal polities, political discourse within sub-state national spaces also feature the full range of opinions which may include ‘separatist’ voices, but despite the fact that the language of independence features heavily in the rhetoric of sub-state nationalist political actors, what is important to note is that in terms of concrete constitutional claims, their agendas are more complex and nuanced than a straightforward commitment to secession and the establishment of a separate sovereign state.<sup>23</sup> More generally, as Michael Keating has put it,

“The argument is that we cannot resolve nationality issues by giving each nation its own state, but neither can, nor should we seek to eliminate nationality as a basis for political order. Rather we need to embrace the concept of plural nationalities and shape political practices and institutions accordingly.”<sup>24</sup>

Theorists of the plurinational state thus widely agree that sub-state nationalism is not synonymous with separatism and, that “...from a legal perspective, constitutional accommodation *within* the plurinational state in fact raises more interesting questions on the nature of sovereignty and its potential for divisibility than does secession.”<sup>25</sup> Plurinational state theory accordingly contains both descriptive and normative dimensions, and in both senses it presents fundamental critiques of the theoretical foundations, political practices and constitutional arrangements of the nation-state, which is traditionally conceived in unitary terms with regard to national identity even

---

<sup>23</sup> Ibid: pp.92-98.

<sup>24</sup> Keating (2001): p.ix.

<sup>25</sup> Tierney (2006): pp.18-19, 18, fn.52.

in federal states.<sup>26</sup> In suggesting alternatives to dominant narratives of constitutional self-understanding in the light of those critiques, plurinational constitutionalism is concerned with both the reinterpretation of existing constitutional arrangements of the host state as well as in their structural amendment, in appreciation of the state's plurinational character.

As noted in Chapter 1, the plurinational state has so far been theorised as a 'discrete category of multilevel polity' within the discourse of liberal democratic constitutionalism, from the empirical experience of national pluralism in Western industrialised states, chiefly Canada, Spain and the United Kingdom, in relation to the sub-state nations of Quebec, Catalonia and Scotland. It is worth noting again that these host states are all politically stable, established democracies with entrenched liberal political and social traditions, enjoying the highest levels of economic development and human security in the world. Having already undergone modernist processes of state-formation, nation-building, and constitutional development, they are also entering upon a phase of 'late sovereignty'<sup>27</sup> in which governmental functions traditionally associated exclusively with the nation-state are being transferred to alternative sites of authority,<sup>28</sup> at the same time that governance is becoming a more diffuse and less statist activity.<sup>29</sup> Again as noted before, the sub-state nations and nationalisms in these contexts are themselves no less liberal or modern than their host states, and the normative and constitutional debates engendered by their claims are therefore debates that are conducted within the broad frame of liberal democratic constitutional discourse.<sup>30</sup>

---

<sup>26</sup> Although of course there is now a growing body of work on multinational federations and federalisms. See e.g., W. Norman (2006) *Negotiating Nationalism: Nation-Building, Federalism and Secession in the Multinational State* (Oxford: OUP); M. Burgess & J. Pinder (Eds.) (2007) *Multinational Federations* (London: Routledge); A-G. Gagnon & J. Tully (Eds.) (2001) *Multinational Democracies* (Cambridge: CUP).

<sup>27</sup> N. Walker, 'Late Sovereignty in the European Union' (2001) European Forum Discussion Paper (Florence: EUI). 'Late sovereignty' or indeed 'post-sovereignty' (Keating (2001); MacCormick (1999)) are particularly relevant for European plurinational states than elsewhere, due to their location in the unique context of the supranational legal order of the European Union.

<sup>28</sup> Tierney (2006): pp.83-84.

<sup>29</sup> Loughlin (2011).

<sup>30</sup> Tierney (2006): p.9, Chs.2,3; Keating (2001): pp.vii-ix.

Notwithstanding their liberal modernity and constitutionalist character, the political aspirations, discursive traditions and constitutional agendas of the sub-state nations of Scotland, Quebec and Catalonia are deeply rooted in their own national historiographies as well as the constitutional history of their host states, and theoretical generalisations must have careful regard to these differences of historical sociology in understanding each of these plurinational states in its own terms. Bearing those specificities in mind, however, recent theorisations of the plurinational state have attempted to articulate the common issues of disaffection these sub-state nations entertain with regard to their respective host states, and the common normative and politico-constitutional claims they present for the better accommodation of their aspirations. Thus in contributions to this debate from the perspective of constitutional theory, there are a number of specific conceptual, normative and institutional propositions that could be identified as defining attributes of the current theory concerning the plurinational state. In the next section, the main theses of plurinational constitutionalism as they relate to the Sri Lankan case are identified and discussed in the context of that case.

### **3. Sri Lanka: Plurinational Constitutionalism as a New Framework of Constitutional Self-Understanding**

Constitutional reform debates generated by the competing claims of ethnic pluralism stretch back to the early 1900s in Sri Lanka, if not before. In the absence of a viable constitutional settlement, it is a debate that continues unabated today. Given the longevity of the constitutional problems of pluralism, it is unsurprising that there is a sizable social science literature on these issues as well as a long, if largely unsuccessful, record of policy, legislative and constitutional responses.<sup>31</sup> While

---

<sup>31</sup> Edrisinha et al (2008); J.C. Holt (Ed.) (2011) *The Sri Lanka Reader: History, Culture, Politics* (Durham, NC: Duke UP); M. Roberts (1994) *Exploring Confrontation* (Chur: Harwood Academic Publishers); M. Roberts (Ed.) (1997) *Sri Lanka: Collective Identities Revisited*, Vols.1, 2 (Colombo: Marga Institute); S.J. Tambiah (1986) *Sri Lanka: Ethnic Fratricide and the Dismantling of Democracy* (Chicago: Chicago UP); C. Amaratunga (Ed.) (1989) *Ideas for Constitutional Reform* (Colombo: CLD); A.J. Wilson (1988) *The Break-Up of Sri Lanka: The Sinhalese-Tamil Conflict* (London: Hurst); N. Wickramasinghe (2006) *Sri Lanka in the Modern Age: A History of Contested Identities* (Colombo: Vijitha Yapa).

constitutional concepts such as federalism and devolution, and international law doctrines such as self-determination feature prominently in this discourse together with the resilience of the unitary state, the combination of critical theses, normative precepts and constitutional principles that constitute plurinational constitutionalism has never been applied in relation to Sri Lanka as either an analytical or prescriptive framework. Indeed, the analytical characterisation of the Sri Lankan polity as one of ‘national pluralism’ is itself a novel suggestion, even though historians, anthropologists, sociologists, political scientists and constitutional lawyers have been addressing ethno-national conflict, and its causes, dynamics and potential solutions, for decades.<sup>32</sup> The application of the analytical and prescriptive precepts of plurinational constitutionalism therefore represents a fresh approach to constitutional self-understanding in Sri Lanka, both with regard to a clearer understanding of the sociological character of the polity, and as a potential normative and constitutional framework that affords a more sustainable foundation for the Sri Lankan state.

### 3.1 The Role and Relevance of History and Historiography

The most visible aspect of sub-state nations and nationalisms in Scotland, Catalonia and Quebec is the demand necessitated by their presence for a major renegotiation of the existing constitutional arrangements of their respective host states, particularly in relation to institutional frameworks of territorial autonomy, and at a more abstract level, the location of sovereignty within the state. In addition to these normative and constitutional claims, the reality of national pluralism as represented in a *plurality of historiographical narratives* also pose a number of major theoretical challenges to conventional assumptions, categories and analytical approaches of liberal constitutionalism apropos the classical modernist nation-state.

---

<sup>32</sup> N. DeVotta (2004) *Blowback: Linguistic Nationalism, Institutional Decay and Ethnic Conflict in Sri Lanka* (Stanford: Stanford UP); D. Rampton (2010) *Deeper Hegemony: The Populist Politics of Sinhala Nationalist Discontent and the Janatha Vimukthi Peramuna in Sri Lanka*, PhD Thesis, School of Oriental and African Studies, University of London (unpublished); S.J. Tambiah (1992) *Buddhism Betrayed? Religion, Politics, and Violence in Sri Lanka* (Chicago: Chicago UP); J. Spencer (Ed.) (1990) *Sri Lanka: History and Roots of Conflict* (London: Routledge); Roberts (1978).

The historiographies advanced by sub-state nations attest not merely to the existence of alternative accounts of the constitutional history of the host state, but also that that history, to the extent it is relied upon as the foundation for dominant visions of constitutional self-understanding in the host state, is essentially contested. Sub-state national historiographies stress the founding moment of the host state by the coming together of different national groups, but in which they retained their sense of discrete identity according to constitutional terms agreed at the time. Statal depictions of the same events would typically render such agreements as acts of incorporation into a broader state national society.<sup>33</sup> In this rendition of state constitutional history, the incorporation or consolidation of previously independent or autonomous national groups into a (singular) new nation merely describes the process of modern state-formation in common with most Western polities in the early modern era. The sub-state nationalist account by contrast repudiates the purported assimilation of their national, societal and institutional distinctiveness by the process of state-formation, and emphasises the notion of union at the fundament of the entire constitutional edifice of the host state. The idea that the plurinational statal polity is constitutionally a ‘union state’<sup>34</sup> is both a factual assertion with regard to state-formation as well as a more abstract conceptual assertion with regard to constitutional self-understanding, requiring the host state to respect, on a continuing basis, sub-state national identities, the plurinational character of the statal polity, specific commitments with regard to the preservation of sub-state societal distinctiveness and institutional structures, and the recognition of these conditions in the state’s constitution and political practices.

One of the major empirical distinctions between Western plurinational union states, exemplified in the Anglo-Scottish Union within the United Kingdom, and the Sri Lankan case is that there is no comparable, historically ascertainable, precise ‘constitutional moment’<sup>35</sup> of a union between the historic nations in Sri Lanka. Tamil

---

<sup>33</sup> For an illuminating account of this with regard to the parliamentary union of Scotland and England in the formation of Great Britain, see MacCormick (1999): Ch.4.

<sup>34</sup> S. Rokkan & D. Urwin, ‘Introduction: Centres and Peripheries in Western Europe’ in S. Rokkan & D. Urwin (Eds.) (1982) *The Politics of Territorial Identity: Studies in European Regionalism* (London: Sage): p.11; see also Walker (2000): p.398; N. Walker (2010) *Final Appellate Jurisdiction in the Scottish Legal System* (Edinburgh: The Scottish Government): Ch.2; Tierney (2006): p.7, fn.16.

<sup>35</sup> B. Ackerman (1991) *We, the People: Foundations* (Cambridge, Mass.: Harvard UP); Tierney (2006): p.14.

claims to a withdrawal of their sovereign consent to be part of the Sri Lankan state occur when Tamil nationalism decides upon a secessionist course in the 1970s following decades of discrimination and the failure to secure regional autonomy within Sri Lanka.<sup>36</sup> This claim is sustained by the argument that the independent Tamil Kingdom of Jaffna was only extinguished following its conquest by the first of the European colonial powers, the Portuguese. When the British eventually granted independence in 1948, it is claimed, the Tamils were not only not consulted as to their constitutional future, but were left to the mercy of the Sinhala-Buddhist majority within the framework of a unitary state.<sup>37</sup> There is, however, a degree of presentist casuistry involved in this type of argument, and it is in any case the kind of ‘otiose’ historical debate that plurinational constitutionalists try to avoid.<sup>38</sup> Nonetheless, the absence of a historical union moment ought not in itself be fatal to the Tamil claim to autonomy, given that Tamils of the north and east have reaffirmed the nationality claim in every election since 1956 (i.e., virtually for the whole of Sri Lanka’s post-colonial existence). We need rather to anchor plurinational accommodation on a different basis, taking into account the different historical dynamics of state-formation in Sri Lanka.

As we have seen in Chapter 2, the majority Sinhala-Buddhist nation locates itself in a position of primacy with regard to both the national identity and the constitutional form of the state on the strength of a powerfully resonant mytho-historical narrative. This has denuded even the limited inclusionary potential of the modernist conception of the ideal post-colonial nation-state.<sup>39</sup> The permeation of the nation-state by Sinhala-Buddhist nationalism entails not merely the subordination of minority groups, but also a specific tendency to regard the Tamil view of themselves as a distinct nation, with an equally long and celebrated history in the island, as a fundamental threat to the sovereignty and territorial integrity of the Sri Lankan state. In the development of Tamil nationalism, on the other hand, Tamils considered themselves as one of the ‘founding peoples’ of the island polity together with the Sinhalese, and

---

<sup>36</sup> See Chapter 2, *supra*.

<sup>37</sup> *Ibid*.

<sup>38</sup> Tierney (2006): p.111.

<sup>39</sup> See Section 3.2, *infra*.

they desired this self-perception to be institutionalised in the post-colonial state in the form of a federal union.<sup>40</sup> For Sinhala-Buddhist nationalism committed to the post-independence re-establishment of the pre-colonial Sinhala-Buddhist state, to countenance such a *bi-national* conception of the island polity was and is completely impossible.

This unbridgeable divergence in the constitutional worldviews of the two historic ethnic nations on the island encapsulates the essence of Sri Lanka's dilemma of national pluralism. The inability to plausibly reposition constitutional discourse on a more 'pactist' footing was demonstrated recently in the failure of a major constitutional reform effort. In one of the proposals published during constitutional reform attempts of President Chandrika Bandaranaike Kumaratunga's administration (1995-2000), the '*Draft Provisions of the Constitution containing the Proposals of the Government of Sri Lanka relating to Devolution of Power*' of 1996, envisaged in Article 1 that 'The Republic of Sri Lanka shall be an indissoluble Union of Regions.'<sup>41</sup> The intent here was to pluralise the institutional form of the state (*Union of Regions*) whilst assuaging Sinhalese fears by foreclosing any prospect of legal secession by a region in the union (*indissoluble Union of Regions*), and for the same reason, to avoid reference to the term 'federal' while providing for a federal-type distribution of powers between the centre and regions. The drafters also clearly avoided any reference to 'nations,' preferring instead the more innocuous 'regions.' Despite these conscious concessions to Sinhala-Buddhist nationalist sentiment, this formulation attracted such vehement opposition that the Kumaratunga government withdrew it in subsequent drafts in 1997 and 2000.<sup>42</sup> The failure of this elite-level attempt (amongst many others) to rearticulate the fundamental character of the state in acknowledgement of its plural polity – attempted reform from above, resisted successfully from below, as it were – illustrates not merely the limitations of that particular strategy and method of constitutional reform, but for us more importantly,

---

<sup>40</sup> See Chapter 2, *supra*, and Chapter 4, *infra*.

<sup>41</sup> According to Neelan Tiruchelvam, one of the drafters of the various constitutional schemes of this period, the formulation drew on the language of the Indian and Australian constitutions: N. Tiruchelvam, '*The Politics of Federalism and Diversity in Sri Lanka*' in Y. Ghai (Ed.) (2000) *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States* (Cambridge: CUP): Ch.9 at p.211.

<sup>42</sup> Edrisinha et al (2008): Ch.23.

the need for a deeper and more theoretically sophisticated approach to the problem in Sri Lanka.<sup>43</sup>

Thus while the Tamil sub-state national challenge continues to assert its claims, rendering the Sri Lankan polity one of plural nations as a matter of socio-political fact, it has thus far proved impossible to constitutionally reflect that reality in terms of a union state norm in the structure of the state. At the theoretical level, this resistance to accommodation raises two sets of questions. It necessitates, firstly, a need to investigate the historiographical foundations of Sinhala-Buddhist nationalism's commitment to the unitary state, the constitutional postulate that obstructs the accommodation of sub-state nationalism because of its conceptual dictates of centralisation and homogeneity. These questions were explored in detail in Chapter 2. Secondly, it demands a deeper theoretical defence of plurinational accommodation that goes beyond the institutional tinkering that has so far characterised Sri Lankan constitutional reform attempts (illustrated in the example above). This raises significant normative questions for democracy, in the context of the tension between a dominant democratic culture of permanent, institutionalised, ethnicised, majoritarianism ('ethnocracy'<sup>44</sup>) against the reality of a polity that is bi-national in sociological fact. I address these questions in Chapter 5.

The historicist conception of the state as a plurinational union is also salient in distinguishing between other models of territorial autonomy prevalent in Western liberal democracies, including classical federalism, and the wide variety of institutional innovations falling within the broad ambit of 'regionalism.'<sup>45</sup> History is

---

<sup>43</sup> D. Rampton & A. Welikala, 'The Politics of the South' in J. Goodhand & B. Klem (Eds.) (2005) *Sri Lanka Strategic Conflict Assessment, 2000 – 2005*, Vol. III (Colombo: The Asia Foundation).

<sup>44</sup> J. Uyangoda, 'Travails of State Reform in the Context of Protracted Civil War in Sri Lanka' in K. Stokke & J. Uyangoda (Eds.) (2011) *Liberal Peace in Question: Politics of State and Market Reform in Sri Lanka* (London: Anthem Press): Ch.2, esp. pp.52-58. Uyangoda draws upon the conceptual model of ethnocracy developed by Oren Yiftachel: O. Yiftachel, "'Ethnocracy" and its Discontents: Minorities, Protests and the Israeli Polity' (2000) *Critical Inquiry* 26(4): pp.725-56; O. Yiftachel (2006) *Ethnocracy: Law and Identity Politics in Israel/Palestine* (Philadelphia, PA: Univ. of Pennsylvania Press). See also A. Harel-Shalev (2010) *The Challenge of Sustaining Democracy in Deeply Divided Societies: Citizenship, Rights and Ethnic Conflicts in India and Israel* (Lanham, MD: Lexington Books).

<sup>45</sup> J. Hopkins (2002) *Devolution in Context: Regional, Federal and Devolved Government in the European Union* (London: Cavendish).

therefore drawn upon in the argument sub-state nations advance that the plurinational union state is a ‘discrete category of multilevel polity’ that does not fit within standard categories of traditional constitutional law, especially the binary classification of constitutions as either unitary or federal. This is not only because of the uniqueness of the formative dynamics of each plurinational union, but also because, reflecting those dynamics, the asymmetrical and heterogeneous nature of its institutional structures and political practices make the constitution and constitutional culture of the plurinational state a complex conceptual category of its own, in relation to which the formalist classifications of unitary and federal make little sense. While in formal terms the conventional constitutional self-description of host states may be as unitary (as in the UK) or federal (as in Canada), in practice the plurinational state functions in ways that bear little resemblance to the conceptual dictates of those categories.<sup>46</sup>

The distinction with federalism as a form of territorial autonomy in particular is that classical conceptions of federalism offer no scope for the accommodation of plural nationhood or nationality; that is, federalism might offer extensive territorial autonomy (self-rule) and representation in central institutions (shared-rule) for sub-state nations, but its accommodative capacity does not usually extend to the recognition of plural *national* identities.<sup>47</sup> In other words, federalist autonomy, representation and recognition of territorial sub-state collective identities are wholly dependent on the monistic notion that nationhood and national identity are exclusively associated with the state: there can be only one *demos* within the state, and not plural *demoi* as in the plurinational conception.<sup>48</sup> This is also the reason why the constitutional claims of sub-state nations are fundamentally different from other non-federal models of regionalism and decentralisation. The rationales for regionalism and decentralisation in democratic states are numerous, stretching from

---

<sup>46</sup> Keating (2001): Ch.4; see also S. Ratnapala, ‘Foedus Pacificum: A Response to Ethnic Regionalism within Nation States’ in G. Appleby, N. Aroney & T. John (Eds.) (2012) *The Future of Australian Federalism* (Cambridge: CUP): pp.250-271.

<sup>47</sup> Norman (2006): Chs.3,4,5,6. See also S. Tierney, ‘Beyond the Ontological Question: Liberal Nationalism and the Task of Constitution-Building’ (2008) *European Law Journal* 14(1): pp.128-37.

<sup>48</sup> Or to use a term familiar to students of the European Union, ‘demoicracy’: see for e.g., F. Cheneval & F. Schimmelfennig, ‘The Case for Demoicracy in the EU’ (2011) EUSA Conference, Boston (unpublished); K. Nicolaidis, ‘Germany as Europe: How the Constitutional Court Unwittingly Embraced EU Demoicracy’ (2011) *International Journal of Constitutional Law* 9(3): pp.786-92.

administrative efficiency to the accommodation of regional collective identity.<sup>49</sup> However, the devolution involved in these models of territorial autonomy is never intended to question the monistic conception of the statal *demos* as a single, unitary entity.

Beyond its secessionist strain, the constitutional default position of Sri Lankan Tamil nationalism has been the demand for federal autonomy for the north and east, sometimes enhanced by an asymmetric claim to the right to internal self-determination for the Tamil nation. However, the relationship between federalism and the claim to nationhood is not entirely clear in Tamil nationalist political postures, to the extent that in its institutionalist focus on federalism, it has failed to engage at a more general level with the conceptual issues arising from its sub-state national claim, including issues such as the monistic *demos* reflected in the nation-state paradigm. In terms of the ‘reactive’ or ‘defensive’ account offered by leading exegetists it seems implicit that Tamil nationalism would have been willing to participate in a post-colonial – and now post-war – ‘Sri Lankan’ nation-building process provided regional autonomy was granted. This seems to suggest a trade off between the claim to nationhood and federalism, or in other words, an eschewal of a plurinational conception of the state in exchange for a commitment to a unitary *demos*, provided federal autonomy is granted. However, in these same accounts, it is far from clear if this is a settled position within Tamil nationalist politics, which then leaves a number of theoretical questions unanswered as to the precise relationship between the Tamil nation and the Sri Lankan state.<sup>50</sup> In this regard particularly, the introduction of plurinational theory into the Sri Lankan case has heuristic value in clarifying our analytical understanding of national pluralism, and thereby clearing the ground for more focussed normative and structural discussions with regard to its constitutional accommodation.<sup>51</sup>

---

<sup>49</sup> Tierney (2006): p.8.

<sup>50</sup> The criticism of mainstream, federalist Tamil political parties by Tamil separatist voices has often taken the form of questioning the former’s political commitment to the idea of a distinct Tamil nation, if mere devolutionary federalism as opposed to more fundamental forms of constitutional accommodation suffices to satisfy Tamil aspirations to nationhood.

<sup>51</sup> These issues will be taken up in detail in Chapters 5 and 6, *infra*.

History is also important to sub-state nationalisms, in Michael Keating's phrase, as 'the usable past': sub-state nations are similar to statal nations in instrumentally employing historical tropes in the construction of national unity.<sup>52</sup> We have seen this dynamic at work in the development of Tamil nationalism (and indeed Sinhala-Buddhist nationalism), albeit in the different model of nationalism featuring in Sri Lanka, the 'usable past' is one element in the politicisation of ethnicity that constitutes the process of nationalist politics and nation-formation.<sup>53</sup> In the model of nationalism that applies to the two Sri Lankan nationalisms under consideration here, ethnicity is central in both cultural and political terms, in the past as well as the present, whereas in the West, individuals' cultural identity including ethnicity and religion were 'privatised' in the historical process of liberal modernity, at the level of state as well as sub-state nations.<sup>54</sup>

This classificatory separation between the ethnic and civic forms of nationalism has been one of the ways in which theorists of plurinational democracy such as Keating and Tierney have expressly restricted the scope of comparative application of their articulations of the plurinational state.<sup>55</sup> There is of course an important normative dimension to this qualification inasmuch as the civic-societal conception of the nation is central to the open, pluralistic and individually negotiable character of national identities that are at the heart of the plurinational ideal.<sup>56</sup> But what of sub-state nations, like the Sri Lankan Tamils, that define themselves primarily or mainly in ethnic terms, but are also "territorially concentrated, potentially self-governing and possessed of the desire for specific constitutional recognition"?<sup>57</sup> And what of post-colonial states, like Sri Lanka, where nation and state building in the modern era has followed a trajectory that does not conform to the classical modernist model (or indeed to subsequent 'post-sovereign' developments), and where the culture and

---

<sup>52</sup> Keating (2001): Ch.1; Tierney (2006): p.6, fn.14.

<sup>53</sup> Chapter 2, *supra*; Rampton (2010).

<sup>54</sup> Although of course the notion of the modern nation-state's cultural neutrality is challenged by liberal nationalists: see Section 3.2, *infra*. See also S. Ratnapala, 'Cultural Diversity and Liberal Society: A Case for Reprivatizing Culture' (2005) *The Independent Review* Vol.X, No.2: pp.249-71.

<sup>55</sup> Tierney (2006): Ch.1; Keating (2001): pp.vi-x.

<sup>56</sup> Tierney (2006): pp.52-58.

<sup>57</sup> *Ibid*: p.4.

processes of democratic politics are not animated ideologically by political liberalism? I attempt answers to these questions in Chapter 4 and 5.

### 3.2 The Monistic *Demos* Thesis and Host State Societal Dominance

A key ground of normative critique presented by plurinational constitutionalism against the Westphalian nation-state model, and political liberalism's attachment to it, concerns the 'monistic *demos* thesis,' i.e., the notion that operates as both postulate and presumption that the 'nation' is synonymous with the 'state.'<sup>58</sup> In other words, sub-state nations, by their very existence, challenge the monistic presupposition of traditional liberalism, or 'Liberalism I' in Charles Taylor's term, that there is, or can only be, one *demos* within the state.<sup>59</sup> A related contention is that regarding 'host state societal dominance,' i.e., that the conceptualisation of the nation in both unitary terms and in exclusive association with the state not only prevents the fullest constitutional recognition of national pluralism, but also serves to privilege in effect a majority or otherwise dominant cultural identity to the disadvantage of minority nations, and in violation of fundamental principles that traditional liberalism claims to defend. Thus, implicit in this challenge is the question as to whether liberalism as an ideology has the theoretical and normative capacity to respond to the realities of national pluralism.

The plurinational critique of traditional liberalism points to the imperviousness with which the existence of plural *demos* within the state and their attendant claims have been treated, rendering sub-state nations 'voiceless and faceless.'<sup>60</sup> As Requejo has noted in relation to the work of liberal scholars such as Rawls and Habermas, national pluralism "...is a question that is not so much badly resolved as completely

---

<sup>58</sup> 'Monistic *demos* thesis' is Tierney's term, as is 'host state societal dominance: Tierney (2007): pp.230, 128-9.

<sup>59</sup> C. Taylor, 'The Politics of Recognition' in A. Gutman (Ed.) (1992) *Multiculturalism and the Politics of Recognition* (Princeton: Princeton UP): pp.25-73.

<sup>60</sup> Tierney (2006): p.10.

unaddressed by the premises, concepts and normative questions of these theorists.”<sup>61</sup> Tierney goes further in pointing out a more insidious consequence of this deficiency in traditional liberalism:

“What is particularly debilitating about this gap in the conceptual precepts of traditional liberal theory is that it has led to a false assumption that the liberal democratic state is neutral in cultural and societal terms. Whereas in reality, as Requejo contends, ‘practically speaking, all liberal democracies have acted as nationalising agencies for specific cultural particularisms.’ Accordingly, many of the normative prescriptions emerging from traditional liberal accounts have been built on epistemological error, or at least, imprecision.”<sup>62</sup>

The assumption that the collective identificatory function of nationhood rests only with the state nation denies the possibility of multiple conceptions of national identity that are commonly held by citizens of plurinational polities. By the failure to acknowledge this important dimension of individual identity and autonomy, traditional liberalism denies to individual members of sub-state national societies, for whom the sub-state societal space is an important means of political self-expression, such cardinal commitments of political liberalism as choice, equality and justice. On the other hand, the pretence that the state national society is a culturally neutral entity held together by purely normative values (sometimes accompanied by the disparaging implication that sub-state nations are not similarly modern, progressive and inclusive entities<sup>63</sup>), hides the reality that the state identity is more often than not associated with a dominant societal or cultural influence within the plurinational polity. The failure to apprehend the homogenising consequences of this approach, it is contended by plurinationalist critics, signals a failure on the part of traditional liberal theory to fulfil fundamental liberal precepts.

---

<sup>61</sup> F. Requejo, ‘Introduction’ in F. Requejo (Ed.) (2001) *Democracy and National Pluralism* (London: Routledge): p.4. See also Kymlicka’s observations on Rawls and Dworkin in Kymlicka (1995): p.128.

<sup>62</sup> Tierney (2006): p.10.

<sup>63</sup> See M. Canovan, ‘Sleeping Dogs, Prowling Cats and Soaring Doves: Three Paradoxes in the Political Theory of Nationhood’ (2001) *Political Studies* 49: pp.203-15 at pp.204-6.

Since the early 1990s, these conceptual inadequacies of traditional liberalism have given rise to a new school of liberal political philosophy that seeks to re-posit the normative values of liberalism in ways that take proper account of both nationalism and national pluralism. According to Wayne Norman, this theoretical work addressing the interstice between nationalism and traditional liberalism came in two waves, the first of which attempted to prove “...that it was *not impossible* to be a liberal and a nationalist at the same time” and the second employed the insights produced by that work in proceeding to critique traditional liberalism and its conception of the state according to the monistic *demos* thesis.<sup>64</sup> The ‘liberal nationalist’ theoretical accounts developed in this second wave in particular constitute the body of political philosophy that Charles Taylor has termed ‘Liberalism II’, associated prominently with the work of Taylor himself and Will Kymlicka, among others.<sup>65</sup>

In contrast to the complacency, if not hostility, with regard to nationalism that marks traditional accounts, the methodology of liberal nationalist theorists places emphasis on the sociological reality of nationalism in, and as a form of, ‘normal politics.’<sup>66</sup> They recognise that sub-state nations are deliberative spaces for the participation in civic and political life, which play an essential intermediary role in the relationship between the citizen and the state. The sub-state nation rather than the statal national society is often the foremost vehicle of identity and agency for the individual member of the sub-state nation, and accordingly, “...the value which he finds in the democratic process can be more fully explained by appreciating these ties, and by understanding the preferences felt by this citizen for the location of his right of *individual* self-determination within the broader condition of *collective* self-determination for his primary *demos*.”<sup>67</sup> The most important analytical proposition of liberal nationalist theory therefore is that the meaningful realisation of liberal democratic commitments in respect of citizenship in plurinational polities requires the

---

<sup>64</sup> Norman (2006): pp.1-9.

<sup>65</sup> Taylor (1992); Kymlicka (1995); Tierney (2006): pp.52-58.

<sup>66</sup> Keating (2001): p.viii.

<sup>67</sup> Tierney (2006): p.11.

empirical reality of national pluralism to be fully acknowledged and accommodated in normative and institutional terms by the plurinational state.

While at the normative level these debates are conducted within liberalism in the current literature on the plurinational state, the broader argument about the monistic *demos* is obviously of much wider application, directed as it is to the Westphalian nation-state, which constitutes the foundational politico-legal concept of the contemporary global order. While paying pharisaic homage to the nation-state, particularly as a means of denying sub-state national claims, however, post-colonial states like Sri Lanka have actively undermined its principles. Westphalian concepts like the unified *demos* – in their original European conception, the apogee of progressive modernity – have as noted before been pervasively ethnicised in Sri Lankan constitutional practice, thereby negating the model's normative dictates, and distorting its emancipatory potential as a conceptual conduit for social progress from ethnic hierarchy to civic equality as envisaged in the early literature on post-colonial nation-building.<sup>68</sup> More particularly, ethnicisation of the nation-state has instituted a 'host state *ethnic* dominance,' with pernicious consequences for non-majority ethnicities and nations.

In the decolonisation era, Westphalian doctrines, endorsed for example by the Five Principles of Peaceful Coexistence embodied in the Sino-Indian Agreement of 1954,<sup>69</sup> were seized upon by weak emerging states as safeguards as much against internal ethno-territorial challenges as against external interference. In this internal sense, Westphalian principles have become ideological tools of majoritarianism in ethnically plural societies such as Sri Lanka, and part of the state's armoury in the rejection of minority claims to territorial accommodation and pluralism.<sup>70</sup> There is therefore an instrumental explanation based on majoritarian *realpolitik* for the

---

<sup>68</sup> Smith (1998): Ch.1.

<sup>69</sup> Agreement (with exchange of notes) on trade and intercourse between Tibet Region of China and India, Peking, 29<sup>th</sup> April 1954, *United Nations Treaty Series* (1958) Vol.299, No.4307: p.57. It is noteworthy that the signatory states to this treaty are in today's world, the two rising global powers of Asia, with the political and economic capacity to influence the content of international law and practice, as discussed below.

<sup>70</sup> H. Rae (2002) *State Identities and the Homogenisation of Peoples* (Cambridge: CUP): Ch.1; Section 3.3, *infra*.

flourishing of the Westphalian model in the post-colonial world, notwithstanding the hollowing out of much of its liberal normative content.<sup>71</sup> But as Radhika Coomaraswamy has observed, the anti-pluralist political and constitutional practices engendered by the homogenising ‘pathology’<sup>72</sup> of the nation-state also have a paradoxically ‘progressive’ intent, arising from the unique political circumstances of the post-colonial condition.

“For many, pluralism is...an aspect of ‘obscurantism’ – a strategy often used by colonialism to maintain outdated laws and customs which prevented the development of modern political, social and economic values. This scepticism has often led to centralisation of power in the hands of the state which then appropriates responsibility for the rapid development of society.”<sup>73</sup>

However, as she also points out, “This attitude toward pluralism has...been questioned...especially in the light of the ethnic factor which has become a dominant factor in Asian politics, and also because the centralisation of state power has often led to repression and intolerance.”<sup>74</sup> In these ways, we see that while the practical ramifications of the monistic *demos* thesis and the issue of host state societal dominance work out in empirically different ways as between the West and the post-colonial world, the core conceptual problem of the homogenising and hegemonic potential of the Westphalian model remains the same.<sup>75</sup> The analytical insights offered by plurinational constitutionalists in respect of these two issues therefore are clearly applicable to any other multinational polity where the conceptual and

---

<sup>71</sup> Cf. A.H.Y. Chen, ‘Pathways of Western Liberal Constitutional Development in Asia: A Comparative Study of Five Major Nations’ (2010) *International Journal of Constitutional Law* 8(4): pp.849-84. See also Bertrand and Laliberté (2010): pp.274-83; Stepan, Linz & Yadav (2011): Ch.1.

<sup>72</sup> Rae (2002): Ch.1.

<sup>73</sup> R. Coomaraswamy, ‘Toward an Engaged Judiciary’ in N. Tiruchelvam & R. Coomaraswamy (Eds.) (1987) *The Role of the Judiciary in Plural Societies* (London: Frances Pinter): Ch.1 at p.6.

<sup>74</sup> Ibid. While it maybe that the accommodation of ethnic pluralism is a major concern within liberal opinion in Sri Lanka, it must be stressed that such approaches are still firmly located within the model of mono-national citizenship, *contra* the plurinational thesis, as implicit in Coomaraswamy’s observation. The subscription to this model is widespread and goes beyond constitutional elites to other sites of cultural production, such as language studies: H. Rambukwella, ‘Reconciling What? History, Realism and the Problem of an Inclusive Sri Lankan Identity’ (2012) ICES Research Paper No.3 (Colombo: ICES). For illustrative examples of the grip of this model on the liberal imagination, see the multidisciplinary essays in G. Moonesinghe (Ed.) (2010) *Nation Building: Priorities for Sustainability and Inclusivity* (Colombo: Shramaya).

<sup>75</sup> Rae (2002).

normative dictates of the Westphalian nation-state stand in opposition to the constitutional demands of national pluralism.

With regard to the Sri Lankan case, there are three points to note in this respect. Firstly, certain aspects of plurinational theory need not detain us, chief among them the debate concerning the issue of the host state's cultural neutrality. As amply demonstrated in the consideration of Sinhala-Buddhist nationalism and its relationship with the Sri Lankan state in Chapter 2, empirical reality relieves us of the need to address this issue in theoretical terms, and we can safely proceed on the basis that the Sri Lankan state is not culturally neutral.

Secondly, in addition to the analytical critique of the monistic *demos* thesis, a particularly useful normative issue that requires greater exploration in the Sri Lankan context concerns the liberal nationalist contentions with regard to multiple nationality allegiances that citizens belonging to sub-state nations might have, and specifically the understanding of the sub-state nation as the 'primary *demos*' through which the individual citizen's relationship with the plurinational host state is mediated.<sup>76</sup> As noted, in the current work this has been theorised within a liberal democratic framework of individual autonomy and collective self-determination. In the Sri Lankan case, the added complexity is the tension between democratic choice theory and the ethnic basis of state- and sub-state national identity. These matters are addressed in Chapters 4 and 6.

Thirdly, as suggested consistently throughout this thesis and confirmed by Coomaraswamy above and others,<sup>77</sup> there is a need for constitutional theory and practice to treat ethnicity seriously as well as positively, and not as some unpalatable primordial remnant that will, hopefully, disappear with the march of time and progress. This is not so much an exercise in making a virtue out of necessity as a realistic appraisal of the 'social context' of constitutional law in Sri Lanka, in which

---

<sup>76</sup> That which Kymlicka terms the 'context of choice': Kymlicka (1995): Ch.5; S. Tierney, '*Rights versus Democracy? The Bill of Rights on Plurinational States*' in Harvey & A. Schwartz (2012): Ch.1 at pp.16-17.

<sup>77</sup> E.g., Urmila Phadnis, cited in Coomaraswamy (1987): p.6.

the resilience of ethnicity as the primary referent of identity materialises from the total collapse of modernist expectations with regard to post-colonial nation-building in the six decades since independence. In any case, as I strongly argue in Chapter 4, while the civic-ethnic dichotomy in relation to nations and nationalisms performs a useful analytical purpose at a basic level, taking it too far can be shown to be theoretically problematic, empirically untenable, and of little use for constitutionalism in practice. In other words, there seems to be little point in the dogmatic adherence to modernist shibboleths about the civic nation in the face of the ethnic reality, and at the theoretical level, the plurinational critique has shown us how the conceptually problematic nature of the modernist nation-state in the context of national pluralism is both deeper and more general than the specificities of the Sri Lankan case.<sup>78</sup>

### **3.3 Relational Sovereignty and the ‘Hard State’**

A related conceptual and methodological challenge of plurinational state theory to traditional constitutionalism inheres in its critique of ‘narrow positivism’ on two fronts: narrow positivism’s promotion of a unitary model of legal sovereignty, and its ‘artificial distinction’ between legal and political sovereignty, both of which it is argued, “...fit nicely with, and share the same flaws as, unitary conceptions of the *demos*.”<sup>79</sup> The result is the close association of narrow positivism with unitary models of constitutional form fundamentally at odds with sub-state national aspirations within multinational polities. Moreover, as Tierney states,

“This notion of sovereignty has been a central ideological device in legitimising the dominant, monistic vision with which the plurinational state has masqueraded as the nation of the state ... The dominant society has been able to crystallise political power at the centre of the state, presenting it in the

---

<sup>78</sup> See also Tierney’s critical comment on both the linear teleology and the normative immutability of its values that constitute the central assumptions of traditional liberalism with regard to the modern nation-state: Tierney (2006): p.58.

<sup>79</sup> Ibid: p.13.

guise of legal legitimacy, and hence entrenching political hegemony in purportedly objective constitutional form.”<sup>80</sup>

One of the issues with narrow positivism is that it purports to offer a self-contained account of pristine legal sovereignty that is divorced (indeed, liberated) from politics. Although the validity of this claim to political neutrality is heavily disputed,<sup>81</sup> taken at face value, this also means that narrow positivism is divorced from the ‘social reality’<sup>82</sup> of which legal institutions are a part, and from which flow the legitimacy of both institutions and power. By contrast to narrow positivism, more sophisticated positivist accounts call for a fuller understanding of the relationship between social conditions and legal institutions, and especially the relationship between political power and legal sovereignty. As Martin Loughlin has argued,

“Sovereignty is essentially an expression of a political relationship and, from a juristic perspective, sovereignty constitutes the essence of the modern state...Sovereignty...is the name given to express the quality of the political relationship that is formed between the people and the state...This relational aspect of sovereignty is highlighted by Croce. ‘In the relationship between the ruler and the ruled’, he argues, ‘sovereignty belongs to neither but to the relationship itself.’”<sup>83</sup>

Plurinational constitutionalists rely upon this relational conceptualisation of sovereignty that stresses the interrelationship between the political and the legal, albeit by extending this insight to the plurality of peoples or nations within the plurinational state.<sup>84</sup> It follows from the application of the relational understanding of sovereignty to the reality of multiple national societies within the state that both the idea of sovereignty and the legal form of governing institutions must also be pluralistic. The challenge of national pluralism to liberal constitutionalism with

---

<sup>80</sup> Ibid: p.16.

<sup>81</sup> Ibid: pp.13-15.

<sup>82</sup> MacCormick (1999): p.106.

<sup>83</sup> M. Loughlin (2003) *The Idea of Public Law* (Oxford: OUP): p.83, citing B. Croce (1945 [1925]) *Politics and Morals* (Trans. S.J. Castiglione) (New York: Philosophical Library): p.17

<sup>84</sup> Tierney (2006): pp.102-4.

regard to the divisibility of sovereignty therefore is to develop the discursive and conceptual capacity to provide for plurinational institutional requirements than it has traditionally been able to achieve.

Sri Lankan legal discourse is a classic example of its kind.<sup>85</sup> A former British colony that has inherited the doctrines, concepts, and modes of thinking of nineteenth century English public law and jurisprudence of Austin, Bentham, Blackstone, Dicey and Maine, the theoretical assumptions of its legal discourse remain fossilised in the imperial age. This limits commensurately the parameters of its imagination on central constitutional concerns, and the manner in which it understands, defines, and responds to issues such as national identity, pluralism, sovereignty, territory, and devolution.<sup>86</sup> It is important to stress the pervasive nature of this legal discourse, in that while its principal beneficiary in politico-constitutional terms has been Sinhala-Buddhist nationalism, it is subscribed to and perpetuated by a much broader spectrum of legal and political opinion. One of the unitary state's most articulate and influential defenders was the eminent constitutional lawyer H.L. de Silva, a Christian Sinhalese, a secularist and a proponent of individual human rights, but a trenchant opponent of ethno-territorial forms of devolution and especially federalism. Criticising the devolution proposals of the Kumaratunga government (adverted to earlier), which he clearly saw as a precursor to secession and disintegration, he made the following argument:

“...in the Republic of Sri Lanka sovereignty is declared to be in all the People and to be inalienable, which means its enjoyment and operational effects are to remain for ever and in perpetuity and in all its plenitude without reduction

---

<sup>85</sup> By ‘legal discourse’ is meant the general assumptions, concepts and categories that lawyers use in discussions regarding constitutional form, norms and structures, and which constitute the very basis of constitutional self-understanding among Sri Lanka’s constitutional elites. The constitutional elite obviously comprises of lawyers, judges, politicians, civil servants and legal academics, but also, less obviously, the media, think tanks and rights pressure groups, and broader social science academia, in particular, historians, anthropologists, sociologists, and indeed other exegetists of time, space and culture such as linguists and cultural critics. All these actors contribute to the formation of constitutional culture.

<sup>86</sup> For a critical discussion of the dominance of positivist approaches in the broader social sciences and in particular professional history, see M. Roberts, ‘*Sri Lanka: Intellectual Currents and Conditions in the Study of Nationalism*’ in M. Roberts (Ed.) (1997) *Sri Lanka: Collective Identities Revisited* (Vol.1) (Colombo: Marga Institute): Ch.1, pp.1, 5-9.

or diminution. Therefore, through approval at a referendum of the people (even though it constitutes a majority or a super majority of all the people in the State) one cannot lawfully and voluntarily transfer or otherwise alienate or disestablish any part of the sovereign power vested in the people. The people cannot validly alienate or deprive themselves or future generations of the plenary powers of government that inhere in them as a sovereign body through the exercise of the franchise or at a referendum...They cannot bring about such a tectonic change in the basic structure of the State through the referendum process. Since the sovereignty of the people is the ultimate norm or the *Grundnorm*, no organ of the State which exercises power on behalf of the people can enter into any legal transaction which contradicts or derogates from the plenitude of sovereignty involving its alienation in a significant degree (which is prohibited), and all such attempts are legally null and void.’<sup>87</sup>

In this passage we see most if not all of the key elements of Sri Lankan legal discourse and its constitutional self-understandings: the monistic conception of the nation (or ‘the People’), the unitary and illimitable conception of sovereignty (and hence of the necessary constitutional form of the state), and the positivist legalism that clothes an ideologically particularistic view of the state in an apparently politically impartial language of legal legitimacy, objectivity and universalism. With regard to assumptions about legal and constitutional order, it is also an archetypical representation of what John Griffiths described, critically, as the ‘ideology of legal centralism.’<sup>88</sup>

---

<sup>87</sup> H.L. de Silva (2008) *Sri Lanka a Nation in Conflict: Threats to Sovereignty, Territorial Integrity, Democratic Governance and Peace* (Colombo: Visidunu Prakasakayo): p.74. For the judicial expression of a broadly similar viewpoint, see the dissenting opinion of Wanasundera, J., *In Re the Thirteenth Amendment to the Constitution and the Provincial Councils Bill* (1987) 2 SLR 312 at 333-383, discussed in: R. Coomaraswamy (1997) *Ideology and the Constitution: Essays on Constitutional Jurisprudence* (New Delhi: Konark): Ch.7; A. Welikala, ‘*The Sri Lankan Conception of the Unitary State: Theory, Practice and Historiography*’ in A. Amarasingham & D. Bass (Eds.) (forthcoming, 2014) *Post-War Sri Lanka: Problems and Prospects* (London: Hurst & Co.).

<sup>88</sup> J. Griffiths, ‘*What is Legal Pluralism?*’ (1986) *Journal of Legal Pluralism and Unofficial Law* 24(2): pp.1-55.

This dominant orthodoxy is sustained by several factors: the instrumental uses of its postulates to majoritarian nationalists in control of the state, as we have seen in Chapter 2; the English legal positivism that is transmitted and reproduced even today through methods and modes of legal education that are largely unchanged from the colonial era;<sup>89</sup> the consequent absence of a vibrant intellectual environment of critique and contestation in the development of the colonial legal inheritance; and in this regard especially, the failure noted before on the part of Tamil nationalism to challenge at a fundamental level the theoretical and normative dimensions of the hegemonic state, as opposed to its institutional form.<sup>90</sup>

In the context of the different social, political and economic considerations that challenge the law's enterprise in a post-colonial, plural, and developing society, this legal discourse has been found fundamentally wanting, especially in the highest deliberative site of its contestation and enunciation: constitutional adjudication.<sup>91</sup> Liberal critiques have pointed to the general failure of the judiciary from the inception of the post-colonial state to fulfil its immanent counter-majoritarian function in the protection of minorities and pluralism, and the role of the dominant narrow positivist legal discourse in this failure in the form of judicial restraint and deference, and in restrictive, literalist interpretative approaches to constitutional text.<sup>92</sup>

---

<sup>89</sup> N. Tiruchelvam, 'Legal Education and Development: The Role of the Law Teacher in Sri Lanka' (1977) *Marga Quarterly Journal* 4(2): p.89.

<sup>90</sup> Ironically, Tamil nationalists, especially those favouring a separate state, seem themselves to be profoundly influenced by the same tradition of positivism and English constitutional law as the Sri Lankan legal discourse. In what was the only concrete expression of its constitutional vision for an autonomous entity in the north and east (widely seen by critics such as H.L. de Silva as a prototype for a future independent state of Tamil Eelam), the Interim Self-Governing Authority (ISGA) proposal of the Liberation Tigers of Tamil Eelam (LTTE) reflected a highly centralised institutional structure exercising 'plenary power.' Thus secessionist Tamil nationalism, and especially that represented by the LTTE, was a mirror image of its rival in respect of a centralising, authoritarian and hegemonic approach to constitutional form. See R. Edrisinha & A. Welikala, 'The Interim Self Governing Authority Proposals: A Federalist Critique' in R. Edrisinha & A. Welikala (Eds.) (2008) *Essays on Federalism in Sri Lanka* (Colombo: CPA): Ch.XII; De Silva (2008): Ch.24. See also Edrisinha et al (2008): Ch.29.

<sup>91</sup> N. Tiruchelvam, 'Introduction' in Tiruchelvam & Coomaraswamy (1987): p.ix.

<sup>92</sup> R. Edrisinha, 'Sri Lanka: Constitutions without Constitutionalism, A Tale of Three and a Half Constitutions' in Edrisinha & Welikala (2008): Ch.I; N. Tiruchelvam, 'Introduction'; H.L. de Silva, 'Pluralism and the Judiciary in Sri Lanka'; R. Coomaraswamy, 'The Sri Lankan Judiciary and Fundamental Rights: A Realist Critique' in Tiruchelvam & Coomaraswamy (1987): p.ix; Ch.5; Ch.6.

However, while these pluralist critiques do attack the statist and majoritarian conception of sovereignty, they do *not* include the radical interrogation of the Westphalian nation-state and its conception of unitary sovereignty found in plurinational constitutionalism. Indeed, the general tenor of these arguments are directed at a *reaffirmation* of the original modernist values of the nation-state, based on popular sovereignty, de-ethnicised, right-based citizenship and minority protecting constitutional democracy, or to locate them in Griffiths' typology, *within* the ideology of legal centralism. Thus in these accounts, because pluralistic modernity is conceived in terms of an ultimately unitary legal order,<sup>93</sup> popular sovereignty is conceived in relation to a monistic *demos*, fundamental rights as attaching to the individual citizen, and constitutional minority protections, while attentive to ethnicity, firmly anchored in the conventional paradigm of competitive democracy.<sup>94</sup> This is unsurprising, given what we have seen of traditional liberalism's theoretical predispositions as revealed via the plurinational critique, and for the same reasons, its theoretical inadequacies in the task of constitutionally accommodating the sub-state national challenge. Therefore in addressing national pluralism from a specifically plurinational constitutional perspective, and in redefining the concepts of sovereignty and constitutional order in a less absolutist and towards a more 'relational' understanding in appreciation of national pluralism, the foregoing discussion underscores the formidable discursive challenge posed by the entrenched monist and unitary assumptions – implicit in even critical liberal positions in respect of the Sri Lankan state – of Sri Lankan legal discourse.<sup>95</sup>

This, however, affords us an opportunity to interrogate the unitary conception not only of the constitutional form of the state, but also of the broader legal order. Juxtaposed alongside the ideology of legal centralism in public law is the empirical

---

<sup>93</sup> Griffiths (1986): pp.2-8.

<sup>94</sup> S. Choudhry, 'Bridging Comparative Politics and Comparative Constitutional Law: Constitutional Design in Divided Societies' in S. Choudhry (Ed.) (2008) *Constitutional Design for Divided Societies: Integration or Accommodation?* (Oxford: OUP): Ch.1 at p.16. For the competitive paradigm of democracy and the theory of cross-cutting cleavages, see: S.M. Lipset (1960) *Political Man: The Social Bases of Politics* (New York: Doubleday); A. Lijphart (1977) *Democracy in Plural Societies: A Comparative Exploration* (New Haven: Yale UP).

<sup>95</sup> I will return to the issue of sovereignty when I address the normative questions for democracy in Chapter 5, and in more concrete terms in Chapter 6, when I consider the constitutional principles of recognition, representation and autonomy.

reality of legal pluralism in private law (albeit in the ‘weak sense’ as defined by Griffiths<sup>96</sup>) where eight different systems – Kandyan law, Buddhist law, Hindu law, *Tesawalamai* law, Islamic law, *Mukkuvar* law, Roman-Dutch law and English law – interrelate and govern transactions in diverse ways.<sup>97</sup> Thus from this empirical legal pluralism we are in a position to demonstrate that the dominant representation of the legal order as “a single, unified and exclusive hierarchical normative ordering depending from the power of the state”<sup>98</sup> to be at best an ideological claim, rather than the representation of an absolute truth. This analytical insight in turn enables the development, analogously to private law, of pluralistic norms for substantive constitutional law and constitutional form in response to national pluralism.<sup>99</sup>

Statist conceptions of sovereignty are also relevant for another distinction between the Western plurinational states and Sri Lanka, and which reflects a further challenge in the transposition of plurinational constitutionalism into the latter case. As we have seen, the contemporary Western (especially the European) state is in a ‘late sovereign’ state of development, with the state no longer representing the exclusive font of political power and legal authority within its territorial borders or outside them. While the sub-state national challenge is common to both experiences, the historical movement which has seen the retreat of the state in certain key sectoral jurisdictions, and certainly its cession of authority to a supra-state constitutional order such as the European Union, is nowhere to be seen in the Sri Lankan and South Asian context. On the contrary, with the state’s military defeat of sub-state secessionist militancy, an even more rigid conception of the ‘hard state’ is being entrenched,<sup>100</sup> a process that has been catalysed by three salient factors. Firstly, the government’s mobilisation of popular support for the final war effort involved an intensive invocation of the martial tropes of Sinhala-Buddhist nationalist historiography, embodied in particular in the

---

<sup>96</sup> Griffiths (1986): p.8.

<sup>97</sup> L.J.M. Cooray (1992) *An Introduction to the Legal System of Sri Lanka* (2<sup>nd</sup> Rev. Ed.) (Colombo: Lake House): Chs.I,IV.

<sup>98</sup> Griffiths (1986): p.4.

<sup>99</sup> These arguments will be further developed in Chapter 6.

<sup>100</sup> J. Uyangoda, ‘Introduction’ and S. Marcelline & J. Uyangoda, ‘Post-Civil War Sri Lanka: Dilemmas of State Reform’ in J. Uyangoda (Ed.) (2013) *State Reform in Sri Lanka: Issues, Directions and Perspectives* (Colombo: SSA): Chs.1, 6; Jayatilleka (2013): Ch.5.

Dutugemunu legend.<sup>101</sup> In providing historiographical validity and continuity to the triumph of the Sinhala-Buddhist state over Tamil subversion, this has incentivised populist majoritarian support for the state's resistance to pluralistic reforms.<sup>102</sup> Secondly, the military strategy of the government in the final stages of the war entailed a massive expansion of the defence establishment which, rather than reduction after the war, is becoming increasingly institutionalised.<sup>103</sup> The peacetime 'normalisation of the exception' has seen the wartime 'national security state' continue in the form of creeping militarisation of civil life, especially in the Tamil north.<sup>104</sup>

Thirdly, the Sri Lankan state is increasingly associated with a foreign policy orientation that prioritises its relationships with states of the global south/east in general and with the ascendant China in particular.<sup>105</sup> While the genesis of this policy orientation lies in Sri Lanka's role as a founder-state of the Non-Aligned Movement (NAM), it has been facilitated by the assistance it received from these states during the war, in contradistinction to Western states, which in raising international concern with regard to violations of international human rights and humanitarian law, were seen to be obstructing the war effort. The significance of these developments for us is that the Sri Lankan state's alignment with non-Western states have the effect of validating the 'Eastphalian' reaffirmation of the hard state, the concomitant rejection

---

<sup>101</sup> See Chapter 2, *supra*; D. Rampton & A. Welikala, 'Would the Real Dutugemunu Please Stand Up? The Politics of Sinhala Nationalist Authenticity and Populist Discontent' in Goodhand, Spencer & Korf (2011): Ch.6; N. Wickramasinghe, 'After the War: A New Patriotism in Sri Lanka?' (2009) *Journal of Asian Studies* 68(4): pp.1045-1054.

<sup>102</sup> N. Wickramasinghe, 'Producing the Present: History as Heritage in Post-War Patriotic Sri Lanka' (2012) ICES Research Paper No.2 (Colombo: ICES).

<sup>103</sup> See e.g., A. Kadirgamar, 'The Question of Militarisation in Post-War Sri Lanka' (2013) *Economic and Political Weekly* XLVIII (7); Centre for Policy Alternatives (2014) *Forced Evictions in Colombo: The Ugly Price of Beautification* (Colombo: CPA); Z. Mampilly, 'The Nexus of Militarization and Corruption in Sri Lanka' in C.S. Cheng & D. Zaum (Eds.) (2012) *Corruption and Post-Conflict Peacebuilding: Selling the Peace?* (Abingdon: Routledge): Ch.11.

<sup>104</sup> A. Welikala (2008) *A State of Permanent Crisis: Constitutional Government, Fundamental Rights and States of Emergency in Sri Lanka* (Colombo: CPA): Chs.5,6; B. Bastiampillai, R. Edrisinha & N. Kandasamy (Eds.) (n.d.) *Prevention of Terrorism Act (PTA): A Critical Analysis* (Colombo: CHRDI); International Crisis Group (2012) *Sri Lanka's North II: Rebuilding under the Military*, Asia Report No.220, 16<sup>th</sup> March 2012.

<sup>105</sup> D. Lewis, 'The Failure of a Liberal Peace: Sri Lanka's Counter-Insurgency in Global Perspective' (2010) *Conflict, Security and Development* 10(5): pp.647-71.

of the ‘Western’ conception of the international order, and with it, rights-based approaches to the settlement of sub-state claims.<sup>106</sup>

While these developments could be seen, rightly, as factors militating against any political acceptance for plurinational constitutionalism in Sri Lanka, as I have noted in Chapter 1, political traction is not my concern. In the context of the potential for conflict that remains inherent in the unresolved sub-state national question, my concern with the Sri Lankan dimension of this thesis lies in the theoretical and constitutional issues that require attention if and when a more accommodative environment eventuates.

### **3.4 The Disaggregation of Nation and State**

It can thus be seen that the contemporary questions of constitutional theory engaged by the reality of national pluralism in certain Western constitutional democracies, and by attendant liberal nationalist discourses, are based on a coherent set of historiographical, normative and politico-constitutional claims, which present normative challenges to traditional liberalism, and both conceptual and substantive challenges to traditional constitutionalism. Taken together, they represent a major critique and call for a fundamental re-conceptualisation of the Westphalian conception of the sovereign nation-state, in terms of its internal constitutional norms and structures, and as the established politico-legal and territorial unit of international order. From the perspective of constitutional law and theory, the essence of the plurinational challenge may be summarised in Tierney’s words as follows:

“...central to the challenge presented by sub-state national societies to the host state is a call for the disaggregation of the terms ‘state’ and ‘nation’;

---

<sup>106</sup> For the idea of ‘Eastphalia,’ see: D.P. Fidler, ‘*Eastphalia Emerging? Asia, International Law and Global Governance*’ (2010) *Indiana Journal of Global Legal Studies* 17(1): pp.1-12; T. Ginsburg, ‘*Eastphalia as the Perfection of Westphalia*’ (2010) *Indiana Journal of Global Legal Studies* 17(1): pp.27-45. These exploratory and predictive essays envisage more sanguine results for international law from the rise of the Eastphalian regime than what is demonstrated in respect of pluralism in Sri Lanka through its reaffirmation of Westphalian state sovereignty and non-intervention.

those who adhere to the traditional conceptualisation of the ‘nation-state’ as one politico-constitutional territory encapsulating a unitary national society are charged with the task of reconceiving the plurinational state in appreciation of its essential societal plurality.”<sup>107</sup>

From the analytical characterisation of the Sri Lankan polity as one of national pluralism that is proposed in this thesis, and the normative and structural questions that attend such a characterisation, it is also this radical proposition with regard to the nation-state that I make in regard to the Sri Lankan case. While the scholarly work in relation to the Western plurinational state demonstrates that this is a theoretically viable constitutional proposition, and thus liberates us from the constraints of Westphalian orthodoxies in the accommodation of sub-state nationalism, the comparative application of the plurinational state model to the empirically distinct Sri Lankan case requires in some respects a different approach to the normative consequences that are intended to flow from the disaggregation of nation and state.

Central to this proposition in Western plurinational constitutionalism is the historical re-conceptualisation of the plurinational polity as a union state, on the basis of which further claims are made for the recognition, representation and autonomy of sub-state nations constituting the union on a footing of equality. The same methodological concern with historiography has taken us in Sri Lanka into the pre-colonial era and the dominant state form that prevailed then. As noted in Chapter 2, there is much that is promising in that cosmo-topographical model in helping us historically contextualise constitutional responses to national pluralism in the present, insofar as it stands in vivid contrast to the centralising nostrums of the modern state that Sinhala-Buddhist nationalists and Jacobinist commentators alike advance in refusing to accommodate the sub-state challenge. This historical exploration however has taken us to an ontology of the state that is fundamentally different to that of the West. The contractarian ideal at the heart of the union state is anchored in Enlightenment rationalism, whereas the pluralist potential of the pre-colonial state form derives from the principles of Indic cosmology. While this provided for an extraordinarily

---

<sup>107</sup> Tierney (2006): p.5.

heterogeneous conception of society, the political order was also governed by principles of hierarchy and encompassment that maintained cohesion. As it will be argued in Chapter 6, in contemporary terms, this appears to demand an emphasis on *asymmetry* as opposed to *equality* in the constitutional treatment of sub-state nations. Asymmetry also features in plurinational theory and has been defended on liberal democratic grounds,<sup>108</sup> but here the concern mainly has been with asymmetrical constitutional arrangements to reinforce the norm of equality for sub-state nations, notwithstanding their numerical minority. As a constitutional principle, asymmetry in a plurinational Sri Lanka would assume a different shape and serve a different normative purpose: that of democratic *pluralism* rather than *equality*, and from a historical point of view, in an hierarchical framework of accommodation of majority and minority nations rather than a relationship of absolute equality.<sup>109</sup>

The disaggregation of nation and state also raises the issue as to the form and content of the statal 'Sri Lankan' national identity within a putative plurinational dispensation. A 'thin' conception of the state-nation would render it a minimalist juristic identity, virtually devoid of any 'national' content, with the sub-state level assuming primacy over the identificatory and functional roles of nationhood. While a hypothetical possibility, the political and historical implausibility of this model suggests that it would be a misleading line of theoretical enquiry, not least because of its formal likeness with the confederal postures associated with the erstwhile secessionist movement.<sup>110</sup> In the Western context, illustrated in the debates over the prospective Scottish constitutional referendum, the liberal democratic host state is committed in policy and principle to respect the democratic wishes of the sub-state nation, either to effect a separation or to fundamentally renegotiate the terms of the union. Needless to say, such options do not form part of the empirical context on which constitutional

---

<sup>108</sup> Keating (2001): Ch.4; M. Keating, 'What's Wrong With Asymmetrical Government?' in H. Elcock & M. Keating (Eds.) (1998) *Remaking the Union: Devolution and British Politics in the 1990s* (London: Frank Cass): pp.195-226; F. Requejo, 'Political Liberalism in Multinational States: The Legitimacy of Plural and Asymmetrical Federalism' in A-G. Gagnon & J. Tully (Eds.) (2001) *Multinational Democracies* (Cambridge: CUP): pp.110-32.

<sup>109</sup> For different reasons, plurinational theorists also critique the uniformising effect of the liberal norm of equality (central to international human rights law), urging instead the value of pluralism and difference: Tierney (2012): p.32.

<sup>110</sup> E.g., Bates, Wells & Braithwaite (Solicitors) (1995) *A Framework for the Constitution of the Union of Ceylon*, discussed in Edrisinha et al (2008): Ch.20.

theory of any solidity can be built in the Sri Lankan case. Arguments for the reform of the *unitary* state are strengthened if they are based on a clear *a priori* commitment to the *unity* of the state, and to this extent the theoretical limits of sub-state autonomy are pre-determined in the Sri Lankan case in a way that they are not in the Western contexts. This then suggests that we need a more substantial, ‘thick’ conception of Sri Lankan identity to underpin or overarch the radical pluralisation and devolution involved in a plurinational constitution. Again drawing from the UK experience, as Hugh Kearney has pointed out, “...there has been a ‘British’ history over and above our ‘multi-national’ history” and therefore the answer to the question, “four nations or one?” is “four nations and one.”<sup>111</sup> A similar approach seems to be apposite in Sri Lanka, whereby an efflorescence of ‘Sri Lankan-ness’ should be encouraged alongside a plurinational settlement of the sub-state national question within the framework of a united state, wherein the loyalty of constituent nations to the state is secured on a basis of consent and persuasion rather than force and imposition. I deal with the issues more extensively in Chapter 5.

#### **4. Concluding Remarks**

The foregoing discussion has set out in outline the claims, critiques and arguments that form the substance of the constitutional theory of the plurinational state, as they relate to the Sri Lanka, while noting the functional similarities and contextual differences that must be taken into account in the comparative application of the theoretical model to the concrete conditions of the chosen case study. I have identified the theoretical challenges to both the model and the case study in this exercise. In the following chapters, the arguments introduced here are further developed in relation to nationalism, democracy, history, and prescriptive principles.

The exploration of these theoretical issues in the deployment of plurinational ideas is conceived as a constitutional strategy of holding, at first instance, the unity of existing multinational states together, while affording the fullest possible

---

<sup>111</sup> H. Kearney, ‘*Four Nations or One?*’ in B. Crick (Ed.) (1991) *National Identities: The Constitution of the United Kingdom* (Oxford: Blackwell): p.4. Cf. Tierney (2006): p.164, fn.148.

constitutional recognition to the autonomy aspirations of sub-state nations within them. It may be that in some cases the creation of separate sovereign states might be the only morally just resolution for sub-state national claims (although in most such cases, this does not seem a politically feasible option in the contemporary 'Eastphalian' world order), but secession is a category of constitutional response to the sub-state national challenge that goes beyond the plurinational state, and consequently, the scope of this thesis.

## CHAPTER 4

### BRIDGING TRADITION AND MODERNITY: PERFORMATIVE NATIONALISM AND PLURINATIONAL CONSTITUTIONALISM

1. Introduction
2. The Civic-Ethnic Dichotomy: Myths and Realities
3. Theoretical Approaches to Nationalism in Sri Lanka
  - 3.1 The Nation of the State? The Post-Orientalist and Ethnicist Accounts of the Sinhala-Buddhist Nation
  - 3.2 The Sub-State National Challenge: The ‘Instrumental Primordialism’ of Tamil Nationalism
4. An Analytical Framework for National Pluralism: Performative Nationalism and Plurinational Constitutionalism
5. Concluding Remarks

#### 1. Introduction

The Western plurinational state, as we have seen in Chapter 3, is premised empirically on nationalisms that are civic-societal in nature, and normatively on the liberal nationalist re-conceptualisation of the modern nation at both state and sub-state levels.<sup>1</sup> In much of the scholarly literature on plurinational constitutionalism therefore, the ethnic-communal model of the nation is excluded from consideration, with the implication that these kinds of nationalisms are potentially incompatible with the liberal plurinational state. This is perhaps not so much an expression of disdain for ethnic nationalisms in preference for some superior form of civic nationalism, as a consequence of the realities within which the plurinational state has so far been theorised. Several factors have contributed to this sociological

---

<sup>1</sup> S. Tierney (2004) *Constitutional Law and National Pluralism* (Oxford: OUP): p.6, Ch.2; M. Keating (2001) *Plurinational Democracy: Stateless Nations in a Post-Sovereignty Era* (Oxford: OUP): Ch.6.

understanding of sub-state nationalisms in Scotland, Quebec and Catalonia. These sub-state nations have undergone a process of nation-building that parallels the ‘classical modernist’<sup>2</sup> account of nation-formation in the political history of industrialised Western nation-states. Plurinational constitutionalism therefore relies upon a tradition of nations and nationalism that is nuanced towards sub-state national claims, but one that is nevertheless located within the historical process of modernity.<sup>3</sup> Moreover, the normative grounding of both liberal nationalism and plurinational constitutionalism in political liberalism, which while attentive to the value and meaning of ‘societal culture’<sup>4</sup> for individual self-expression, rejects the fixity of national identity that is suggested by primordialist or perennialist accounts.<sup>5</sup> Plurinationalist theorists have also been concerned to refute charges of ethnic revanchism<sup>6</sup> or ‘ethnic politics’<sup>7</sup> directed at sub-state national claims by traditional liberals in these established Western democracies, and have therefore emphasised the civic and modern nature of these sub-state nations.<sup>8</sup>

In Sri Lanka by contrast, both competing nationalisms are conceived in ethnic-communal terms, which rely on ascriptive features such as language, religion and ethno-culture both for their conceptual articulation and day-to-day practice. Equally importantly, the modern idea of the nation-state was introduced, not by a process of organic historical development of pre-existing collective identities and forms of social, political, and economic organisation, but by the foreign intervention of British colonialism. Consequently, the modern state preceded the modern nation at the moment of independence, and the post-colonial process of modernity took shape in

---

<sup>2</sup> A.D. Smith (1998) *Nationalism and Modernism: A Critical Survey of Recent Theories of Nations and Nationalism* (London: Routledge): Ch.1.

<sup>3</sup> N. MacCormick, ‘*Liberalism, Nationalism, and the Post-Sovereign State*’ (1996) *Political Studies* 44: pp.553-67.

<sup>4</sup> W. Kymlicka (1995) *Multicultural Citizenship* (Oxford: OUP): Ch.5.

<sup>5</sup> Tierney (2004): p.36; F. Requejo, ‘*Shadows of the Enlightenment: Refining Pluralism in Liberal Democracies*’ in F. Requejo & M. Caminal (Eds.) (2011) *Political Liberalism and Plurinational Democracies* (London: Routledge): Ch.2.

<sup>6</sup> Tierney (2004): Ch.3; S. Tierney, ‘*We the Peoples’: Constituent Power and Constitutionalism in Plurinational States*’ in M. Loughlin & N. Walker (Eds.) (2007) *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* (Oxford: OUP): pp.232-3.

<sup>7</sup> Keating (2001): p.165.

<sup>8</sup> W. Kymlicka, ‘*Misunderstanding Nationalism*’ in R. Beiner (Ed.) (1999) *Theorizing Nationalism* (Albany, NY: SUNY Press): Ch.7.

different ways to the West and had to address different challenges.<sup>9</sup> While the fact remains therefore that frameworks of both nation and state in contemporary global usage are not Sri Lankan or Asian concepts, but originally British and European ideas,<sup>10</sup> the role of imperialism in the formation of nations and nationalisms has been overstated by some post-orientalist scholars, just as much as Sinhala-Buddhist and Tamil nationalists exaggerate, respectively, pre-colonial unity or fragmentation in the furtherance of contemporary political agendas.<sup>11</sup> In each of these approaches including that of the post-orientalists, ideology has played a major role in distorting sociological observation as well as the construction of descriptive theory. We need therefore a less zealous and more nuanced understanding of pre-colonial collective consciousness among the Sinhalese and Tamils, as well as of how colonial modernity impacted on traditional identities.

The conceptualisation of nations and nationalism I articulate in this chapter recognises the centrality of ethnicity to collective consciousness and its political salience for constitutional theory.<sup>12</sup> The sociological and historical enquiry with regard to nations and nationalism in this thesis accordingly is conceived as a consideration of whether such ethnic forms of the nation are amenable to constitutional accommodation in conformity with the basic tenets of the plurinational model. In other words, we are dealing here not with civic nation-states and ‘sub-state national societies’,<sup>13</sup> but with an ‘ethnocratic state’<sup>14</sup> and sub-state ethnic nations. This enquiry may thus be broken down into several further questions, which are

---

<sup>9</sup> M. Guibernau (1999) *Nationalisms: The Nation-State and Nationalism in the Twentieth Century* (Cambridge: Polity Press): Ch.6; P. Saravanamuttu, ‘Governance and Plural Societies: Sri Lanka’ in P.R. Chari (Ed.) (2001) *Security and Governance in South Asia* (Colombo: RCSS): Ch.6 at pp.130-4; P. Saravanamuttu, ‘Sri Lanka: The Intractability of Ethnic Conflict’ in J. Darby & R. MacGinty (Eds.) (2000) *The Management of Peace Processes* (London: Macmillan): pp.195-227. Both Guibernau and Saravanamuttu use ‘state-nation’ as a *descriptive* concept to denote the state’s antecedence to the nation in Third World contexts. This is fundamentally different to the *normative* concept of ‘state-nation’ (pace A. Stepan, J.J. Linz & Y. Yadav (2011) *Crafting State-Nations: India and other Multinational Democracies* (Baltimore: JHU Press) that I rely upon in Chapter 5, *infra*).

<sup>10</sup> A.D. Smith (1986) *The Ethnic Origins of Nations* (Oxford: Blackwell): pp.144-5; M. Loughlin (2010) *Foundations of Public Law* (Oxford: OUP): pp.2,6; Ch.7.

<sup>11</sup> These matters are discussed in Section 3, *infra*. See also S. Sivasundaram (2013) *Islanded: Britain, Sri Lanka and the Bounds of an Indian Ocean Colony* (Chicago: Chicago UP): Chs.1,8.

<sup>12</sup> J. Hutchinson & A.D. Smith (Eds.) (1996) *Ethnicity* (Oxford: OUP): pp.3-14 [Introduction] at pp.4-7.

<sup>13</sup> Tierney (2004): pp.4-5.

<sup>14</sup> This idea is more fully developed in Chapter 5, *infra*.

discussed in this and the next two chapters. The discussion in this chapter can be broadly divided into two parts. It seeks, firstly, to articulate the sociological and historical dimensions of nations and nationalisms in Sri Lanka in the context of more general questions of nationalism theory, in particular, the role and relevance of the civic-ethnic dichotomy.<sup>15</sup> In the light of these discussions, secondly, the chapter sets out the island's condition of national pluralism within a framework of political analysis drawing upon the theory of performative nationalism, which can in turn serve as the basis for applying the plurinational model to the Sri Lankan case.<sup>16</sup>

Two reservations are entered at the outset. The first is that while I actively engage in the theoretical questions of nations and nationalisms as they relate to issues of constitutional accommodation in terms of the plurinational ideal, I allow Sinhala-Buddhist and Tamil nationalists to speak for themselves. I do not therefore intend to fill internal gaps and especially theoretical weaknesses of nationalist self-representations. As already noted in Chapter 2, and will become even clearer in Section 3.2 below, in comparison to Western sub-state nationalisms, the constitutional claims of Tamil nationalism suffer from a critical absence of theory. These weaknesses in part necessitate the recourse to the analytical framework of performative nationalism, mentioned above, that I construct in the second part of the chapter by drawing upon the work of Charles Tilly.<sup>17</sup> Secondly, I make no attempt to construct new objective definitions of concepts like ethnicity, nation, and nationalism (which are in any case primarily matters for historians, sociologists, and philosophers, rather than constitutional lawyers). Rather, a methodology akin to the liberal nationalists' "non-absolutist approach based on sociological observation"<sup>18</sup> will be used to reconstruct national histories and 'myth-symbol complexes'<sup>19</sup> in order to explain the resilience of plural ethnic nations against the (notional) modernising and homogenising pressure of post-colonial nation-building, and to suggest ways in which such plural ethnic nations might be accommodated within the state consistently with requirements of democratic constitutionalism.

---

<sup>15</sup> Sections 2 and 3, *infra*.

<sup>16</sup> Section 4, *infra*.

<sup>17</sup> Section 4, *infra*.

<sup>18</sup> Tierney (2004): p.36.

<sup>19</sup> Smith (1986): p.211.

In commencing with a discussion of the well-established conceptual dichotomy between civic and ethnic models of nationalism, one of my specific aims is to investigate whether the suggestion by some that ethnic nationalisms are not only the same everywhere, but are also always essentialist, primordial, anti-modern, and fundamentally intolerant of difference, is a viable assumption.<sup>20</sup> If ethnic nationalisms are no more and no better than this, then there is little scope for a model of democratic constitutionalism like the plurinational state to take root in an ethnically multinational polity like Sri Lanka. I argue, however, that such an indiscriminating view of ethnicity and nationalism is both unhelpful and imprecise. To begin with, it pays too much attention to the intolerant rhetoric, manipulative historiographies, and violent practices of ethnonationalist political entrepreneurs, and in doing so fails to make a cardinal analytical distinction between *nations*, as organisational cultures, and *nationalisms*, as ideological movements.<sup>21</sup> Furthermore, approaching these phenomena from the standpoint of the civic-ethnic distinction can be analytically misleading because neither primordialists nor instrumentalists offer an adequate account of their complexity, of which the two nationalisms in the Sri Lankan case are particularly instructive examples. On the one hand, primordialist conceptions of ethnic nationalism, while offering a grand explanation for its resilience in the modern age, do not in general further our understanding of the dynamics of its transformation and reproduction in conditions of modernity. On the other hand, instrumentalist accounts of the nation do not account for the complex relationship between the modern state and democracy, and national identities informed by prior ethnic consciousness, because in this view the nation and nationalism are entirely products of the modern age.

---

<sup>20</sup> M. Ignatieff (1993) *Blood and Belonging: Journeys into the New Nationalism* (New York: Farrar, Straus & Giroux); W. Pfaff (1994) *The Wrath of Nations* (Touchstone); B. Denitch (1994) *Ethnic Nationalism: The Tragic Death of Yugoslavia* (Minneapolis: Univ. of Minnesota Press); M. Viroli (1995) *For the Love of Country: An Essay on Patriotism and Nationalism* (Oxford OUP); D. Schnapper (1998) *Community of Citizens: On the Modern Idea of Nationality* (London: Transactions); G. Gibson (2000) *A Principled Analysis of the Nisga'a Treaty*, Public Policy Sources No.27 (Vancouver: Fraser Institute).

<sup>21</sup> Smith (1986): p.2.

Determining the theoretical validity of the civic-ethnic dichotomy – and thus its practical utility in situations like Sri Lanka – seems to require consideration of three matters. Firstly, we must bring to bear the arguments from within political theory itself which hold that the idea of a purely rational, contractarian, civic nation, founded solely on deliberately chosen (Enlightenment) values and principles, usually at a constitutive historical moment, is as specious as any fabricated myth that sustains ethnic nationalisms.<sup>22</sup> Secondly, we must consider the ‘ethnosymbolic’ tradition of political sociology in the study of nationalism that has fundamentally questioned both primordialist and modernist assumptions underlying this conceptual distinction by drawing attention to the continuities between pre-modern ‘*ethnies*’ and modern nations even in civic, liberal Western states.<sup>23</sup> These two responses lead us to the conclusion that, while sometimes useful as a basic analytical tool, or perhaps as an extraneous source of normative or ideological critique (which is how cosmopolitan Sri Lankan liberals usually use it against nativist nationalists), the civic-ethnic dichotomy has very little value for a deeper explanatory understanding of the nature and functional dynamics of either ethnicity or nationalism. This is, thirdly, borne out by the general survey of scholarly approaches to explaining ethnicity and nationalism in the literature on Sri Lanka that I undertake next in this chapter. Neither ethnic nation can be regarded as conforming in practice with the essentialist purity projected by nationalist ideologues, or indeed, as demanded by abstract theoretical categories. This recalls Anthony D. Smith’s observation that “the most perplexing feature of ... ethnic and national phenomena” is “the curiously simultaneous solidity and insubstantiality of ethnic communities and nations.”<sup>24</sup> It is to this protean and contingent history of myths, symbols and memories, both modern and pre-modern, that constitutional theory must look, in liberating the nation from the nationalists.

The key point therefore is that it is in the histories of the Sinhala-Buddhist and Tamil *nations* themselves that the arguments with which to challenge the essentialist and exclusionary ideologies of contemporary ethnic *nationalists* can be found. This is a

---

<sup>22</sup> B. Yack, ‘*The Myth of the Civic Nation*’ in Beiner (1999): Ch.5; Kymlicka (1999).

<sup>23</sup> The leading exponent of which approach is Anthony D. Smith. See Smith (1998): Ch.8.

<sup>24</sup> Smith (1986): p.2.

particularly important argument with regard to the majority Sinhala-Buddhist nationalism, which controls the state and denies the minority Tamil nationality claim (and aspiration to recognition, representation and autonomy on that specific basis). Reinforcing the discussion of nations and nationalisms in this chapter is the preceding discussion in Chapter 2 where I explored the pre-colonial state tradition, to disprove the historical revisionism that has been used to buttress an ethnocentric unitary state-formation project in the post-colonial era. It revealed instead an historic state tradition, which while necessarily pre-democratic, demonstrated a capacity to countenance extensive territorial decentralisation and heterogeneous communal pluralism. Both are key elements in the argument that not only does plurinational constitutionalism provide most of the normative and structural principles of constitutional organisation that are needed to address the problem of national pluralism in the Sri Lanka of the present, but also that those principles can be contextualised and defended by reference to historical experience.

At the same time, it must be conceded that this discussion also demonstrates the serious challenge to constitutional accommodation posed by the limitations of ethnonationalisms that have so far resisted important aspects of democratic modernisation. As noted above and in Chapter 1, recommending prescriptions in this regard to either Sinhala-Buddhist or Tamil nationalists is beyond the scope of this thesis. However, we cannot avoid addressing the question of the overarching national identity that is associated with the state, for two reasons. Firstly, a reconceptualised statal nation is imperative to provide the basic foundation of democratic modernity within which a plurinational solution to sub-state ethnic national pluralism can be grounded and pursued; and secondly, an inclusively defined statal nation is one of the non-coercive appeals to the unity of the state that can balance the radical sub-state national autonomy contemplated by a putative plurinational constitution, without the need for autonomy-limiting constitutional measures such as, *in extremis*, prohibitions on secession.

In short, ethnicity-based plurinational autonomy at the sub-state level requires a common ‘societal culture’ at the level of the state in order to succeed. Thus while we

can dismiss some of the more simplistic *descriptive* conclusions with regard to the ethnos to which some traditional liberals are led as a result of applying the civic-ethnic dichotomy, I do not reject the democratic *normative* vision of the demos they endorse. The argument rather is that democratic consent *as well as* cultural inheritance define the nation, or more precisely in the plurinational context, the *nations*. In the Sri Lankan case, therefore, a plurinational dispensation should reflect a plurality of *both* civic and ethnic conceptions of the nation: by an accommodation of the reality of plural ethnic nations at the sub-state level (self-rule) that is held together by an overarching civic nation at the level of the state (shared-rule).<sup>25</sup>

If the civic-ethnic dichotomy is undermined theoretically and empirically in the ways outlined above, what is the better alternative that we may use to analytically frame the competing nationalisms in Sri Lanka in a way that is more conducive to a plurinational constitutional logic? Performative theories of nationalism become useful in this second part of the chapter in two complementary ways. In its anthropological strain, performative practice constitutes an important element of explanatory accounts of collective identities and political institutions in Sri Lanka, in which rituals of kingship and sovereignty that determined both ‘we-feeling’ and the bounds of the state’s authority in the pre-colonial era continue to animate ethnicity and nationalism as salient forms of political mobilisation even within the framework of the modern territorial state.<sup>26</sup> In its sociological strain, performative nationalism also helps explain the dynamics of conflict between competing nationalisms in multinational polities, understood as a species of ‘social movement’ engaged in a type of ‘contentious politics’ framed by the dictates of the modern state.<sup>27</sup> In other words, it explains the political motivations that encourage both majority and minority groups to engage in ‘We are a Nation’ performances, with the potential ownership of a nation-state as the ultimate prize. In both these ways, performative nationalism combined with the insights of ethnosymbolism constitute a more useful analytical

---

<sup>25</sup> These issues are taken up in Chapter 6, *infra*.

<sup>26</sup> H.L. Seneviratne (1978) *Rituals of the Kandyan State* (Cambridge: CUP); M. Roberts (1994) *Exploring Confrontation. Sri Lanka: Politics, Culture and History* (Chur: Harwood Academic Publishers): Ch.5. Some of these issues have already been discussed in Chapter 2, *supra*.

<sup>27</sup> S. Tarrow (2011) *Power in Movement: Social Movements and Contentious Politics* (3<sup>rd</sup> Rev. Ed) (Cambridge: CUP): Ch.1; C. Tilly (2004) *Social Movements, 1768-2004* (Boulder, CO: Paradigm Publishers): Ch.1.

basis for reframing the multinational dynamic in Sri Lanka, explaining both the traditional roots of contemporary ethnic nationalisms as well as their reformation and practice according to forms of politics and constitutional categories established by the modern state order.

This approach meets the challenge posed by “the legacy of two distinct types of modernity” in Sri Lanka that Roshan de Silva Wijeyeratne has described in the following terms: “The first is the liberal rational bureaucratic state and its legal infrastructure that the British developed, while the second is the domain of the gods, which also brings both the elites and the subalterns into a series of hierarchical relationships.”<sup>28</sup> Put another way, this means that in Sri Lanka, contrary to the classical modernist account of nationalism in particular, tradition and modernity in relation to political community must be understood not as two counterposed elements separated by time and distinctive spatial concepts, but as coeval, coterminous and coexisting elements of a longer story of historical evolution. In this pre-colonial, colonial, and post-colonial continuum, the colonial instantiation of the modern state transformed, but did not create, nation-type collective identity.<sup>29</sup> As we shall see, this is perhaps more true of the Sinhala-Buddhist nation than the Tamil nation, but the former dominates the politico-historical space of the state in the island so decisively that it becomes the primary focus for any exercise in constitutional theorising and reform. In this regard, as de Silva Wijeyeratne suggests, the principle of hierarchy is an important one in both traditional and modern terms, and I will explore how this can be rendered into a democratic constitutional norm of asymmetry within the framework of a plurinational constitution in Chapter 6.

In proposing some form of the plurinational state as one of the institutional responses that can be presented in resolving the problem of unstable and conflict-prone national pluralism, it becomes necessary for this thesis to examine the substantive adaptations that the model itself must undergo in order to be applicable to cases like Sri Lanka. The main argument in this respect – that the plurinational state in non-Western

---

<sup>28</sup> R. de Silva Wijeyeratne (2014) *Nation, Constitutionalism and Buddhism in Sri Lanka* (London: Routledge): p.1.

<sup>29</sup> Sivasundaram (2013): Chs.1,8.

contexts must draw normative sustenance from a wider and ideologically more neutral conception of democracy than political liberalism – is continued in Chapter 5, where I consider the issue of post-colonial state-formation and democracy in the context of national pluralism. But the issues regarding the sociology and history of plural nations and nationalisms must be dealt with first, and it is to this that the rest of this chapter is devoted.

## **2. The Civic-Ethnic Dichotomy: Myths and Realities**

In everyday usage, the word ‘nation’ encapsulates both the cultural and political dimensions of the concept to denote the cultural origins of a particular community as well as its legitimacy as a community to assert certain normative claims to some form of self-government. The classificatory purpose of the civic-ethnic dichotomy has been to separate these two dimensions of the nation, to serve both descriptive and normative aims. Thus it seeks to describe forms of the nation that draw a close connection between ethno-culture and political community as ethnic nationalism, whereas the civic nation is a political community made up of individuals freely associating or contracting to achieve self-government according to certain fundamental values of common subscription. For traditional liberals in particular, the distinction also serves the important normative purpose of distinguishing between political communities that foster values such as individual liberty, the rule of law, limited government and economic freedom – civic nations that are built upon the thought and values of the European Enlightenment – and those others – ethnic nations – in which ascriptive attributes of the community take centre-stage and both the identity and the rights of the individual are determined by the community rather than *vice versa*.

The impetus for the contemporary revival of the civic-ethnic dichotomy in liberal thought (in both descriptive and normative senses) arose from the explosion of ethnonationalist conflict that erupted in many parts of the world at the end of the

Cold War, especially in the wars in the former Yugoslavia,<sup>30</sup> although it draws from and builds upon earlier attempts at classification of nations, such as between Eastern and Western nationalism,<sup>31</sup> ethnos and demos,<sup>32</sup> cultural and political states,<sup>33</sup> the German and the French conceptions of the nation-state,<sup>34</sup> and civic-territorial and ethnic-genealogical nationhood.<sup>35</sup>

Indeed, it is the same distinction that found expression in the ‘modernity against tradition’ teleology of the post-colonial nation-building literature of the 1950s and 60s.<sup>36</sup> The canonical status of this once widely accepted school of thought has been eroded by scholars who have pointed to the ‘modernity of tradition’.<sup>37</sup> It has also been attacked for its Western ethnocentrism,<sup>38</sup> and its claims to the universalism of Enlightenment thought widely rejected. Both these points have been made by Sarath Amunugama: “Two assumptions underlie this approach. Firstly, that all societies evolve in unilinear fashion towards the Western ideal. Modernisation, in short, is

---

<sup>30</sup> That even a scholar like Michael Walzer who is associated with Liberalism II, and presumably therefore more sympathetic to cultural claims than classical liberals, would describe the emergence of a ‘New Tribalism’ is reflective of the disquiet that this ethnonationalist resurgence and the brutal violence it unleashed generated among liberals: M. Walzer, ‘*The New Tribalism: Notes on a Difficult Problem*’ in Beiner (1999): Ch.11.

<sup>31</sup> J. Plamenatz, ‘*Two Types of Nationalism*’ in E. Kamenka (Ed.) (1973) *Nationalism* (Canberra: ANU Press): Ch.2; H. Kohn (1967) *The Idea of Nationalism* (2<sup>nd</sup> Ed.) (New York: Collier Macmillan): Ch.5.

<sup>32</sup> E. Francis (1965) *Ethnos und Demos: Soziologie Beiträge zur Volkstheorie* (Berlin: Duncker & Humblot).

<sup>33</sup> F. Meinecke (1970) *Cosmopolitanism and the National State* (Princeton: Princeton UP).

<sup>34</sup> E. Renan, ‘*What is a Nation?*’ in H. Bhabha (Ed.) (1990) *Nation and Narration* (London: Routledge): Ch.2; L. Dumont (1994) *German Ideology: From France to Germany and Back* (Chicago: Chicago UP).

<sup>35</sup> Smith (1986): Ch.6.

<sup>36</sup> Standard works of post-colonial nation-building include D. Lerner (1958) *The Passing of Traditional Society* (New York: Free Press); K. Deutsch & W. Foltz (Eds.) (1963) *Nation-Building* (New York: Atherton); K. Deutsch (1966) *Nationalism and Social Communication* (Cambridge, Mass.: M.I.T. Press); R. Bendix (1978) *Kings or People: Power and the Mandate to Rule* (Berkeley: California UP). For an example of how this theoretical approach has been applied in relation to early post-colonial Sri Lanka, see R. Kearney, ‘*Nationalism, Modernisation and Political Mobilisation in a Plural Society*’, in M. Roberts (Ed.) (1979) *Collective Identities, Nationalisms and Protest in a Plural Society* (Colombo: Marga Institute): pp.440-461; see also R. Kearney (1967) *Communalism and Language in the Politics of Ceylon* (Durham, N.C.: Duke UP); B.H. Farmer (1963) *Ceylon: A Divided Nation* (Oxford: Oxford University Press).

<sup>37</sup> L.I. Rudolph & S.H. Rudolph (1984) *The Modernity of Tradition: Political Development in India* (Chicago: Chicago UP); de Silva Wijeyeratne (2014); M. Roberts, ‘*Sri Lanka: Intellectual Currents and Conditions in the Study of Nationalism*’ in M. Roberts (Ed.) (1997) *Sri Lanka: Collective Identities Revisited*, Vol.1 (Colombo: Marga Institute): Ch.1 at p.6.

<sup>38</sup> J. Coakley, ‘*National Majorities in New States: Managing the Challenge of Diversity*’ in A-G. Gagnon, A. Lecours & G. Nootens (Eds.) (2011) *Contemporary Majority Nationalism* (Montreal & Kingston: McGill-Queen’s UP): Ch.5.

Westernisation. Secondly, traditionalism is the polar opposite of modernity.”<sup>39</sup> By contrast, Amunugama discerns “a dialectical relationship between tradition and modernity” in the Sri Lankan context, illustrating the “powers of tradition to evolve creatively in a new environment.”<sup>40</sup> Some of these criticisms of modernisation as westernisation are infected by culturally relativist perspectives, such as in Sri Lanka, the *Jathika Chinthanaya* movement, in which cultural authenticity is a fig leaf for ethnic majoritarian authoritarianism.<sup>41</sup> For our purposes, what is more important is the plurinationalist critique of the ‘monistic demos thesis’, discussed in Chapter 3, that is the lynchpin of the post-colonial nation-building discourse.

One of the celebrated contributions to the classical liberal critique of ethnonationalism in the 1990s was that of Michael Ignatieff, who defined the civic nation as “a community of equal, rights-bearing citizens, united in patriotic attachment to a shared set of political practices and values.” In this view, rational individuals exercise the freedoms of thought, expression, association and choice to establish a political community in which “national belonging is a form of rational attachment.” In ethnic nations by contrast, “an individual’s deepest attachments are inherited, not chosen” and “it is the national community that defines the individual, not the individuals who define the national community.”<sup>42</sup>

Responding to this interpretation of civic and ethnic nationalisms, Bernard Yack makes the point that, although “Designed to protect us from the dangers of ethnocentric politics, the civic/ethnic distinction itself reflects a considerable dose of ethnocentrism...a mixture of self-congratulation and wishful thinking.”<sup>43</sup> Yack argues that while it may seem reasonable to distinguish between nations based on political principles and those conceived on ethnic origins, it is “unreasonable and unrealistic” to interpret this as a distinction between “the rational attachment to

---

<sup>39</sup> S. Amunugama, ‘*Ideology and Class Interest in One of Piyadasa Sirisena’s Novels: The New Image of the ‘Sinhala Buddhist’ Nationalist*’ in Roberts (1997): Ch.11 at p.342.

<sup>40</sup> Ibid.

<sup>41</sup> D. Rampton (2010) *Deeper Hegemony: The Populist Politics of Sinhala Nationalist Discontent and the Janatha Vimukthi Peramuna in Sri Lanka*, PhD Thesis, SOAS, University of London (unpublished): pp.225, 231; K. Senaratne, ‘*Jathika Chinthanaya and the Executive Presidency*’ (forthcoming).

<sup>42</sup> Ignatieff (1993): pp.7-8; see also esp. Kymlicka (1999).

<sup>43</sup> Yack (1999): p.105

principle and the emotional celebration of inherited culture.” Echoing a central argument of liberal nationalism, he observes that, “In order to characterise ‘national belonging [as] a form of rational attachment,’ one must ignore the contingent inheritance of distinctive experiences and cultural memories that is an inseparable part of every national political identity.”<sup>44</sup> Yack extends his critique to two related traditional liberal postulates of civic nation-formation: the idea of consent at the heart of political community and the idea of popular sovereignty.

With regard to consent, Yack notes that Ernest Renan’s description of the nation as a ‘daily plebiscite’ is frequently cited by defenders of the civic nation because “it seems to point to individual consent as the source of national identity.” However, as he points out, traditional liberals “rarely note that this phrase represents only half of Renan’s definition of the nation.”<sup>45</sup> Renan held that,

“Two things constitute the nation. One lies in the past, the other in the present. One is the possession in common of a rich legacy of memories, the other is present day consent, the desire to live together, the will to perpetuate the value of the heritage that one has received in an undivided form...The nation, like the individual, is the culmination of a long past of endeavours, sacrifice, and devotion.”<sup>46</sup>

In Yack’s view, while the nation may be a daily plebiscite, the substance of the ideas and symbols that is debated and tested by that plebiscite is provided by the nation’s cultural inheritance: “Without ‘a rich legacy of memories’ there are no communal loyalties to be tested by consent.”<sup>47</sup> Yack extends this critique to Jürgen Habermas’s influential idea of ‘constitutional patriotism,’<sup>48</sup> which was originally developed as a conception of German identity in the wake of the reunification of East and West Germany. Habermas urged that the ‘social-liberal’ democratic values of the

---

<sup>44</sup> Ibid: p.106.

<sup>45</sup> Ibid.

<sup>46</sup> Renan (1990): p.19.

<sup>47</sup> Yack (1999): p.107.

<sup>48</sup> J. Habermas, ‘*Citizenship and National Identity*’ in R. Beiner (Ed.) (1995) *Theorizing Citizenship* (Albany, NY: SUNY Press): Ch.9; J. Habermas (1989) *The New Conservatism* (Cambridge, Mass: MIT Press): pp.256-62.

constitutional state founded by the post-war *Grundgesetz* should form the basis of the unified German identity, rather than a restoration of the “pre-political unity of a community which a shared historical destiny” that had characterised militaristic and expansionist German nationalism before.<sup>49</sup> Given the “terrible history” of German nationalism, Yack appreciates Habermas’s concern to provide a civic interpretation to the post-unification German nation, but, as he asks, “How can one explain [German reunification] without invoking the prepolitical community of shared memory and history that tied West to East Germans...?”<sup>50</sup> He points out that even Habermas tacitly accepts that constitutional patriotism is a way of locating universal liberal principles “in the horizon of the history of the nation,” which “clearly implies that the audience for arguments about the focus of political loyalty is not some random association of individuals united only by allegiance to shared principles, but a prepolitical community with its own cultural ‘horizon’ of shared memories and historical experiences.”<sup>51</sup>

Moreover, according to Yack, the tendency of liberalism itself to encourage people to think of themselves as members of pre-political communities is particularly visible in the theory of popular sovereignty that is central to the civic conception of the nation: “Popular sovereignty arguments encourage modern citizens to think of themselves as organised into communities that are *logically and historically prior* to the communities created by their shared political institutions.”<sup>52</sup> In other words, logically and historically, there must exist a ‘We, the People’ that can promulgate a constitution, or otherwise create the state, before such political institutions can come into existence. As Yack points out, this is what Locke and others “variously described as the community, the civil society, or the people (in contrast to the commonwealth or political society).”<sup>53</sup> Thus even though traditional liberals reject the notion of a pre-political cultural community that constitutes the political community (the civic nation), without an acceptance of such “contingencies of our

---

<sup>49</sup> Yack (1999): p.107.

<sup>50</sup> Ibid: p.108.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid: p.109, emphasis added.

<sup>53</sup> Ibid.

historical experience”<sup>54</sup> as existed before, the liberal doctrine of popular sovereignty makes no sense. We can thus surely agree with Jeffrey Friedman that the civic-ethnic dichotomy,

“...is merely a taxonomic device whose value is a function of its usefulness in classifying regimes. It does no ethical work, at least in principle; and its employment certainly does not commit the scholar to endorsing the pretensions entailed by either civic or ethnic nationalism.”<sup>55</sup>

Yack’s critique of “the myth of the civic nation” in debates within liberal political theory parallels the arguments made by the school of liberal nationalism about the importance of ‘the context of choice’<sup>56</sup> in the exercise of individual freedom; and which plurinational constitutional theory extends to the critique of the ‘monistic demos thesis’ and for pluralising both constitutive and constituted power in the plurinational state.<sup>57</sup> Yet this latter body of work, concerned only with civic-societal nations, is largely irrelevant to a study of national pluralism in Sri Lanka, and we need therefore to shift the focus of the argument from political theory to political sociology in considering the issue of ethnicity more closely. Here I draw upon the ‘ethnosymbolic’ theory of nationalism represented in the work of Anthony D. Smith, which stresses not only the ethnic origins of modern nations, but also the persistent presence of an ethnic core in the modern nation.<sup>58</sup> As Eric Kaufmann and Oliver Zimmer note,

“... Smith successfully disembeds ethnicity from the ideologically-charged, anglo-centric discourse of ethnic relations and places it in historical context.

---

<sup>54</sup> Ibid: p.111.

<sup>55</sup> J. Friedman, ‘Nationalism in Theory and Reality’ (1996) *Critical Review* 10(2): pp.155-67 at p.158.

<sup>56</sup> Kymlicka (1995): pp.82-84.

<sup>57</sup> Tierney (2007).

<sup>58</sup> Other important contributions in this vein include R.A. Schermerhorn (1970) *Comparative Ethnic Relations: A Framework for Theory and Research* (New York: Random House); J.A. Armstrong (1982) *Nations before Nationalism* (Chapel Hill, NC: Univ. of North Carolina Press) and J. Hutchinson (1987) *The Dynamics of Cultural Nationalism* (London: Routledge). See also M. Guibernau & J. Hutchinson (Eds.) (2004) *History and National Destiny: Ethnosymbolism and its Critics* (Oxford: Blackwell); A.S. Leoussi & S. Grosby (Eds.) (2007) *Nationalism and Ethnosymbolism: History, Culture and Ethnicity in the Formation of Nations* (Edinburgh: Edinburgh UP).

Ethnic groups are no longer defined by their exoticism or marginality, but rather by characteristics (i.e., popular name, myth of shared ancestry, concept of homeland, ethno-history) which are attributable to oppressors and oppressed alike.”<sup>59</sup>

Smith’s work is too well known to require summarisation here, but the following arguments and observations are particularly helpful to the present discussion. Smith’s theory draws upon the insights offered by both, primordialist and perennialist, as well as modernist and instrumentalist accounts of nation-formation, but is distinct from either school by offering an account which reveals each nation to have a core ethnic identity, the *ethnie*, which sets the parameters of its change and evolution over time.<sup>60</sup> Thus, “*Ethnie* and nations are not fixed and immutable entities ‘out there’ (not even the nationalists thought so); but neither are they completely malleable and fluid processes and attitudes, at the mercy of every outside force.”<sup>61</sup> Smith argues that the variety, complexity, recurrence and persistence of ethnic phenomena and sentiments cannot be adequately captured by either the primordialist or modernist theories. The former treats markers of identity like religion and language as immutable and timeless; the latter treats ethnic and national phenomena as purely instrumental and short-term devices of other, more important, political and economic forces. Smith’s approach, by contrast, focuses on the ‘myth-symbol complexes’ that unite and divide populations and explain their attitudes and sentiments. In his words,

“...by eschewing [the primordialist and modernist] alternatives and attending to the complex of myths, symbols, memories and values that are handed down the generations of collectivities and which define them to themselves and those outside, we can treat *ethnie* as mutable and durable at the same time, and ethnicity as both fluctuating and recurrent in history...The study of

---

<sup>59</sup> E. Kaufmann & O. Zimmer, ‘*Dominant Ethnicity*’ and the ‘*Ethnic-Civic*’ Dichotomy in the Work of A.D. Smith’ (2004) *Nations and Nationalism* 10 (1/2): pp.63-78 at p.65. They also observe, “This notion greatly influenced Yael Tamir, whose *Liberal Nationalism* reflects many of the theoretical advances made by Smith”: *ibid.*

<sup>60</sup> Smith (1986): Ch.2

<sup>61</sup> *Ibid*: p.211.

ethnicity through ethnic myths, symbols, memories and values allows us to grasp the dynamic and expressive character of ethnic identity, and its long-term influence on human affairs, while allowing for its changing content and meanings.”<sup>62</sup>

This ethnosymbolic approach with its strong historical emphasis leads to a delineation of five major characteristics of the nation, all of which are germane to the present discussion, but two of which are pivotal to it.<sup>63</sup> These relate to his observations on the *process* of nation-formation and the *ethnic core* of every nation. In the first respect, Smith notes how nations are not static entities, “attained once-for-all”, but must be understood as long-term processes of “mobilisation, inclusion, territorialisation, politicisation and autarchy” that “are never concluded and always subject to redefinition in each generation.”<sup>64</sup> Because of their constantly evolving nature, “they presume a ‘national past’ against which advances can be measured and back-slidings corrected. Nations do not exist in a timeless present.”<sup>65</sup> This perpetual evolution has “definite limits. Hence the ‘modernity’ of any nation is being continually qualified by its historical roots and its accretions in each generation.” Secondly, Smith is blunt in his assertion that, “nations require ethnic cores if they are to survive. If they lack one, they must ‘re-invent’ one. That means discovering a suitable and convincing past which can be reconstructed and re-presented to members and outsiders.”<sup>66</sup> Supported by historical evidence of nation-formation in Western Europe, Eastern Europe and the Middle East, Southeast Asia and Sub-Saharan Africa, Smith argues that there is an ‘antiquity of modern nations’ which signifies “their rootedness in a past that their members, or significant sections of them, presume to be distinctively theirs, one that expresses their uniqueness.”<sup>67</sup> This affirms the Janus-faced nature of nationalism, but in a more fundamental way than liberal nationalists would allow:

---

<sup>62</sup> Ibid: pp.211-212.

<sup>63</sup> See *ibid*: pp.212-214.

<sup>64</sup> *Ibid*: p.212.

<sup>65</sup> *Ibid*.

<sup>66</sup> *Ibid*.

<sup>67</sup> *Ibid*: p.214.

“Not only in spirit but in structure, modern nations and not only nationalism, turn out to be Janus-headed – and this is necessary. If there was no model of past ethnicity, and no pre-existent *ethnie*, there could be neither nations nor nationalism. There would only be states and *étatisme* imposed from above, a very different phenomenon.”<sup>68</sup>

Smith’s account, with its vast historical and global sweep, is undoubtedly persuasive as a general explanatory theory of nations and nationalism, and is acutely resonant in the Sri Lankan case. As Michael Roberts observes, “To the Sinhalese literati, nurtured as they were in the *Dhammadipa* and *Sihadipa* concepts, there could be no nation that was distinct from a race or an *ethnie*.”<sup>69</sup> Given the reification of language and culture so central to Tamil ethnic consciousness (*tamilpparru*<sup>70</sup>), it is surely an observation that can be extended to the Tamils.

In addition to its value in interpreting the contemporary practice of both ethnic nationalisms in the Sri Lankan case, Smith also maintains that colonial state-builders had an “ethnic model in mind”<sup>71</sup> when establishing the institutional framework of the modern state in Asian, Middle Eastern and African colonies. However, he contends, “here it proved much harder to select the *ethnie* which could provide the socio-cultural base of the new colonial state.”<sup>72</sup> Historians of colonial Ceylon have noted the role of such institutions as the Royal Asiatic Society and of colonial officials and scholars such as Davy, Forbes, Ferguson, Geiger, Knighton, Skinner, Tennant and Turnour in resurrecting the *Mahavamsa* and the glories of the ancient Sinhala-Buddhist civilisation in the heyday of nineteenth century Orientalist scholarship.<sup>73</sup>

---

<sup>68</sup> Ibid.

<sup>69</sup> Roberts (1997): p.444.

<sup>70</sup> S. Ramaswamy (1997) *Passions of the Tongue: Language Devotion in Tamil India, 1891-1970* (Berkeley: Univ. of California Press): pp.5-9.

<sup>71</sup> Smith (1986): p.212.

<sup>72</sup> Ibid.

<sup>73</sup> See e.g., E. Nissan, ‘History in the Making: Anuradhapura and the Sinhala Buddhist Nation’ (1989) *Social Analysis* 25: pp.64-77; E.V. Daniel, ‘Afterword: Sacred Places, Violent Spaces’ in J. Spencer (Ed.) (1990) *Sri Lanka: History and Roots of Conflict* (London: Routledge): Ch.11; P. Jeganathan, ‘Authorizing History, Ordering Land: The Conquest of Anuradhapura’ in P. Jeganathan & Q. Ismail (Eds.) (2009) *Unmaking the Nation: The Politics of Identity and History in Modern Sri Lanka* (2<sup>nd</sup> Ed.) (New York: South Focus Press): pp.108-37; S. Sivasundaram, ‘Buddhist Kingship, British Archaeology and Historical Narratives in Sri Lanka, c.1750-1850’ (2007) *Past and Present* 197(1): pp.111-42.

The equation of the history of the island as an exclusively or mainly Sinhala-Buddhist narrative in this tradition of ‘positivistic historiography’<sup>74</sup> would haunt later attempts at colonial constructions of a civic ‘Ceylonese’ demos,<sup>75</sup> but it demonstrates Smith’s point about the ethnic assumptions of nationhood that underlay the civic rhetoric of liberal imperialism.<sup>76</sup> He also notes that, “In south-east Asia, the new ‘plural society’ that evolved soon tended to favour a dominant *ethnie*, as in Burma and Indonesia, with ensuing secessionist tendencies in outlying ethnic communities like the Karen and Achinese”<sup>77</sup>; an observation that, *mutatis mutandis*, perfectly describes the post-colonial history of Sri Lanka. In relation to post-colonial Africa, however, Smith notes that in most countries,

“...the ethnic balance is too even or too complex to allow any one *ethnie* to furnish the basis of the state. The result is that African states are likely to face serious problems in trying to create ‘territorial nations’ without the benefit of ethnic cores and a common historical mythology.”<sup>78</sup>

Here we encounter an aspect of his work that needs qualification when applied to multinational contexts from a specifically plurinationalist perspective. In this statement he seems to be indirectly upholding the modernist principle that equates or conflates the nation and the state, or at least the leading role of the state in post-colonial nation-building; whereas, as noted in Chapter 3, it is one of the central postulates of plurinational constitutionalism that these two concepts require disaggregation if the reality of national pluralism is to be adequately reflected in the constitutional architecture of the host-state.<sup>79</sup> Within nationalism theory from the perspective of stateless nations, it is critique that is trenchantly made by Montserrat Guibernau, who argues that, “the most fundamental flaw in Smith’s theory, which contains significant repercussions for his approach to national identity, stems from

---

<sup>74</sup> R.G. Collingwood (1956) *The Idea of History* (Oxford: Clarendon): pp.127-33.

<sup>75</sup> See Chapter 5, *infra*.

<sup>76</sup> See Sivasundaram (2013): Chs.1,8.

<sup>77</sup> Smith (1986): p.212.

<sup>78</sup> *Ibid*.

<sup>79</sup> See Chapter 3, *supra*.

conflation of nation and state.”<sup>80</sup> Among other arguments concerning Smith’s views on the mass character of public culture and a common economy, she points out that the sharing of common rights and duties among its members that Smith posits as one of the elements of a nation is flawed, because “Smith was simply attributing to the nation one of the fundamental characteristics of the state.” In her view, the provision of legal rights is “not what one should expect from a cultural community, such as a nation” but is “a function of the state, the political institution that regulates the lives of people within its territory.”<sup>81</sup>

While attentive to Guibernau’s critique, this weakness in Smith’s view seems to be more of a lapse than one of its fundamental features. Unlike in the case of certain instrumentalist theories (such as post-colonial nation-building), there is no reason why the state should be regarded as the driving mechanism of nation-formation in Smith’s account. Indeed, what is important to this account is not the modern state, but the ‘*mythomoteur*’ (i.e., the constitutive political myth) derived from the historical ‘myth-symbol complex’ of the given nation.<sup>82</sup> Smith himself underscores this when he makes a clear distinction between the nation and “states and *étatisme* imposed from above, a very different phenomenon.”<sup>83</sup> Consequently, we can plausibly continue to make use of Smith’s account as an *explanatory* theory of nations and nationalism in ethnically multinational contexts, while disaggregating the nation from the state as a constitutional requirement in such situations.

I now come to a point outlined at the outset, that any plurinational settlement in Sri Lanka must seek to also address the statal nation in addition to sub-state autonomy, and specifically to remedy the distorted ‘modernity’ produced by the hegemonic

---

<sup>80</sup> M. Guibernau, ‘Anthony D. Smith on Nations and National Identity: A Critical Assessment’ (2004) *Nations and Nationalism* 10 (1/2): pp.125-141 at p.127.

<sup>81</sup> Ibid: p.128; see also, pp.127-132. This may seem inconsistent with plurinational constitutionalism’s normative postulate that sub-state nations enjoy legal and political rights to recognition, representation and autonomy regardless of the fact that they do not possess a state, but in fact Guibernau’s argument must be understood in the context of a broader critique of the cultural focus of ethnosymbolism wherein “The political aspects [of nations and nationalism] are left practically untouched.”: *ibid*: pp.126; see also pp.138-140. A more recent iteration of these ideas (more obviously consistent with plurinational constitutionalism) is at: M. Guibernau, ‘Nationalism without States’ in J. Breuilly (ed.) (2013) *The Oxford Handbook of the History of Nationalism* (Oxford Handbooks Online).

<sup>82</sup> Smith (1986): pp.57-68.

<sup>83</sup> Ibid: p.214.

project of ethnocentric state-building that Sinhala-Buddhist nationalism has relentlessly pursued since independence. The constitutional concepts and strategies that may be deployed to this end awaits fuller consideration in following chapters, but at this stage of the argument, it is important to reiterate that Smith also anticipates this constitutional problem faced by many post-colonial Asian and African states, and to which he proposes a radical solution: the invention of tradition.<sup>84</sup> To the constitutional problem of a dominant *ethnie* appropriating the power, ownership and resources of the post-colonial state against the competing claims of plural *ethnies*, Smith's solution is as follows:

“The alternative strategy is to construct a new ‘political culture’ out of the various ethnic traditions within the territorial state, by combining myths and symbols, seeking common denominators (colonial, racial discrimination) and even inventing a distant common origin or ‘age of heroism’ such as other nationalisms have admired. In effect, this means that the new territorial nation-to-be must acquire ethnic dimensions and characteristics, if it lacks them; in Rousseau’s words, it must be given a ‘national character’.”<sup>85</sup>

From a plurinational perspective, the problem with this monistic approach is again immediately apparent. Smith in effect advocates the same procedure championed by the older theorists of post-colonial nation-building in promoting the construction of a unitary demos, albeit one that draws sustenance from (where necessary, invented) common ethnic myths, memories and symbols rather than purely civic nationalist ideals. In short, in addressing the demotic question of post-colonial ‘*states without nations*’,<sup>86</sup> he ignores and even unwittingly invalidates the empirical and normative claims to specifically national autonomy made by ‘*nations without states*’<sup>87</sup> in multinational – as opposed to merely communally plural – post-colonial polities. Now it may seem to follow from this that a work of plurinational constitutional theory should instantly reject Smith’s prescribed solution to this issue, and yet, we

---

<sup>84</sup> Ibid: Ch.6, esp. pp.144-152.

<sup>85</sup> Ibid: p.149.

<sup>86</sup> Ibid: p.145; Guibernau (1999): Ch.6.

<sup>87</sup> Guibernau (1999): Ch.5; M. Guibernau (1999) *Nations without States: Political Communities in a Global Age* (Cambridge: Polity Press).

find that he cannot be dismissed outright. To the extent that a plurinational constitution in Sri Lanka ought to be equally concerned about the unity of the state as it is with sub-state autonomy, and to the extent that the rational attachments of some form of constitutional patriotism are inadequate for this purpose (for the reasons discussed above), then it would appear that a carefully calibrated adoption of Smith's views with regard to the statal nation becomes a necessity. And even if Smith does not seem to envisage the process in quite the same way, it seems possible at least in theory to contemplate an 'invention' of a *mythomoteur* and myth-symbol complex for the putative statal nation of a plurinational dispensation which stresses unifying myths, memories, symbols and values between all of Sri Lanka's nations and communities, while simultaneously taking full account of the distinctive socio-political challenges of national pluralism and the normative dictates of democratic plurinationalism.

The challenge here of course is whether the island's history yields the resources and precedents necessary for such reinterpretations. As we shall shortly see, an earlier attempt by a post-orientalist school of scholars in Sri Lanka to reimagine a pre-modern history facilitative of present-day pluralism and accommodation met with substantial failure in both practical and theoretical terms. This is a salutary, although not prohibitive, caution about the parameters of what is possible, and in this regard, Michael Roberts' admonition that "Theory must be constrained by the empirical material, so that any questionings must be through specific Sri Lankan material pertinent to specific temporalities" is apposite.<sup>88</sup> We need therefore to revisit the theoretical battlefield of nationalism studies in Sri Lanka to see if a new and more plausible approach to the resolution of these issues is possible. While any definitive conclusions can only follow the consideration of the Sri Lankan material, it might be provisionally asserted at this stage of the argument that, in the light of the preceding discussion about how we understand ethnicity and nationalism, there seems to be nothing about these phenomena that is inherently repugnant to the basic logic of plurinational accommodation, even though the character of the nationalisms determined by these empirical conditions do point to the need for philosophical

---

<sup>88</sup> M. Roberts (2004a) *Sinhala Consciousness in the Kandyan Period, 1590s to 1815* (Colombo: Vijitha Yapa): p.16.

alternatives to political liberalism in articulating the pluralistic normative foundations of such a constitutional order.

### **3. Theoretical Approaches to Nations and Nationalisms in Sri Lanka**

There is a rich and substantial theoretical literature on Sinhala-Buddhist nationalism, much less so in relation to Tamil nationalism. In the former category, I focus on the central scholarly debate between the ‘post-orientalists’ who have characterised modern nationalism as artificially constructed and historically contingent on colonialism’s impact in the formation of *national* identities, and the ‘ethnicists’ who have responded to this position by reasserting the existence of nation-type conceptions of collective identity among the Sinhalese long before nineteenth century European ideas on nations and nationalism were adopted by indigenous elites. For the sake of brevity, I narrow this down still further to a seminal article by Elizabeth Nissan and R.L. Stirrat and an equally seminal monograph by Michael Roberts, in which the major claims on either side of this debate emerge with the greatest clarity. More recently published historical work reflect significant critiques and extensions of these older debates, but the post-orientalist and ethnicist dichotomy is still the implicit frame within which opposing positions in Sri Lankan constitutional disputes on the nationalities question take shape, hence my focus on it.<sup>89</sup>

The term ‘post-orientalist’ is used here in the same sense it was used by John D. Rogers to describe the ‘new sociology of knowledge’ influenced by the work of Edward Said and Michel Foucault.<sup>90</sup> This is also the sense in which Roberts describes post-orientalist work as “characterised by its anti-nationalist leanings, its emphasis on the circumstantialist shaping of ethnic identity and the force of systems

---

<sup>89</sup> Important recent contributions include de Silva Wijeyeratne (2014); Sivasundaram (2013); A.M. Blackburn (2010) *Locations of Buddhism: Colonialism and Modernity in Sri Lanka* (Chicago: University of Chicago Press); Rampton (2010).

<sup>90</sup> J.D. Rogers, ‘Post-Orientalism and the Interpretation of Pre-Modern and Modern Political Identities: The Case of Sri Lanka’, (1994) *Journal of Asian Studies* 53: pp.10-23.

of knowledge in the implantation of collectivised identities.”<sup>91</sup> The term ‘ethnicist’ is used as a distilled label of convenience to characterise scholars who have opposed the post-orientalist thesis on the history and sociology of the nation and nationalism in Sri Lanka. Adopting an emic rather than etic approach,<sup>92</sup> they emphasise the importance of *subjective* meanings of categories of collective identity within particular cultures in a particular historical setting. Roberts has described this approach as “a contextualised hermeneutic approach weighted towards culture.”<sup>93</sup> This approach is very similar to the types of theory Anthony D. Smith characterised as ‘perennialism’.<sup>94</sup> Again drawing from Smith, the sharper descriptive term within this tradition is ‘ethnicism’, which captures all the various forms of collective activity in defence of the *ethnie*.<sup>95</sup>

### **3.1 The Nation of the State? The Post-Orientalist and Ethnicist Approaches to the Sinhala-Buddhist Nation**

Intense and highly partisan intellectual debates are part of the dynamics of intra-state ethnonationalist conflict, and these seemingly irreconcilable disagreements parallel the violence that are the physical manifestations of these conflicts. In Sri Lanka by the 1980s, part of what had become a full-blown ethnic conflict were the historiographical claims and counter-claims made on behalf of the two nationalisms, at various levels of intellectual abstraction. As Jonathan Spencer noted, “The war which has been fought between the armed Tamil separatists and the Sinhala-dominated government has been accompanied by rhetorical wars fought over archaeological sites, place-name etymologies, and the interpretation of ancient inscriptions.”<sup>96</sup> An implicit commonality in an otherwise bitterly divided and divisive debate, however, was the notion shared by both sides that the conflicts of the

---

<sup>91</sup> Roberts: p.2.

<sup>92</sup> A. Strathern, ‘Review of *Sinhala Consciousness in the Kandyan Period 1590s to 1815* by Michael Roberts’ (2005) *Modern Asian Studies* 39(4): pp.1007-1020 at p.1012.

<sup>93</sup> M. Roberts, ‘Nationalisms Today and Yesterday’ in G.H. Peiris & S.W.R. de A. Samarasinghe (Eds.) (1999) *History and Politics: Millennial Perspectives* (Colombo: LST): p.25. See also Roberts (2004a): p.16; Roberts (1997).

<sup>94</sup> Smith (1986): p.12.

<sup>95</sup> Ibid: pp.47, 50.

<sup>96</sup> J. Spencer, ‘Introduction: The Power of the Past’ in Spencer (1990): p.3.

present could only be explained by reference to the past. Thus competing nationalist historiographies, often reformulated for inflicting maximum political damage on the opposing group rather than with any notion of historical veracity or scholarly objectivity, further entrenched the spiralling dynamics of conflict.

### *The Post-Orientalist Account*

The body of scholarship that I refer here to as ‘post-orientalist’ was a response by liberal and left-leaning scholars to this excessive politicisation of history, in which they sought to present arguments against the ideological constructs relied upon by the extreme chauvinist versions of historiography.<sup>97</sup> Although they were concerned with Tamil as well as Sinhala chauvinism, there is in this body of work a greater concentration on Sinhala-Buddhist nationalism, due to the fact that this was the politically dominant nationalism in control of the state.

In introducing a collection of influential essays in this vein, Spencer set out their aim as being “to expose the inadequacy of explaining conflicts like those in Sri Lanka as the inevitable working out of immanent – ‘primordial’ – cultural forces. Rather, the historical arguments so often heard in Sri Lankan politics have themselves to be understood as products of their own peculiar history.”<sup>98</sup> In demonstrating that “the crisis itself has been made by the actions of particular men and women, and is not the outcome of inherited destiny”, or “the inevitable outcome of centuries of hostility”<sup>99</sup> as the nationalist antagonists tended to present the conflict, post-orientalists sought to change both the frames of reference and the content of the historical debate in relation to nationalism and conflict. The post-orientalist counterargument to the essentialist and primordialist historiographies of the nationalists, in Spencer’s words, was that,

---

<sup>97</sup> Book-length interventions include Spencer (1990); Social Scientists Association (1984) *Ethnicity and Social Change* (Colombo: SSA); Committee for Rational Development (1984) *Sri Lanka, The Ethnic Conflict: Myths, Realities and Perspectives* (New Delhi: Navrang).

<sup>98</sup> Spencer (1990): p.3.

<sup>99</sup> Ibid.

“In simple terms, Sinhala-Tamil conflict is a product of modern politics. To interpret the history of the pre-colonial kingdoms in terms of ‘nationalism’ – a distinctive ideology of the modern nation-state – is anachronistic and therefore misleading...The understanding of the national past as a history of warring ‘communities’, ‘races’, or ‘ethnic groups’ is a product of colonial readings of the available sources of the Sri Lankan past.”<sup>100</sup>

Moreover, in reinterpreting the history of conflict as essentially a political rather than a cultural history, Spencer emphasised the ‘transactionalist’<sup>101</sup> nature of nationalist historiography in which “particular cultural resources have been deployed to suit the interests of key political actors.”<sup>102</sup>

In the same collection, Elizabeth Nissan and R.L. Stirrat make a strong case for paying adequate attention to the influence of state forms in the formation of group identities whether as ethnicities or nationalisms, contending that “different state forms depend upon, and generate, different senses of collective identity.” The understanding of nationalist identities and communal conflict in Sri Lanka, they further argue, “has been hindered by the unwarranted and anachronistic imposition of the dominant political identities of the present day on to the past.” Pointing out that there is a “need to examine the processes by which a nation-state was created in Sri Lanka out of the kingdoms of the past in order to understand the nature of present-day political identities”, and that “Too often kingdoms and nation-states are conflated in both popular and academic literature on this subject”,<sup>103</sup> they emphasise the influence of the modern European state form, transmitted through British colonialism, on the formation of modern Sri Lankan nationalisms.

---

<sup>100</sup> Ibid: p.5. See also J.D. Rogers, ‘*Historical Images in the British Period*’ in Spencer (1990): Ch.4.

<sup>101</sup> ‘Transactionalism’, the seminal contribution of Fredrik Barth to anthropological theory, has been defined by Michael Roberts as “a theory that attaches a dominating influence to the strategising goals of individuals, interest groups or organised parties. In other words, it is a perception of the world as one peopled by maximising-strategising-instrumental individuals”: Roberts (2003): p.13. See also Roberts (1997).

<sup>102</sup> Spencer (1990): p.12.

<sup>103</sup> E. Nissan & R.L. Stirrat, ‘*The Generation of Communal Identities*’ in Spencer (1990): Ch.2 at p.19.

In the context of the confrontation of crude oppositional caricatures of each other that the intercourse between Sinhala and Tamil nationalists had by then descended to, this kind of fresh perspective promised more constructive avenues for historiographical debate. Using inscriptional, archaeological and other empirical examples, Nissan and Stirrat attempt to separate the “very muddled” nature of ethnic relations in pre-colonial and most of colonial history from “the ideal congruence of race, language, religion and political territory assumed in nationalist discourse”<sup>104</sup> from the nineteenth century onwards. On this evidence they argue that pre-colonial history does not support the picture of two opposed nations portrayed by Sinhala and Tamil rhetoricians. In doing so, they make two further observations which are important. The first is that “For long periods of time groups which would now be characterised in terms of the Sinhala-Tamil divide lived more or less at peace with one another. There were dynastic wars; but Sinhala-Tamil communal violence dates from after Independence.”<sup>105</sup> The characterisation of pre-colonial conflicts as ‘dynastic wars’ has attracted severe criticism, to which I shall return presently. Nissan and Stirrat do not deny that there were differences between groups in the pre-colonial polity, and so the second observation, which has proved to be more tenable, is that “the point is simply that differences of language, custom and religion were made into *something new* by the devices of a modern state.”<sup>106</sup>

In elaborating how pre-colonial identities ‘were made into something new’ by the state form introduced through the colonial circumstance, Nissan and Stirrat draw on the models of the pre-modern state developed by Benedict Anderson, Ernest Gellner, Burton Stein and Stanley Tambiah.<sup>107</sup> The pre-modern states in South and Southeast Asia were “relatively loosely structured organisations built up upon the bases of heterogeneity, relativity, and graduality, and on the ideal of the delegation of power from the centre.”<sup>108</sup> This conceptualisation of the pre-colonial state and polity

---

<sup>104</sup> Ibid: p.22.

<sup>105</sup> Ibid: p.24.

<sup>106</sup> Ibid, emphasis added.

<sup>107</sup> References are to: E. Gellner (1983) *Nations and Nationalism* (Oxford: OUP); B. Anderson (1983) *Imagined Communities* (London: Verso); B. Stein (1983) *Peasant, State and Society in Medieval South India* (New Delhi: OUP); S.J. Tambiah (1986) *Sri Lanka: Ethnic Fratricide and the Dismantling of Democracy* (Chicago: Chicago UP).

<sup>108</sup> Nissan & Stirrat (1990): p.24.

is contrasted with the modern state and nation on the basis of the different organisational principles that underlie each, which in turn demands that both state and polity/nation have to be understood in very different terms in relation to each historical period. Firstly, “the pre-modern state was defined through its centre rather than by its boundaries. Power – often expressed in ritual idiom – radiated out from the centre...By contrast, the modern state is territorially defined through ritualised boundaries which are recognised in international law.”<sup>109</sup> Secondly,

“...ethnic, religious, and linguistic differences were not used as the bases for inclusion or exclusion from the polity. At various times groups would speak alternative languages, adhere to alternative religions and claim alternative identities. The quasi-autonomous Vanniyar kingdoms, for example, which stretched in a broad band across north central Sri Lanka between the fourteenth and eighteenth centuries often consisted of Tamil-speaking Hindus; yet at various times they accepted the over-lordship of the kings of Kandy.”<sup>110</sup>

In regard to pre-modern and modern state forms considered as ideal-types, Nissan and Stirrat make three further observations on authority, equality and territory, and homogeneity, which are important to the present discussion. They observe, firstly, that authority in the pre-modern state was legitimated from above (i.e., divine right or in the case of Sri Lanka, from Buddhist cosmology), whereas in the modern democratic state, authority is legitimated from below, from the consent of the ruled. Secondly, they maintain that the pre-modern state “consists of a series of dissimilar groups articulated about the centre, possibly in dissimilar ways”,<sup>111</sup> whereas in the modern state the norm of equality governs the relationship between individuals and between individuals and the state. For this reason, the pre-modern state is spatially heterogeneous in terms of culture, politics and law, and therefore cohesion is achieved by sacralising the centre; whereas the modern state is culturally, politically and legally homogeneous, and cohesion is achieved by the stress on bounded

---

<sup>109</sup> Ibid: p.25.

<sup>110</sup> Ibid: p.26.

<sup>111</sup> Ibid.

territory. According to Nissan and Stirrat, it is upon the extent of ‘homogeneity’ that the scope and content of the nation – and its relationship to the state – assumes meaning within modern states. Thus the ‘nation’ becomes meaningful *only* in association with the modern state, its territoriality, equality and homogeneity, and to use the nation as a category to describe groups in the pre-modern state makes no sense. It is in this way that the colonial intervention, through which the modern state was introduced to Sri Lanka, produced the dynamics in which collective identities began to be articulated in distinctively nationalist ways.

While introducing the modern homogeneity implied in territorial unification and the administrative centralisation of the colonial state, however, British administrators recognised they had to respond to a culturally highly heterogeneous native society, which posed both administrative as well as conceptual problems. According to Nissan and Stirrat, the intellectual response to the problem of social diversity “was simply dealt with by interpreting it in biological terms: different groups were...different races.”<sup>112</sup> They identify three sites of administration in which this critical process was at work: the legal system, native political representation, and in the territorial organisation of the administrative system. The legal system recognised custom as a source of personal laws, especially marriage and succession. From the beginning of such institutions following the Colebrooke-Cameron reforms in 1833,<sup>113</sup> communal representation was the basis of the local elite’s involvement in the political administration until the Donoughmore reforms established territorial democracy in 1931.<sup>114</sup> Likewise, administrative units were territorially demarcated and administered in the language of the majority ethnicity of the area.

Moreover, colonial historiography were deeply influenced by contemporary studies in European Indology, linguistic theory and evolutionary theory, by which “‘Aryans’ (Sinhala) came to be opposed in absolute terms to ‘Dravidians’ (Tamils) historically. Language and race were conflated, so that eventually the smaller

---

<sup>112</sup> Nissan & Stirrat (1990): p.27, n.30. See also K. Mantena (2011) *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism* (Princeton: Princeton UP).

<sup>113</sup> See Chapter 5, *infra*.

<sup>114</sup> *Ibid*.

‘races’...recognised by the British as separate entities were subsumed into the Tamil-Sinhala divide.”<sup>115</sup> Taken together, this created a “major paradox at the heart of the Sri Lankan polity” by the end of the nineteenth century:

“On the one hand all citizens of Sri Lanka were to be treated equally: the island was subject to one set of rules and one set of governors; in terms of citizenship, all should be equal. Yet at the same time, British rule substantialised heterogeneity, formalising cultural difference and making it the basis for political representation.”<sup>116</sup>

This then, according to the post-orientalist account, was the institutional and political context as defined by nineteenth century British colonial practices that enabled the formation of nationalist identities based on ideas of racial exclusivity among ethnic groups in Sri Lanka.<sup>117</sup> If the post-orientalist thesis is accepted, then despite the totalising claims of contemporary Sinhala-Buddhist nationalism, and “despite the assertions made by various rulers at various times to be rulers of the whole island, it seems that the polity of pre-modern Sri Lanka was, at its most centralised moments, a series of semi-autonomous states owing certain ritual and material obligations to an overlord.”<sup>118</sup> Not only Tamil principalities at the periphery but even Tamil monarchic dynasties at the centre were countenanced. It is the pre-modern, territorially unbounded nature of the socio-political and state order, in which European racial categories were unheard of and ethno-cultural differences were politically inconsequential, that enabled these exchanges to take place peacefully.

This view of the pre-colonial polity, as post-orientalists have intended, facilitates a more pluralistic outlook with regard to the present, in that the accommodation of competing multi-ethnic claims is shown to have historical antecedents contrary to monistic Sinhala-Buddhist nationalist historiography and ideology, denuding the latter’s political potency. Post-orientalist theory therefore suggests that there are

---

<sup>115</sup> Nissan & Stirrat (1990): p.30.

<sup>116</sup> Ibid: p.29.

<sup>117</sup> See Rampton (2010).

<sup>118</sup> Nissan & Stirrat (1990): p.26.

deeper historical resources in envisioning alternative constitutional possibilities for pluralism, beyond the dismal picture of either Sinhala-Buddhist hegemony, or perennial conflict between the Sinhalese and Tamils, that is displayed in the politics of the present. In the scholarly response to the post-orientalist thesis, however, significant limitations of this approach have been highlighted. These issues are dealt with next.

### *The Ethnicist Response*

In *Sinhala Consciousness in the Kandyan Period* (2004), the historical anthropologist Michael Roberts has subjected the post-orientalist thesis on nationalism to a sustained critique, and offered an alternative view on pre-colonial group identities and state form. Roberts represents an intellectual tradition, referred hereto as ‘ethnicism’, that is older than the post-orientalist tradition in Sri Lanka. This section delineates the main elements of Roberts’ critique of the *reasoning* adopted by post-orientalist scholars on the question of collective identity, nationalism and state form. Before proceeding to his critique, it is useful to establish the points on which Roberts agrees with the post-orientalists because these uncontested elements in the debate constitute an important part of the empirical context of nations and nationalisms that constitutional law and theory must contend with in Sri Lanka.

At a general level, Roberts welcomes the post-orientalist intervention in cautioning against the reading of the present unto the past and in encouraging greater focus and care in the use of modern analytical categories in explanations of the past.<sup>119</sup> More specifically, he does not contest the post-orientalists’ caution against using modern categories like ‘nation’ and ‘nationalism’ to describe pre-British kingdoms.<sup>120</sup> Reinforcing my observations in Chapter 2, he also endorses the conceptualisation of the pre-colonial indigenous state presented by Nissan and Stirrat as “centre-oriented

---

<sup>119</sup> Roberts (2004a): p.10.

<sup>120</sup> Nissan & Stirrat (1990): p.26.

polities that did not define their boundaries sharply and conceived of lordship in ritual idioms.”<sup>121</sup>

However, in arguing that pre-colonial conflicts were ‘dynastic wars’; that “ethnic, religious and linguistic differences were not used as the bases of inclusion or exclusion from the polity”;<sup>122</sup> and that the “old kingdoms were indifferent to internal cultural difference”,<sup>123</sup> post-orientalists suggest that these categories were not *politically significant* in the pre-colonial era. It is this contention that constitutes the gravamen of the disagreement between the post-orientalists and the ethnicist view as represented by Roberts. As already noted, post-orientalists rely upon Tambiah’s work especially in relation to their characterisation of the pre-colonial kingdom as a *mandala*-type state (or galactic polity). Territory was not the central organising principle in this type of state, and territorial sovereignties therefore, as Anderson described it, “faded imperceptibly into one another.”<sup>124</sup> While agreeing with the post-orientalist reliance upon Tambiah’s conceptualisation of the pre-colonial state, however, for Roberts,

“It is the next Andersonian step that is problematic. They link the ‘modern nation-state’ indelibly to the egalitarian democratic idea, so that authority is seen as ‘legitimated from below’. In effect they buy into Anderson’s emphasis on a ‘deep, horizontal comradeship’ as a *sine qua non* for nation-as-community...[T]herefore, the conceptualisation proposed by Nissan and Stirrat is founded on a rigid distinction between the modern and pre-modern in ways that re-configures the modern:tradition distinction that was integral to modernisation theory and its determinisms.”<sup>125</sup>

In support of this dichotomisation between the ‘heterogeneous pre-modern’ and the ‘homogeneous modern’, post-orientalists present an empirical view of the pre-

---

<sup>121</sup> Roberts (2004a): p.10.

<sup>122</sup> Nissan & Stirrat (1990): p.26.

<sup>123</sup> Spencer (1990): p.12.

<sup>124</sup> Anderson (1983): p.26.

<sup>125</sup> Roberts (2004): p.10-11. He adds, “Since Gellner and Anderson...are among their authorities, this is hardly surprising.” Reference in quote is to Anderson (1983): p.16.

modern island in which there was considerable cultural exchange between Sri Lanka and the world and especially southern India.<sup>126</sup> Particular evidential emphasis is placed on the southern Indian Tamil Nayakkar dynasty that provided the last four kings of Kandy (1739-1815). These empirical observations concerning the acceptance by Sinhala-Buddhist society of Tamil-speakers and cultural and religious practices throughout the pre-modern period are directed at proving the argument that group distinctions were not politically salient (and thus a corresponding vision of harmony and peace) within the pre-colonial polity.<sup>127</sup>

While Roberts reaffirms the evidence *per se* of the “considerable ingress of individual families, bodies of people, commodities, artefacts and deities from India into the island”,<sup>128</sup> he argues that the interpretation placed by post-orientalists on these processes of exchange is not defensible at either an empirical level or as a matter of interpretative reasoning. Roberts presents extensive rebuttals and alternative interpretations to the post-orientalist empirical arguments, in particular in relation to the Nayakkar dynasty, the Tamil chieftains of the Vanni, and more generally on the nature of these cultural exchanges and the manner in which external cultural influences were received within Sinhala society, to which I will return in a moment.<sup>129</sup> It is the post-orientalist reasoning in this regard – that “wherever there is pronounced cultural exchange and fragmentary evidence on the incidence of boundary crossing...[that] there can be no differentiation and enmity”<sup>130</sup> – based on the counterposing of oppositional conceptions of the modern (in which territorial boundaries are the key determinant of the ‘other’ or foreignness), and the pre-modern, (in which they are not), that Roberts finds untenable.

“Behind the conclusion that Sinhala:Tamil differentiation was of little significance is the either/or epistemology of the modern rational order...In building the principle of equality into the concept of community (as well as

---

<sup>126</sup> See for an enumeration of post-orientalist examples, Nissan & Stirrat (1990): pp.23-24.

<sup>127</sup> See for e.g., N. Gunasinghe, ‘*Ethnic Conflict in Sri Lanka: Perceptions and Solutions*’ in H. Alavi & J. Harriss (Eds.) (1985) *South Asia* (New York: Monthly Review Press): pp.247-255.

<sup>128</sup> Roberts (2004a): p.11.

<sup>129</sup> See *ibid*: pp.46-48, and Ch.5.

<sup>130</sup> *Ibid*: p.11.

‘nation’), they extend Anderson’s modernist framework into settings where people’s linkage with an entity, a socio-political, king-centred entity, was organised on hierarchical principles that recognised the encapsulation of lesser beings by higher beings.”<sup>131</sup>

Thus, even as they caution against it, post-orientalists read the present into the past, and apply a framework of reasoning to a pre-colonial socio-political order that cannot be understood in terms of those frameworks, and in doing so contributes to misleading if not revisionist understandings of nationalisms in Sri Lanka today.<sup>132</sup> Roberts links this approach to the influence of two intellectual currents in the social sciences: post-modernism and associated concepts of ‘hybridity’ and ‘situational ethnicity’ on the one hand, and on the other, transactionalist theory, which stresses the role of individuals and elites in the formation of ethnic and national identities.<sup>133</sup> Underlying both post-modernism and transactionalism is an emphasis on individual agency that is insufficiently attentive to the cultural contexts that do not attach the same significance to individualism, rationalism, and egalitarianism, and in which ethnicity and nationalism are reproduced in places like Sri Lanka.

In the theoretical understanding of ethnic identity as fluid, shifting, and ambiguous in the discourse on ‘hybridity’ – a position originally developed in relation to challenges of multiculturalism and mass immigration in Western liberal democracies – Roberts sees a clear preference for “multi-cultural mosaics” and “a world of contestation”.<sup>134</sup> These ideological predispositions, combined with an “ignorance of context” and limited and selective consideration of secondary sources, sometimes leads to sweeping theoretical statements about ethnicity and nationalism, “within the

---

<sup>131</sup> Ibid: p.11, emphasis in original.

<sup>132</sup> This is a criticism that has been made more generally by Kaufmann and Zimmer about the “...strongly normative, New Left discourse which sought to reverse the patronising and negative tendencies of Orientalism. Though the new radicalism claimed to be making a sharp break with the anglo-centric tradition, it actually represents a continuation of many of the earlier exoticist themes.”: Kaufmann & Zimmer (2004): p.64.

<sup>133</sup> Ibid: pp.11-13.

<sup>134</sup> Ibid: p.12.

frame of individual choice rather than [a] sense of structured context”<sup>135</sup> which are wholly asociological and ahistorical in relation to the reality.

These notions of fluid identity patterns are bolstered by transactionalist theory in relation to ethnicity and nationalism, which “attaches a dominating influence to the strategising goals of individuals, interest groups or organised parties.”<sup>136</sup> The work of Eric Hobsbawn on nationalism and the ‘invention of tradition’, a source of authority for post-orientalist scholars, both stresses the “designs of powerful agents” at the same time as insisting on rigidly modernist categories of nation, state and territory in conceptualising ‘tradition’ and ‘modernity’ in dichotomous terms.<sup>137</sup> The problem with these postmodernist-cum-transactionalist approaches to understanding the historical and cultural context of collective identity in Sri Lanka is that they are,

“...inadequate when we explore the subjectivities of people who are immersed in their particular versions of the cosmic. The world of Sinhala-speakers in the Kingdom of [Kandy] ... had many strands of cosmic evaluation – from the respectful worship of a god-king to the possible significance attached to a period of prolonged drought or to a comet in the sky or the awful mark of small pox on a supposedly godly figure.”<sup>138</sup>

It is from this critical analytical standpoint that Roberts addresses the empirical arguments of the post-orientalist position to effect that in the pre-colonial polity cultural difference was politically unimportant; that cultural identities were protean and constantly renegotiated; and that conflicts when they did occur, were in the nature of dynastic disputes rather than deeper ethno-cultural ones. Roberts frames the central question in this way:

---

<sup>135</sup> Ibid. See J.D. Eller (1999) *From Culture to Ethnicity to Conflict: An Anthropological Perspective on International Ethnic Conflict* (Ann Arbor: Michigan UP); D.D. Buck, ‘Dimensions of Ethnic and Cultural Nationalism in Asia – A Symposium’ (1994) *Journal of Asian Studies* 53: pp.3-9.

<sup>136</sup> Roberts (2004): p.13.

<sup>137</sup> Ibid. See also J. Spencer (1990a) *A Sinhala Village in a Time of Trouble* (New Delhi: OUP): pp.238-239, 253.

<sup>138</sup> Roberts (2004a): p.13.

“The issue is whether the data on the ingress of symbols, people and commodities from the Indian subcontinent and across the Indian Ocean *precluded differentiation* between [Sinhalese, Tamils, Moors and others] in the referential and *subjective world* of the population in the [Kandyan kingdom].”<sup>139</sup>

In summary form, Roberts’ arguments in relation to the multiplicity of empirical issues implicit in this central question are as follows. Firstly, in the absence of persuasive contrary evidence, cultural exchange to the extent it had a bearing on people changing their ethnic, religious or linguistic identities was a one-way process of Tamils and others becoming Sinhalese, and not a two-way process in which Sinhalese also become Tamils or otherwise changed their identity.<sup>140</sup> Roberts suggests that “issues relating to the distribution of power, including the weight of numerical majority and the advantages attached to the control of state machinery” were pertinent to this “one -way traffic” of Sinhalisation.<sup>141</sup>

Secondly, at least in the last Kingdom of Kandy, “the spatial centre of potency” was the Sinhala-Buddhist kingship, and its potency was such that “patriotic sentiments” towards it spread beyond the areas in the vicinity of the Kandy plateau, and extended to the indigenous *Vadda* community and their lands as well as to Sinhalese inhabitants of the coastal areas under the control of the Portuguese and later the Dutch and the British: “these sentimental attachments were threaded by notions of Sinhalaness and directed towards a named entity, referred to variously as *Sinhalē*, *Tunsinhalaya*, *Siri Lanka*, *uda pata rata* or by other synonyms, associated with the king.”<sup>142</sup> Roberts adduces evidence that even the Tamil-speaking Vanni chieftains of the north were “patriotically attached” to the Kandyan order of kingship.<sup>143</sup>

---

<sup>139</sup> Ibid: p.13, emphasis added.

<sup>140</sup> Ibid: p.11, esp. n.36.

<sup>141</sup> Ibid: p.14.

<sup>142</sup> Ibid: pp.14-15; Ch.7.

<sup>143</sup> Ibid: p.14. See also pp.70-78; D.G.B. de Silva, ‘*New Light on Vanni Chiefs, based on Historical Tradition, Palm-leaf Manuscripts and Official Records*’, (1996) *Journal of the Royal Asiatic Society, Sri Lanka*, Vol. LXI: pp.153-204.

Thirdly, Roberts addresses the post-orientalist argument about the heterogeneity of the pre-colonial state based on the evidence of extensive intercourse between the island and the world during the pre-colonial era, in which there was movement of people and cultural, linguistic and religious borrowing. Post-orientalists adduce this evidence in support of the proposition that ethnic differences were not politically significant in this heterogeneous polity, suggesting further that it was colonial modernity that introduced ideas of homogeneous and territorial exclusivism to conceptions of especially Sinhala-Buddhist identity.<sup>144</sup> Roberts offers a radically different view of the nature of pre-colonial heterogeneity, in which the category ‘Sinhala’ encompassed ethnic plurality hierarchically, rather than one that existed as one among many equal group identities.

“Those who spoke Sinhala and who saw themselves as Sinhalese were not homogeneous. Sinhala society was not only girded and threaded by caste differentiation, it was permeated by hierarchical principles of caste distinction ... In a word, it was structured on difference – so that the category “Sinhalese” (*Sihala*, *Sinhala*) was necessarily an encompassing category that incorporated difference. This made it feasible for the Sinhala states of the pre-British era to incorporate lineages and bodies of migrants as castes or slot them into an existing caste category as a fraction thereof.”<sup>145</sup>

These arguments form a strong historiographical foundation for the position that a coherent and pervasive sense of collective identity along a “We:They scheme of categorisation”<sup>146</sup> was prevalent among the Sinhalese during the era of the Kandyan kingdom. Roberts cautions against extending “the concept of ‘nationalism’ into contexts that may not support its usage”,<sup>147</sup> but the manner in which this king-centred polity sustained the last pre-colonial Sinhala state renders it akin to a monarchical

---

<sup>144</sup> Nissan & Stirrat (1990): pp.25-26.

<sup>145</sup> Roberts (2004a): p.15. See G. Obeyesekera, ‘*The Great Tradition and the Little in the Perspective Sinhalese Buddhism*’, (1963) *Journal of Asian Studies* 22: pp.139-155; G. Obeyesekera, ‘*The Buddhist Pantheon in Ceylon and its Extensions*’, in M. Nash (Ed.) *Anthropological Studies in Theravada Buddhism* (New Haven: Yale UP); J.C. Holt (1991) *Buddha in the Crown* (New York: OUP).

<sup>146</sup> Roberts (2004a): p.17.

<sup>147</sup> Ibid: p.16.

state-nationalism in many ways. If, as Roberts suggests, there are ‘residual continuities’ between this pre-colonial collective consciousness and state form, and the post-colonial state-nationalism in Sri Lanka, then it is easy to see how the post-orientalist efforts failed. The Sinhala-Buddhist nation’s historical, cultural, political, social, and territorial dominance, or in other words, its ‘hierarchical encompassment’ of the whole island, seems complete and unassailable.

I contend, however, that there are two significant ways in which this challenge can be met in contextualising plurinational principles to the Sri Lankan case. Firstly, the very ethnicism of Roberts’ account insulates it from the kind of nationalist attack that demolished the post-orientalists. Its emic theoretical strength thus enables us to add content to Anthony D. Smith’s theoretical distinction between the nation (as organisational culture) and nationalism (as ideological movement), and to *differentiate* the historical and sociological nature of the Sinhala-Buddhist conception of the nation and state, from the historiographical claims of contemporary Sinhala-Buddhist nationalism. When conceived this way, the rediscovery of pluralistic traditions can be accomplished free from the ideology of post-orientalism and therefore with firmer defences against contemporary nationalist challenges. This in turn allows us to re-examine elements of the ‘myth-symbol complex’ of the Sinhala-Buddhist nation with a view to bringing to the fore its inclusionary and pluralist potential, in contradistinction to the ethnocentric *mythomoteur* that present-day Sinhala-Buddhist nationalists have defined for and entrenched within the post-colonial constitutional order.

Secondly, it helps us understand the historical relationship between the Sinhala and Tamil ethnic collectivities, which in turn helps to determine the politico-spatial relationship between the two nations that requires constitutional articulation in the context of multinational territorial and normative claims today. At the level of political rhetoric and practice, it is abundantly clear that the Tamils, or significant sections of Tamils, regard themselves as a nation rather than a minority ethnic

community within the island.<sup>148</sup> The Tamils are thus a minority nation in Sri Lanka in terms of demography and power, and in this sense, they are no different from minority stateless nations located within comparable types of state (i.e., a state that only reluctantly concedes and fitfully implements administrative devolution, and categorically denies any national status).<sup>149</sup>

There is, however, a further layer of complications arising from certain weaknesses and inconsistencies in the way that Tamil nationalists have chosen to represent their national claims, such as, for example, the controversial inclusion of the Muslims in the national category ‘Tamil-speaking peoples’ and the more ambitious aspects of the territorial boundaries of the traditional homeland.<sup>150</sup> Evaluated against the Sinhala-Buddhist position in each of these respects as well as a rich and substantial literature (both supportive and critical) about the ethnicity, religion, the nation and nationalism of the Sinhala-Buddhists, these weaknesses exacerbate the vulnerability of Tamil nationality claims. While this does not vitiate the case for constitutional accommodation, the manifest spatiotemporal *inequality* between the two nations does suggest that plurinational autonomy is better defended theoretically on the basis of a norm of asymmetry than of equality. This can only be demonstrated by considering the Tamil nationalist historiography.

### **3.2 The Sub-State National Challenge: The ‘Instrumental Primordialism’ of Tamil Nationalism**

Virtually every political statement of Tamil *identity* commences with a reaffirmation of the distinct Tamil culture centred on their great and ancient language. This ‘romanticist’<sup>151</sup> emphasis on language and culture is also often couched in timeless – or primordial – terms. At the same time, most ideological and historical accounts of

---

<sup>148</sup> See most recently, C.V. Wigneswaran, ‘*Brother Bernard and the National Question*’, Keynote Speech by the Chief Minister of the Northern Province at the Bernard Soysa Centenary Commemoration, Colombo, 31<sup>st</sup> March 2014.

<sup>149</sup> See Guibernau (1999): Ch.2.

<sup>150</sup> See Chapter 2, *supra*.

<sup>151</sup> Guibernau (2013).

modern Tamil *nationalism* date the gradual formation of a politically salient collective consciousness amongst Sri Lankan Tamils to the nineteenth century, and to social and political impulsions in response to British colonialism arising within the Tamil community in the Jaffna peninsula particularly.<sup>152</sup> The focus on nineteenth century colonial modernity – involving the infrastructural development of education, communications and transport networks, together with the introduction of European ideas of the nation and nationalism – as being the conditions from which nationalism evolves, arises from instrumentalist conceptual assumptions widely held among contemporary Tamil nationalists.

These assumptions are evident in the emphasis on modernist concepts like bounded territory, linguistic community and state-centred self-determination as the constitutive elements of nationhood. These theoretical assumptions are common to centrist-constitutionalist as well as Marxian interpretations of Tamil nationalism. Thus in the former tradition, the influential political scientist Alfred Jeyaratnam Wilson characterised the Vaddukoddai Resolution of 1976, in which formerly federalist Tamil nationalist parties called for the establishment of a separate state of Tamil Eelam for the first time, as a transition from “*quasi-nationalism to nationalism*”, implying that the authenticity of a nationalism depended on its aspiration to a state. He goes on to say,

“This meant unwillingness to live within the confines of a single island entity...the Ceylon Tamils occupy a geographically contiguous base in the north and east, and it is this space, strengthened by common language and

---

<sup>152</sup> D. Ambalavanar, ‘Introduction’ in R. Cheran, D. Ambalavanar & C. Kanaganayakam (Eds.) (2008) *New Demarcations: Essays in Tamil Studies* (Toronto: Canadian Scholars’ Press): pp.1-2; K. Gopal (2000) *Nationalism in Sri Lanka: Genesis and Evolution* (New Delhi: Kalinga Publications): Ch.3; M. Gunasingam (1999) *Sri Lankan Tamil Nationalism: A Study of its Origins* (Sydney: MV Publications): pp.3-4, Chs.4-7; D. Feith, ‘The Tamil Struggle: A Brief Historical Survey’ in N. Seevaratnam (Ed.) (1989) *The Tamil National Question and the Indo-Lanka Accord* (New Delhi: Konark): Ch.9, pp.73, 79-80; K.M. de Silva, ‘Sri Lanka: National Identity and the Impact of Colonialism’ in J.C. Holt & P.B. Meegaskumbura (Eds.) (2006) *Identity and Difference: Essays on Society and Culture in Sri Lanka* (Kandy: ISLE): Ch.1.

culture, that provides them with the drive and anxiety to maintain their identity and separateness.”<sup>153</sup>

Likewise from the left, Rudramoorthy Cheran provides the following working definition for his account of Tamil nationalism:

“Nationalism involves and evolves from a fusion of several elements: language, territory and distinctions from contiguous neighbours in ways which sustain a group’s sense of ‘us’ and ‘them’...The concept of a nation, together with the idea of self-determination and popular sovereignty, argue that this collectivity must receive one’s undivided loyalty [sic].”<sup>154</sup>

This combination of a Romantic sense of collective identity together with a modernist conceptualisation of the nation can be called Tamil nationalism’s ‘instrumental primordialism’,<sup>155</sup> although it must be made clear that no such characterisation is expressly advanced anywhere in the Tamil nationalist literature. On the contrary, except for the Marxist categories that permeated much Tamil nationalist discourse in the 1970s and 80s, Tamil nationalism’s English-language literature is striking for its disengagement with nationalism and constitutional scholarship. Indeed, Wilson’s canonical account begins with the (essentially unpersuasive) complaint that,

“It has been difficult and sometimes impossible ... to find in Western literature definitions relevant to the case of Ceylon/Sri Lanka for terms such as ‘communalism’, ‘artificial states’ bequeathed by decolonisers, alternatives

---

<sup>153</sup> A.J. Wilson (2000) *Sri Lankan Tamil Nationalism: Its Origins and Development in the 19<sup>th</sup> and 20<sup>th</sup> Centuries* (New Delhi: Penguin): p.109. See also pp.85,101,102,105, 109 for suggestions in this vein, although Wilson is not wholly consistent in relation to the concept of nationalism underlying his empiricist narrative of the origins and development of Tamil nationalism.

<sup>154</sup> R. Cheran, ‘*Pathways of Dissent: An Introduction to Tamil Nationalism in Sri Lanka*’ in R. Cheran (Ed.) (2009) *Pathways of Dissent: Tamil Nationalism in Sri Lanka* (New Delhi: SAGE): p.xvi.

<sup>155</sup> M.V. de Almeida, ‘*Instrumental Primordialism? The Politics of Representation among a Black Cultural Group in a Town of Bahia, Brazil*’ (2000) paper for 6<sup>th</sup> European Association of Social Anthropologists Conference, Cracow, Poland, 26<sup>th</sup> – 29<sup>th</sup> July 2000: pp.2-3.

to the state structure such as ‘galactic polities’, and a number of other phenomena that beset the new state formations in the Third World.”<sup>156</sup>

The governing narrative of Tamil nationalism usually commences with the Hindu revival of the nineteenth century. As with the rise of the Sinhala-Buddhist revivalist movement, the cultural influence of European rule and in particular the role of Christian missionary activity in the Jaffna peninsula aroused the need for a reaffirmation of Tamil culture and Hinduism, at the same time as European forms of modern education and methods of knowledge dissemination catalysed revivalist activity.<sup>157</sup> In fact, the Tamil-Hindu revival begun by Arumuka Navalar (1822-1879) in Jaffna in the mid-nineteenth century preceded its Sinhala-Buddhist counterpart by a generation.<sup>158</sup> As Wilson observes,

“Navalar’s work uplifted Tamil ethnicity and pointed the way to a yet-to-be articulated Tamil national consciousness. He was not a dominant figure like Anagarika [Dharmapala], but there were certain important changes which he sponsored or introduced himself, and which can be connected to later developments in Tamil nationalism.”<sup>159</sup>

The distinction Wilson suggests here between Dharmapala and Navalar needs to be underscored because it also signifies certain important differences between the two revivalist movements and the two ethno-cultural nationalisms that sprang from them. While both were public men who contributed decisively to the ethno-religious revival of their respective communities in the face of a shared opponent in the form of Christian evangelism and European imperialism, the overtly political nature of Dharmapala’s activities (including in the articulation of an historically

---

<sup>156</sup> Wilson (2000): p.5.

<sup>157</sup> K. Kailasapathy, ‘*The Cultural and Linguistic Consciousness of the Tamil Community*’, Punitham Tiruchelvam Memorial Lecture (1982), cited in Wilson (2000): p.28. See also K. Kailasapathy, ‘*Cultural and Linguistic Consciousness of the Tamil Community*’ in Social Scientists Association (1984) *Ethnicity and Social Change in Sri Lanka* (Colombo: SSA): pp.107-120.

<sup>158</sup> Cheran (2009): p.xiv. See also D. Hellmann-Rajanayagam (1989) ‘*Arumuka Navalar: Religious Reformer Or National Leader of Eelam?*’, *Indian Economic Social History Review* 26: 235; P. Schalk, ‘*Sustaining the Pre-Colonial Past: Saiva Defiance against Christian Rule in the 19<sup>th</sup> Century Jaffna*’ in M. Bergunder, H. Frese & U. Schroder (Eds.) (2010) *Ritual, Caste and Religion in Colonial South India* (Halle: Franckesche Stifungen zu Halle).

<sup>159</sup> Wilson (2000): p.27.

contextualised, state-centred Sinhala-Buddhist nationalist ideology of inclusion and exclusion), is to be contrasted with Navalar's near-complete disinterest in the 'political' and the 'historical' as understood within Western approaches to modernity and nationalism. While Navalar's cultural and religious activities revived a heightened sense of historical and collective selfhood among Jaffna Tamils, which in turn spawned an efflorescence in Tamil historical scholarship and polemics well into the next century, he was himself unconcerned with such cornerstone nationalist concepts as territory and state that feature so prominently both in Western ideas of the nation and nationalism as well as Sinhala-Buddhist nationalist historiography. He therefore reflected and represented a sense of Tamil-ness that was wholly organic, and in many ways unique even in the context of performative or ritual-based conceptions of collective consciousness among other ethnicities of South Asia.<sup>160</sup> As Dagmar Hellmann-Rajanayagam observes,

“The Tamils do not need history to prove who they are and how they come to be what they are, because they confirm their identity by other means, namely, religious, cultural, literary, social [means]. They are secure as Tamils, and Tamil culture and religion do not need a state, they are timeless.”<sup>161</sup>

In addition to Navalar and his religious revival, the Tamil historiographies produced in this period by scholars educated in the Western mould began to use the methods and techniques of European history-writing, and aspired to reproduce Tamil history according to the expectations of European conceptions of history.<sup>162</sup> Chief among these objectives was the desire to portray the Tamils as a people with a particular type of great and distinctive history, which was a necessary precondition for their recognition by colonial rulers as a distinctive 'race' and the political entitlements from the colonial state that accrued from that recognition.<sup>163</sup> Tamil historical scholarship in this tradition thus sought to depict Sri Lankan history as either the

---

<sup>160</sup> D. Hellmann-Rajanayagam (1994) 'Tamils and the Meaning of History', *Contemporary South Asia* 3(1):3; Ramaswamy (1997).

<sup>161</sup> D. Hellmann-Rajanayagam (1994): p.5.

<sup>162</sup> D. Hellmann-Rajanayagam, 'The Politics of the Tamil Past' in Spencer (1990): Ch.5 at pp.107-112. See also esp. P. Lawrence, 'Nationalism and Historical Writing' in Breuilly (2013).

<sup>163</sup> Nissan & Stirrat (1990): p.27, n.30.

history of two distinctive peoples or ‘founding races’<sup>164</sup> or that the entire history of Sri Lanka was a Dravidian, Tamil history, including that of the Sinhalese in spite of their Aryan pretensions.<sup>165</sup>

The Tamil-Hindu revival, as championed by Navalar, was therefore a Romantic renaissance of conservatism and traditionalism. Its insular and inward-looking nature, and its preoccupation with the preservation of its own culture, language and religion, meant that it was not concerned with the rest of the island, with the Sinhalese, or with the Sinhalese monarchical state in history.<sup>166</sup> This was in sharp contrast to Sinhala-Buddhist revivalism (especially Dharmapala’s hegemonic version of it), which was not only noticeably preoccupied with Tamil subversion and with incursions by the Dravidian enemy across the sea in South India, but also engaged a ‘protestant’ critique of traditional monastic Buddhism.<sup>167</sup> Sinhala-Buddhist nationalism’s central concern with the resurrection of the glorious past of the ancient Sinhala-Buddhist monarchical state together with its territorial tropes was in part an expression of hostility to outsiders. It reflected a desire to evict European colonialists from their island home, and to exclude, or rather to subordinate, Christians, Muslims, Hindus and Tamils within a state order enshrining Sinhala-Buddhist supremacy.<sup>168</sup> The effect of Navalar’s Saivite Tamil revivalism was to raise some measure of consciousness among Tamils about a shared religion, language, culture and literature, but “by the end of the nineteenth century, a vibrant Tamil nationalism had still to make itself articulate.”<sup>169</sup> The consensus within Tamil nationalist scholarship about the nineteenth century revival is perhaps best summed up by Cheran:

“It is difficult to assert that the Hindu revival was a form of Tamil nationalism. Nationalism involves and evolves from a fusion of several elements: language, territory and distinctions from contiguous neighbours in

---

<sup>164</sup> Wilson (2000): p.42.

<sup>165</sup> Hellmann-Rajanayagam (1994): p.5; Hellmann-Rajanayagam (1990): pp.107-112.

<sup>166</sup> Wilson (2000): p.31.

<sup>167</sup> R. Gombrich & G. Obeyesekera (1988) *Buddhism Transformed: Religious Change in Sri Lanka* (Princeton: Princeton UP): Ch.6; A.M. Blackburn (2010) *Locations of Buddhism: Colonialism and Modernity in Sri Lanka* (Chicago: Chicago UP): Ch.6; B. Schonthal (2012) *Ruling Religion: Buddhism, Law and Politics in Sri Lanka*, PhD Thesis, University of Chicago (unpublished).

<sup>168</sup> Cheran (2009): p.xv-xvi.

<sup>169</sup> Wilson (2000): p.39.

ways which sustain a group's sense of 'us' and 'them'. Nationalism as a collective identity is both intersubjective and relational. The concept of a nation, together with the idea of self-determination and popular sovereignty, argue that this collectivity must receive one's undivided loyalty. Understood thus, it can be said that there was no Tamil nationalism to speak of. However, there was a well-developed sense of Tamil ethnic consciousness sustained by a range of everyday practices as well as by caste-based practices that maintained boundaries of exclusion and inclusion."<sup>170</sup>

Parallel to Navalar's revival, however, were the innovations in the secular world introduced by the colonial state, especially by the Colebrooke-Cameron reforms of 1833. Until territorial democracy under universal franchise was introduced in 1931, 'communal representation' was the principal institutional means by which the imperial power transacted with the colonial peoples.<sup>171</sup> Communal representation as the governing principle and framework of elite native politics in the colonial period had a profound effect on the political development of Ceylon and the future trajectories of ethnic relations, especially after the imperial arbiter had left the scene at independence.<sup>172</sup> For the purposes of the Tamil nationalist narrative, however, what was important about communal representation was that it served to reinforce the view held among Tamils that they together with the Sinhalese were the two historic majority communities of the island, with others such as the Muslims, Malays, Burghers and Indian Tamils being regarded as the minorities. Wilson has described this phenomenon thus:

“...there developed a sense of *national awareness*, the consciousness of being Sinhalese or Tamil, given weight by the perception that each of them were the island's 'founding races', the major communities, while the others (Muslims, Indian and Burghers) were the minorities. Only with the advent of

---

<sup>170</sup> Cheran (2009): p.xvi.

<sup>171</sup> See Chapter 5, *infra*.

<sup>172</sup> All this is well documented elsewhere. See Wilson (2000): Ch.4; M. Roberts, 'Introduction: Elites, Nationalisms and the Nationalist Movement in Ceylon' in M. Roberts (Ed.) (1977) *Documents of the Ceylon National Congress and Nationalist Politics in Ceylon, 1929-1950*, Vol.1 (Colombo: Dept. of National Archives): pp.xxix-clxvii; K.M. de Silva (1986) *Managing Ethnic Tensions in Multi-Ethnic Societies, Sri Lanka 1880-1985* (Lanham, MD: Univ. Press of America): Chs.III, IV, V.

territorial representation based on population in the 1920s did the Tamils begin to realise that they too were a minority community. The transition from a lower to a higher level of *national consciousness* then began to kindle the anxieties of the Tamils, who started to entertain fears of the Sinhalese majority.”<sup>173</sup>

These fears were left unresolved at the time of independence in 1948. The well-known history that follows after independence saw the Tamils demanding federal autonomy as a distinct nation, and then launch an armed struggle to secede from the Sri Lankan state, which concluded in 2009 with the comprehensive military defeat of the separatist movement.

From the established narrative of the development of Tamil nationalism in Sri Lanka, we see that it was based at the core in a collective sense of belonging around the Tamil language and culture, and was driven by two factors: firstly, by social responses to perceptions of cultural degradation under colonialism and discrimination post-independence; and secondly, by political responses to changing institutional forms of power and representation in the colonial and postcolonial state. We can also see from this narrative that the articulations of the nation by Tamil nationalists, and the politico-legal claims made on behalf of the nation, have been influenced by two main ideological and discursive sources: the rights discourse of conventional international law relating to the self-determination of peoples, and the Marxist approach to nations and nationalities. The synthesis of these influences is seen in representations of Tamil nationalism even today, although echoing global trends, Marxist terminology is less apparent in Tamil nationalist rhetoric now than in the Cold War era.

One of the consequences of this reliance by Tamil nationalists on the categories of international law in particular has been an absence of engagement with the political and constitutional theory concerning democracy and the state. In contrast therefore to sub-state nationalisms in Western plurinational states, which in recent decades have produced some of the most fundamental theoretical interrogations of liberal

---

<sup>173</sup> Wilson (2000): p.42, emphasis added.

democracy and the Westphalian nation-state,<sup>174</sup> Tamil nationalism has not, in the main, concerned itself too deeply with *theoretical* critiques of the Sri Lankan state and its normative foundations.<sup>175</sup> Of course, in its political rhetoric, Tamil nationalism critiques such features of the host-state as ethnicised majoritarianism, discrimination and the absence of power-sharing space in the centralised unitary state in making its autonomy claims, either as a sub-state nation or separate state. Like Western sub-state nationalisms, Tamil nationalism also offers historiographical arguments about territorial nationhood, and in its federalist, as opposed to secessionist, incarnations, constitutional claims to recognition, representation and autonomy that necessarily involve a fundamental reorganisation of the Sri Lankan state in appreciation of the island's bi-national character. However, the point to note is that these critiques and claims are generally *empirical* and *institutional* in character, and are more directed at issues of constitutional form than the underlying theoretical implications of national pluralism in a polity and constitutional order such as Sri Lanka.

With some notable but limited exceptions such as the work of the historian Dagmar Hellmann-Rajanayagam and the anthropologist Stanley Tambiah, neither have Tamil nationalists felt the need to theorise the Tamil nation and its central claims much beyond the demotic language of political rhetoric.<sup>176</sup> Aside from the projection of a separate ethnicity, comprising language, culture and a history of community in an identified territory as the basis of the nation, the politico-moral or philosophical arguments for its recognition rely almost entirely on grievances arising from the intolerance and misconduct of Sinhala-Buddhist nationalism, as reflected in the central idea of Tamil nationalism as a 'defensive' or 'reactive' concept, exemplified in the influential account given by A.J. Wilson. While the host-state does not deny

---

<sup>174</sup> See Chapter 1, *supra*.

<sup>175</sup> By way of contrasting examples, see the rigorously historicised theory of nationalism worked out for South Indian Tamils by Sumathy Ramaswamy, or in Sri Lanka for Sinhala consciousness by Michael Roberts: Ramaswamy (1997); S. Ramaswamy (1994) 'The Nation, the Region, and the Adventures of a Tamil Hero', *Contributions to Indian Sociology* 24:295; S. Ramaswamy (1998) 'Language of the People in the World of the Gods: Ideologies of Tamil before the Nation', *Journal of Asian Studies* 57(1):66; S. Ramaswamy (2000) 'History at Land's End: Lemuria in Tamil Spatial Fables', *Journal of Asian Studies* 59(3):575; Roberts (2004).

<sup>176</sup> Hellman-Rajanayagam (1994); S.J. Tambiah (1991) *Sri Lanka: Ethnic Fratricide and the Dismantling of Democracy* (Chicago: Chicago UP): Ch.6.

the ethnic distinctiveness of Tamils – Sinhala-Buddhist nationalism is hegemonic, not assimilationist<sup>177</sup> – the historical and territorial claims that comprise the foundation of Tamil *nationhood*, and aspirations to autonomy on that particular footing, are violently contested, and it is in these most vital respects that Tamil nationalist theory is weakest.

These theoretical weaknesses are manifested in at least two important respects. It is both undeniable as well as unavoidable that Tamil nationalism is an ethnic-communal model of nationalism, but as such it is susceptible to a whole range of normative and ideological critiques that are usually directed at this kind of nationalism, chief among them the liberal democratic concern with the status of the individual as a rights-bearer in relation to the nation that I have discussed in relation to the civic-ethnic dichotomy above. Tamil nationalists have not met this and many other critiques, and it is perhaps unsurprising that Eric Hobsbawm, from a Marxist/functionalist viewpoint, described the first attempt by the Tamil Federal Party to set out an “‘objective’ definition” of the Tamil nation in 1951 as “unusually convenient for propagandist and programmatic, as distinct from descriptive purposes”, but “fuzzy, shifting and ambiguous, and as useless for the purposes of the traveller’s orientation as cloud-shapes are compared to landmarks.”<sup>178</sup>

Similarly, the pronounced reliance on international law for the rights framework within which the claim to self-determination is articulated has bared Tamil nationalism to charges of compulsive separatism. While it is conceded that Tamil nationalism became a secessionist nationalism only after a sustained period of seeking accommodation within a united Sri Lanka and in the face of obdurate refusal on the part of an ethnocratic state to grant either equality or autonomy, the fact remains that the recourse to international law has meant the relative neglect of constitutional law as the means and method of mounting its sub-state challenge to the Sri Lankan state. As noted above, Tamil nationalism’s federal constitutional

---

<sup>177</sup> M. Roberts, ‘*Ethnic Conflict in Sri Lanka and Sinhalese Perspectives: Barriers to Accommodation*’ (1978) *Modern Asian Studies* 12(3): pp.353-76; Roberts (2004): Ch.1.

<sup>178</sup> E. Hobsbawm (1990) *Nations and Nationalism since 1780: Programme, Myth, Reality* (Cambridge: CUP): pp.6-7 at p.6.

demands have confronted the unitary form of the Sri Lankan state on the plane of institutional (re)form, but it cannot be said that it has presented a particularly rigorous challenge, “at a deeper and more general level to the fundamental normative precepts which inform contemporary constitutional theory and legal praxis.”<sup>179</sup>

Both these weaknesses have arisen from the failure of the Tamil nationalist elite (politicians as well as intellectuals) to produce cogent conceptual arguments to substantiate their constitutional claims. As Guibernau has argued, a crucial factor in the sustainability of nations without states, especially those within repressive host states, is “...the existence of an alternative elite ready to provide cultural, historical, political and economic arguments to foster and sustain the distinctive character of the stateless nation and to legitimise its will to decide upon its political future...”<sup>180</sup> In the case of Tamil nationalism, however, a persistent tendency to resort to shrill and often unrealistic political rhetoric has not been backed up by deeper conceptual work. This was compounded during the dominance of the Liberation of Tigers Tamil Eelam (LTTE), whose terrorism extended conspicuously to the Tamil intelligentsia and a complete intolerance of dissent and debate. Nevertheless, even in the light of these deficiencies, that Tamils of the north and east have repeatedly affirmed their nationality claim and entitlement to self-determination attests to the resonance of those claims, and perhaps to the futility of the repressive methods of Sinhala-Buddhist ethocracy.

We can thus recapitulate the sociological, historical and political dimensions of Sri Lankan Tamil nationalism in the following terms. The scholarly and political literature on the origins and development of Tamil nationalism in Sri Lanka offers an account that is historically linear and remarkably ideologically consistent. It is possible to delineate four major features to this dominant narrative. Firstly, even though ancient and medieval historiographical information is marshalled in support of the articulation of political and legal rights claims, Tamil political consciousness is generally presented as an historically modern phenomenon, originating in the nineteenth century. Secondly, the Tamil collective identity is presented essentially as

---

<sup>179</sup> Tierney (2004): p.4.

<sup>180</sup> Guibernau (2004): p.134.

a distinctive ethno-culture, based primarily on the Tamil language, its forms and history, and at least at the beginning, the Saiva Siddhantha form of Hinduism, although the emphasis on Hinduism recedes dramatically in the politics of Tamil nationalism especially after independence. Thirdly, there is wide consensus that the development of collective identity, from a culture-based ‘group awareness’ to a politically salient ‘national consciousness,’ was a gradual process occurring throughout the British colonial and post-colonial era, in the context of changing constitutional forms of political representation and broader socio-economic transformations. In what is a distinctive if not unique feature of Sri Lankan Tamil nationalism as a post-colonial sub-state nationalism, fourthly, the common narrative advances the view that the formation of this nationalist identity, as well as the several political transformations of its nature and claims during the twentieth century, is almost entirely the result of the intolerant or perfidious actions of Sinhala-Buddhist nationalism, institutionally empowered to consolidate its numerical primacy through territorial democracy (as opposed to communal representation in the colonial state) from the late colonial period onwards.

Thus the major implication of this narrative seems to be that, absent the hegemonic influence of Sinhala-Buddhist nationalism within the polity and with regard to the form of the state, it is possible that neither the Tamil collective identity nor Tamil constitutional claims would have assumed a specifically *nationalist* character. It is from and within these perspectives that Wilsons’s seminal scholarly account of the rise of Tamil nationalism commences with the observation that it “evolved gradually, as a defensive reaction to events”<sup>181</sup> and has at its heart the following assertion:

“... the phenomenon of Sri Lankan Tamil nationalism, [is] born of defensiveness and reaction to events. The phenomenon means that if the Sinhalese leadership were accommodating, Tamil national consciousness would settle for a federalised polity. But such an accommodation has not yet materialised.”<sup>182</sup>

---

<sup>181</sup> Wilson (2000): p.1.

<sup>182</sup> Ibid: p.5.

The notion of a ‘defensive’ and ‘reactive’ nationalism therefore needs to be underscored as the predominant feature of Tamil nationalism’s political self-representation. This has material implications for theorising Tamil nationalism as well as in understanding its substantive constitutional claims. In the latter respect, the essential nature of the constitutional claims is as a protective bulwark against majoritarian hegemony within the island polity. While to a greater or lesser extent, the counter-majoritarian impulse is true of all sub-state nations in plurinational contexts, what is noteworthy is that Tamil nationalism’s constitutional claims are not generally conceived from an *a priori* assertion of a national status, but are fundamentally dependant on the behaviour of the dominant nation and the host state. It can therefore be argued, albeit counterfactually, that had the host state been more constitutionally accommodative in respect of addressing Tamil *minority rights* (including a measure of territorial devolution), it is likely that Tamil constitutional claims would not have been asserted in categorically nationalist terms.

On the other hand, as we know, the post-colonial Sri Lankan state has been characterised throughout its existence not by policies of inclusion, pluralism and accommodation but by ethnicised majoritarianism, discrimination and exclusion. To the extent it has adopted constitutional and other measures towards the accommodation of ethno-cultural diversity, the state has done so under force of political circumstances, and then demonstrated reluctance or indifference with regard to their meaningful implementation.<sup>183</sup> It has also instigated or tolerated political violence against minorities, with a long record of sporadic communal violence

---

<sup>183</sup> For example, the Thirteenth Amendment to the Constitution of 1987, which eventually granted language parity and a degree of provincial devolution, was only enacted under severe pressure of the Indian government. Its most important feature and rationale, territorial autonomy in the north and east, has never properly materialised: see R. Edrisinha, M. Gomez, V.T. Thamilmaran & A. Welikala (Eds.) (2008) *Power Sharing in Sri Lanka: Constitutional and Political Documents, 1926-2008* (Colombo: CPA): Chs.16,17; K. Loganathan (1996) *Lost Opportunities: Past Attempts at Resolving Ethnic Conflict* (Colombo: CEPRA): Ch.5; N. Seevaratnam (Ed.) (1989) *The Tamil National Question and the Indo-Lanka Accord* (New Delhi: Konark); R. Amarasinghe, A. Gunawardena, J. Wickramaratane & A.M. Navaratna-Bandara (2010) *Twenty Two Years of Devolution: An Evaluation of the Working of Provincial Councils in Sri Lanka* (Colombo: Institute for Constitutional Studies).

culminating in the manner in which the ethnic conflict was brought to an end involving massive civilian deaths.<sup>184</sup>

It is in this insalubrious context that the Tamil electorate in the north and east of Sri Lanka have consistently returned political parties affirming the basic claims of Tamil nationhood in every general election since 1956, including several post-war elections between 2009 and 2013. Thus the Tamils of the north and east of the island have electorally endorsed a vision of distinctive nationality from virtually the beginning of Sri Lanka's post-colonial existence, and have done so even after the armed secessionist movement was military defeated by the state in 2009. That is the sub-state national challenge that renders Sri Lanka not merely a multi-ethnic but also a multi-national polity. It is this socio-political reality that the Sri Lankan state must, both normatively and structurally, fully reflect in its constitutional order if it is to be regarded as consistent with fundamental democratic values.

Constitutional theory in Sri Lanka is thus confronted with a real case of competing national claims requiring accommodation in some constitutional form, but unlike in the case of Western sub-state nationalisms, the sub-state elite has produced little or no coherent theoretical foundation for their legal and political claims. As I do not intend to fill these internal lacunae, we need an alternative analytical basis to explain the dynamics of multi-nationalism.

#### **4. An Analytical Framework for National Pluralism: Performative Nationalism and Plurinational Constitutionalism**

In the ethnicist interpretation of the Sinhala-Buddhist nation we have glimpsed the ritual idiom that was so central to the nationality performances of that group in the pre-colonial world, and which are continued today in various forms. Noting how the incentives of the modern state influence the nationalist practices of the present, de Silva Wijeyeratne argues that,

---

<sup>184</sup> S.J. Tambiah (1996) *Leveling Crowds: Ethnonationalist Conflicts and Collective Violence in South Asia* (Berkeley: Univ. of California Press): Ch.4.

“Modern Sinhalese nationalism ... has never been wholly modern. The epistemological moment of the 19<sup>th</sup> century [ethno-religious, anti-colonial revival] never effaced the continued resonance of a set of older practices that were ontologically grounded. Rituals that were intrinsic to the [pre-colonial and post-colonial] State were transformed through the imaginary of the bureaucratic State, the cosmic order becoming ‘active in state processes towards greater centralisation, totalitarian action, and the way its agents and agencies react to events in the environment of the state.’”<sup>185</sup>

The anthropological strain of performative nationalism has been discussed earlier in relation to the pre-colonial state as well as collective consciousness, from which historical models important lessons can be drawn for the constitutional accommodation of national pluralism in the present. But in this section, I turn to the instrumentalist version of performative nationalism exemplified in the work of Charles Tilly; from subjective historical and sociological accounts of nationalism to a structuralist explanation of why groups make specifically nationalist claims, or to use Rogers Brubaker’s metaphor, from ‘supply-side’ to ‘demand-side’ arguments.<sup>186</sup>

This further step in the argument is necessitated by three factors. The first is that we need something more than what the literature presently offers by way of explanation for the emergence of the Tamil sub-state claim qua nation. We cannot of course assume ‘supply-side’ arguments are not there simply because of an absence of a cogent scholarly literature offering plausible theories of the Tamil nation and nationalism. Indeed, the Tamil masses have shown not merely compliance but also commitment to the Tamil elite’s nationalist project, in both parliamentary politics and armed conflict, and paid a very high human cost for that commitment.<sup>187</sup> But it does mean for present purposes that we have to make use of instrumentalist

---

<sup>185</sup> R. de Silva Wijeyeratne, ‘Republican Constitutionalism and Sinhalese Buddhist Nationalism in Sri Lanka: Towards an Ontological Account of the Sri Lankan State’ in A. Welikala (Ed.) (2012) *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Colombo: CPA): Ch.10 at p.414.

<sup>186</sup> R. Brubaker, ‘Charles Tilly as a Theorist of Nationalism’ (2010) *American Sociologist* 41: pp.375-81 at p.378.

<sup>187</sup> Ibid.

explanations as to why Tamil ethnicity began to be politically articulated in the distinctive language of nationhood in the post-independence era. Indeed, while not framed in the language of performative nationalism, Wilson's 'defensive and reactive' account is extremely similar to, if not the same as, Tilly's more generalised explanation of the global rise of sub-state nationalism. But Wilson's attempts at theory are vague and imprecise and hence we can reinforce his efforts with the introduction of Tilly into the argument.

Secondly and more broadly, the insights generated by Tilly's "elegant and parsimonious"<sup>188</sup> structural realism gives us a clearer picture of the macro-political dynamics of national pluralism beyond the subjective accounts of nationalists (or indeed the sociological explanations of nations) at which constitutional reform should be directed. As Brubaker reminds us, Tilly's instrumentalism leaves many issues unanswered: "[Tilly] offers a theory of nationalism without nationhood. The theory addresses the political form of nationalist claims-making while ignoring the cultural content of nationalist sense-making."<sup>189</sup> We have been attentive in the preceding discussion to both the distinction between the nation and nationalism as well as the 'cultural content of nationalist sense-making' and consequently we are in a position to benefit from Tilly's insights into the 'political forms of nationalist claims-making' regardless of the broader deficiencies of his theory.

Thirdly, Tilly's work, which developed in critical response to the teleological assumptions of post-colonial nation-building theorists, placed the state at the centre of his analysis of nationalism.<sup>190</sup> This is important to us because of the continuing salience of the state and the traditional Westphalian state order to both majority and minority nationalisms for purposes articulating politico-legal claims. In this sense, it also marks a significant point of departure (noted in Chapter 3) with European plurinational constitutionalism, which assumes the retreat of the nation-state and the

---

<sup>188</sup> Ibid: p.377.

<sup>189</sup> Ibid: p.380; see also pp.378-380.

<sup>190</sup> C. Tilly, 'Reflections on the History of European State-Making' in C. Tilly (Ed.) (1975) *The Formation of National States in Western Europe* (Princeton: Princeton UP): Ch.1 at p.6; C. Tilly, 'Ethnic Conflict in the Soviet Union' (1991) *Theory and Society* 20: pp.569-80.

advent of a ‘post-sovereignty era.’<sup>191</sup> This does not describe the reality of states in South Asia and our treatment of plurinational constitutionalism must take account of this major difference.<sup>192</sup>

Tilly’s earlier work on the global history of state-formation had adumbrated the connection between war-making and state-making and how the “heightened extractive appetites of militarily expansive states caused a progressive shift from indirect to direct rule, and this in turn generated resistance from previously insulated and autonomous regional power-holders and intermediaries.”<sup>193</sup> In applying Tilly’s instrumentalist framework to the Sri Lankan case of competing nationalisms, his concepts of ‘top-down’ and ‘bottom-up’ nationalisms, and the relationship of both to the concepts of direct and indirect rule, are especially important. Tilly defines top-down nationalism as “the insistence that the nation’s collective interest, as interpreted by the state’s current rulers, should take priority over all particularisms” which “emerged from the practices and then the doctrines that were useful in the state’s combat against resistance to imposition of direct rule.”<sup>194</sup> In the Sri Lankan case, the British Empire constituted a form of indirect rule in which Tamils had an imperial protector and arbiter, but independence brought with it direct rule of the Sinhala-Buddhist majority which adopted the practices and doctrines of top-down nationalism in redefining the state. These practices and doctrines included “standardized national languages, national histories, pageants, ceremonies, songs, banners, museums, schools, and much more.”<sup>195</sup> In turn,

“Top-down nationalism generated bottom-up nationalism as its antithesis and mirror image. Political brokers who had strong investments in alternative definitions of language, history, and community rallied supporters in the name of oppressed and threatened nations, demanding protection from top-down nationalizers. Having insisted on the correspondence between state and nation, top-down nationalizers were caught in a trap of their own devising: to

---

<sup>191</sup> Keating (2001): p.ix; Ch.5.

<sup>192</sup> See Chapter 5, *infra*, for discussion of this point.

<sup>193</sup> Brubaker (2010): p.376.

<sup>194</sup> C. Tilly, ‘*The State of Nationalism*’ (1996) *Critical Review* 10: pp.299-306 at pp.303-4.

<sup>195</sup> *Ibid*: p.304.

the extent that interlocutors for regional populations could establish that they constituted distinct, ancient nations, they made credible cases for political autonomy.”<sup>196</sup>

This explains how Tamil claims came to be articulated in nationalist terms immediately after independence, although before that, Tamil politicians had used the terminology of ‘minority community’ in making claims to constitutional protection.<sup>197</sup>

With regard to decolonisation, Tilly states that “bottom-up and top-down nationalisms usually combined, with advocates of independence speaking for captive nations but, upon arriving in power, seeking to impose their own versions of the national interest in the face of frequent opposition from within their own states”.<sup>198</sup> In both the top-down and bottom-up phases of decolonisation,

“political leaders put much of their energy into organizing public performances that broadcast the message: We Are a Nation. National performances usually included some display of military power, but they also frequently represented the nation in question as ancient, culturally coherent, unified, determined, and faithful to its self-proclaimed leaders.”<sup>199</sup>

To the extent Tilly is here contemplating *state-seeking* nationalisms, this insight about anti-colonial nationalists is easily applicable to sub-state nationalists as well. The key point about nationalism as nationhood performances – “disciplined, stereotyped public demonstrations of nationness”<sup>200</sup> – is that they are aimed at the acquisition, and framed by the doctrines of, an independent state for the nation. Thus Sinhala-Buddhists used top-down nationalism to consolidate control of the new state they had inherited from the British; whereas for the Tamils, nationhood was central

---

<sup>196</sup> Ibid.

<sup>197</sup> See Wilson (2000): Chs.5,6; Edrisinha et al (2008): Chs.6,8; see esp. M. Roberts (2004b) ‘Narrating Tamil Nationalism: Subjectivities and Issues’, *South Asia: Journal of South Asian Studies* 17(1): pp.87-108.

<sup>198</sup> Tilly (1996): p.304.

<sup>199</sup> Ibid: p.305.

<sup>200</sup> C. Tilly (1998) *Durable Inequality* (Berkeley: Univ. of California Press): p.179.

to winning autonomy. Once the federalism project had failed, nationhood performances became even more important in convincing the world beyond the Sri Lankan state that they had the capacity of self-government, and deserved recognition of a separate state of their own. These nationhood performances are clearly seen in Tamil nationalism throughout post-colonial history, from the Federal Party's first assertion of the claim and subsequent electoral success, to the Liberation Tigers' elaborate attempts to emulate stateness in territories under their control and to emulate the "visible, prestigious, transferable models" of state-seeking nations elsewhere.<sup>201</sup>

Beyond explaining the performative dimension of nationalist behaviour, what use does Tilly's theory have for constitutional law in a multinational polity? The answer lies in Tilly's observations on direct and indirect rule, as applied to "ethnically defined populations."<sup>202</sup> He notes that these entities make strong claims for autonomy under two conditions: firstly, "when competitors begin to make claims for statehood that would exclude or subordinate the ethnic group in question"; and secondly, "when the agents of the state to which the population is already subordinated begin to threaten a) the group's distinctive identity or b) its shared access to advantageous niches."<sup>203</sup> In the Sri Lankan case, the first condition became apparent to Tamils at the point of independence, and Sinhala-Buddhist nationalism's top-down nationalism and direct rule thereafter fulfilled both the second conditions. If this demand for autonomy is to be met without the creation of a separate state, then some form of amelioration of the consequences of top-down nationalism and direct rule is clearly necessary. It is submitted that an application of many of the principles of plurinational constitutionalism – in particular the disaggregation of the nation from the state, and the principles of autonomy, recognition and representation – would address these constitutional challenges in the Sri Lankan context. How this might be done is dealt with in the next two chapters.

---

<sup>201</sup> Ibid: p.180; Z. Mampilly (2011) *Rebel Rulers: Insurgent Governance and Civilian Life during War* (Ithaca, NY: Cornell UP); N. Malathy (2012) *A Fleeting Moment in My Country: The Last Years of the LTTE De-Facto State* (Atlanta, GA: Clear Day Books).

<sup>202</sup> Tilly (1991): p.574.

<sup>203</sup> Ibid: p.575.

#### 4. Conclusion

In this chapter I have tried to demonstrate three things. Firstly, I have tried to show that the plurinational state as a model of constitution for multinational polities need not be restricted to the civic-societal nations on the basis of which it has so far been theorised, and that it may be usefully extended to other contexts in which competing nations and nationalisms are defined in ethnic-communal terms. I did so by demonstrating the superficiality of the civic-ethnic dichotomy in relation to a deeper understanding of ethnic nationalism, and by calling upon theoretical resources which stress the complementary rather than the either/or manner in which tradition and modernity interact in the contemporary reproduction of the nation and nationalism, especially in post-colonial contexts.

Secondly, and building on the above, I discussed some of the major debates with regard to nation and state-formation in the Sri Lankan context, and sought to demonstrate that, while serious challenges persist, there is nothing about the historical and sociological character of the Sinhala-Buddhist nation that makes it categorically impervious to pluralistic accommodation of the Tamil nation and other minority communities, in spite of the intolerant rhetoric and the manipulated historiographies of Sinhala-Buddhist nationalists today. As de Silva Wijeyeratne has stated, “the ontological ground of Sinhalese nationalism is contingent upon its *modernity*, [but] this very same ontological ground made possible a pre-European State imaginary that was not centralised but thoroughly devolved or rather *galactic* in nature.”<sup>204</sup> Thus while this galactic past makes a pluralistic reading of the island’s history conceivable, it was apparent nevertheless in this part of the discussion that in spatiotemporal terms, the relationship between the Sinhala-Buddhists and Tamils in the island is such that any claim to an equality of status between the majority and minority nations within a putative plurinational dispensation would be difficult historicise. A normative approach that foregrounds asymmetry rather than equality as

---

<sup>204</sup> De Silva Wijeyeratne (2012): p.405.

the foundation of plurinational autonomy therefore suggest itself, and these questions will be pursued in Chapters 5 and 6.

Finally, the eschewal of the tradition and modernity dichotomy allowed us to incorporate a useful instrumentalist perspective into the argument, which has given us a diagnostic view of the behavioural dynamics of national pluralism within the incentives and constraints imposed by the modern state system. It has clarified the political challenges of competitive nationalisms, and complemented our socio-cultural understandings of ethnic nationalism, and in doing so provided a useful analytical framework within which to locate the normative and structural discussion of the application of plurinational principles to the Sri Lankan case.

## CHAPTER 5

### THE CONSTITUTIONAL ACCOMMODATION OF NATIONAL PLURALISM AND THE SRI LANKAN STATE: RE-APPRAISING DEMOCRATIC CONCEPTS

1. Introduction
2. Problematising the Post-Colonial Democratic State
  - 2.1 Colonial Modernity and Post-Colonial Nation-State Building: Difference and Exception
  - 2.2 The Shift from Monistic *Demos* to Hegemonic *Ethnos*: The Process of Ethnocratic State Formation
3. The Plurinational State and Sri Lanka: Exploratory Propositions for a Plurinational Democracy
  - 3.1 From Liberal Democracy to Comprehensive Pluralism
  - 3.2 From Plurinational Union State to Plurinational State-Nation
4. Concluding Remarks

#### **1. Introduction**

Building on the preceding socio-historical accounts of the Sinhala-Buddhist and Tamil nationalisms in the island, this chapter explores at more depth the descriptive and normative theoretical challenges for democratic constitutionalism that arise in the context of national pluralism in Sri Lanka. The principal issues in this regard, and the ways in which they diverge empirically and theoretically from the conditions from which the liberal plurinational state has so far been mainly theorised, have been introduced in outline Chapter 3. These include fundamental questions about the state, sovereignty, democracy, and pluralism, within the rubric of a post-colonial polity. This chapter proceeds in two steps, seeking to address both, in descriptive terms ‘what is,’ and in normative terms ‘what ought to be,’ in relation to a constitutional accommodation of the island’s plurinational character that is consistent with democratic values of general application in the world today. In the first step, the

democratic dilemma of national pluralism is problematised by reference to two important aspects of state-formation in Sri Lanka, both of which underline a ‘hard’ conception of statehood that varies dramatically with the ‘soft’ liberal Western states that have so far received the attention of plurinational constitutionalism.

It has been observed that one of the major empirical differences between the Western and Sri Lankan contexts of national pluralism is the issue of colonialism: the historical circumstance through which the modern state was introduced into the political landscape of the island in the nineteenth century.<sup>1</sup> Consistently with the direction of argument I have taken in previous chapters, I am attentive to Sujit Sivasundaram’s germane observation that,

“...what matters is not an assessment of whether colonialism was the agent of change or continuity, but rather the idea of transition as a process which was ever changing and which lay in the varying and uneven interactions of people across the axis of colonizer-colonised, even at the moment when the state and its publics were being forged out of early modern conceptions of political sovereignty and lineage.”<sup>2</sup>

Even so, it is undeniable that conceptions of the state, sovereignty and collective self-hood(s) did change fundamentally due to colonial reforms. Therefore, aside from distinguishing it empirically from the process of state-formation in Western plurinational democracies, colonialism has a number of important theoretical implications for the character of the state in Sri Lanka, even beyond the colonial era, which are central to constitutional law. Colonial modernity entailed two significant departures – in the form of the ‘rule of difference’ and the ‘law of exception’ – from the egalitarian universalism of the rule of law that characterised the modern state in the Western experience. These two exceptions have defined the very character of what is meant by the ‘modern state’ in Sri Lanka (in common with other comparable

---

<sup>1</sup> S. Sivasundaram (2013) *Islanded: Britain, Sri Lanka and the Bounds of an Indian Ocean Colony* (Chicago: Chicago UP): Ch.8; R. De S. Wijeyeratne (2014) *Nation, Constitutionalism and Buddhism in Sri Lanka* (London: Routledge): Ch.5.

<sup>2</sup> Sivasundaram (2013): p.317.

former colonies of the British empire), and they have altered the meaning of ‘modernity’ from what that term denotes in the Western world in terms of key principles of state organisation like equality, during both the colonial and post-colonial eras. These contextual differences in an important phase of state-formation have a direct bearing on whether plurinational ideas are an appropriate constitutional strategy for addressing national pluralism in Sri Lanka, and if so, what the form and substance of such constitutional rearrangements ought to be.

With the introduction of universal electoral democracy in 1931, and for the first few years after independence in 1948, attempts were made by the departing colonial power as well as the local political elite to consolidate the legitimacy of the successor state with the deliberate construction of an inclusive statal nation. In accordance with the dominant thinking of the time, this process attempted to emulate the modernity of Western nation-states by constitutional frameworks premised on, and aimed at the promotion of, a unified *demos* transcending ethnic and religious cleavages, mainly through the traditional liberal strategy of privatising cultural diversity.<sup>3</sup> While the monistic *demos* assumption implied the rejection of any notion of multiple nations within the island, the liberal modernist experiment itself was short-lived, and any potential it had as a viable model for Sri Lanka’s plural polity was nullified by the rise of Sinhala-Buddhist nationalism laying claim to the ownership of the state, registered in the watershed general elections of 1956.<sup>4</sup> Democratic proceduralism together with absent or ineffective constitutional protections for pluralism paved the way for the majoritarian ethnic nationalism to occupy the embryonic national space of the post-colonial state, displacing the ideal of a monistic (but internally pluralist) *demos* with the reality of a hegemonic (although not assimilationist<sup>5</sup>) *ethnos*, and thereby eclipsing the inclusionary and egalitarian potential of the traditional Westphalian nation-state.

---

<sup>3</sup> See A. Welikala, ‘‘Specialist in Omniscience’’? *Nationalism, Constitutionalism and Sir Ivor Jennings’ Engagement with Ceylon* in H. Kumarasingham (Ed.) (forthcoming, 2015) *Constitution Making in Asia: Decolonisation and State-Building in the Aftermath of the British Empire* (London: Routledge).

<sup>4</sup> See Chapter 2, *supra*.

<sup>5</sup> M. Roberts (2004a) *Sinhala Consciousness in the Kandyan Period, 1590s to 1815* (Colombo: Vijitha Yapa): Ch. 1.

This political process of ethnicised democracy has fundamentally coloured the nature and evolution of the Sri Lankan nation-state ever since, and constitutes one of the most important contextual features of the case study. The conflation of the majority Sinhala-Buddhist identity with that of the statal nation has of course long been noted by historians, sociologists and anthropologists.<sup>6</sup> But this insight can be extended and deepened by characterising the Sri Lankan state as a specific instance of an ‘ethnocracy,’ within the broader theoretical category of ‘ethnic democracy.’ This has an important theoretical purpose, inasmuch as it constitutes one of the most powerful rationales for a plurinational settlement of the sub-state national claim (it has further implications for the constitutional design of such a settlement), if on the negative ground that in the context of an ethnocratic regime at the level of the host-state, only plurinational autonomy can address the Tamil national aspiration in conformity with democratic norms, and without the need for the creation of a separate Tamil state.

As we have seen in Chapter 2, the ethnocratic trajectory of the post-colonial state radicalised Tamil political claims from relatively benign demands for equal treatment to full-blown armed secessionist nationalism. The resulting violent conflict had, in terms of the state’s response, the effect of entrenching the ‘overdeveloped state’<sup>7</sup> (but with an underdeveloped statal nation) inherited at independence into an intolerant and authoritarian ‘hard state.’ Even without the hardening effects of protracted conflict (including through interminable states of emergency and the recourse to majoritarian populism in order to legitimise the accretion of authoritarian power<sup>8</sup>),

---

<sup>6</sup> Michael Roberts, for example, has developed this theme from the mid-1970s: M. Roberts, ‘*Ethnic Conflict in Sri Lanka and Sinhalese Perspectives: Barriers to Accommodation*’ (1978) *Modern Asian Studies* 12: pp.353-76; M. Roberts, ‘*History as Dynamite*’ (2000) in M. Roberts (2010) *Fire and Storm: Essays in Sri Lankan Politics* (Colombo: Vijitha Yapa): pp.5-12; M. Roberts, ‘*Sinhaleanness and its Reproduction, 1232-1818*’ in A. Welikala (Ed.) (2012) *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Colombo: CPA): Ch.6. As with the conflation of ‘united state’ (*eksath raajya*) with ‘unitary state’ (*ekeeya raajya*) in constitutional discourse, there is an issue of Sinhala etymology in this. As Serena Tennekoon has pointed out, “The ambiguity is preserved most strikingly in language: *jatiya* (denoting group or kind) refers to ethnic group as well as nation”: S. Tennekoon, ‘*Newspaper Nationalism: Sinhala Identity as Historical Discourse*’ in J. Spencer (Ed.) (1990) *Sri Lanka: History and Roots of Conflict* (London: Routledge): Ch.10 at p.205 and n.1. See also H. Kumarasingham, ‘*A Democratic Paradox: The Communalisation of Politics, 1911-1948*’ (2006) *Asian Affairs* 37(3): 342-52.

<sup>7</sup> H. Alavi, ‘*The State in Post-Colonial Societies: Pakistan and Bangladesh*’ (1972) *New Left Review* 1(74): 59-81.

<sup>8</sup> See A. Welikala (2008) *A State of Permanent Crisis: Constitutional Government, Fundamental Rights and States of Emergency in Sri Lanka* (Colombo: CPA): pp.96-99; O. Gross & F. Ní Aoláin

however, the Sri Lankan state shares with its counterparts in the South Asian region a conception of Westphalian statehood that is highly literalist in relation to legal principles like sovereignty and non-interference. This has determined a generally hostile attitude in terms of the state's response to internal demands for minority accommodation, particularly if they involve territorial autonomy and a perceived dilution of the state's sovereign authority. When those demands have taken the shape of a sub-state *national* challenge, the result has been nothing less than catastrophic. While a comparative review of South Asian states is beyond the scope of the present chapter,<sup>9</sup> placing the case study in this regional context further illustrates another key empirical difference with Western plurinational contexts – the absence of a 'post-sovereign' or 'late sovereign' supra-state environment – which again has implications for the way in which plurinational constitutional approaches in regard to Sri Lanka have to be conceptualised.

Drawing on the analytical insights from the problematisations above, in the second step, the argument adopts a more prescriptive mode. It canvasses two main normative propositions that must be incorporated into a new constitutional order for Sri Lanka if it is to accommodate its multiple nations according to a specific and contextualised logic of plurinational democracy. The background to this discussion has already been set out at some length in Chapter 3, in particular, the extension to the case study of established principles of plurinational constitutionalism relating to the disaggregation of 'nation' and 'state' in the plurinational state, and the concept of 'relational sovereignty' that must underpin a state order based on plural *demoi*. Building on this, the present chapter develops two further conceptual and normative

---

(2006) *Law in Times of Crisis: Emergency Powers in Theory and Practice* (Cambridge: Cambridge UP): pp.220-227.

<sup>9</sup> But see generally S. Krishna (1999) *Postcolonial Insecurities: India, Sri Lanka, and the Question of Nationhood* (Minneapolis: Univ. of Minnesota Press); A. Jalal (1995) *Democracy and Authoritarianism in South Asia: A Comparative and Historical Perspective* (Cambridge: CUP); S. Baruah (Ed.) (2010) *Ethnonationalism in India: A Reader* (New Delhi: OUP); S. Mahmud Ali (1993) *The Fearful State: Power, People and Internal War in South Asia* (London: Zed Books): Ch.1; W. van Schendel (2005) *The Bengal Borderland: Beyond State and Nation in South Asia* (London: Anthem Press): Ch.1; S. Bose & A. Jalal (Eds.) (2003) *Modern South Asia: History, Culture and Political Economy* (London: Routledge); H. Scharfe (1989) *The State in Indian Tradition* (Leiden: E.J. Brill); S. Subrahmanyam (2001) *Penumbra Visions: Making Politics in Early Modern South India* (Ann Arbor: Michigan UP).

propositions, which require more extensive justification because they involve substantial modifications to established plurinational principles.

For reasons already set out, the reliance of liberal plurinational constitutionalism on the normative philosophy of liberal nationalism and liberal democracy, in its approaches to the sub-state and host-state levels respectively, has little use in the Sri Lankan context due to the different types of nationalism and state involved. Indeed, in a political context in which symbols and symbolism hold much political salience, the adoption of liberalism as a language of constitutional negotiation can be constraining and invite opposition in ideological terms.<sup>10</sup> In this context, a different foundation of political philosophy becomes necessary in order to constitute a democratic normative basis for the constitutional recognition and accommodation of national pluralism. Here the idea of ‘comprehensive pluralism’<sup>11</sup> is useful as a means of rendering ‘pluralism-as-fact’ into ‘pluralism-as-norm,’ so that a more just and legitimate constitutional order may be imagined that can replace the anomalous unitarism-as-norm of the present. The idea of comprehensive pluralism is more appropriate as a philosophical foundation in the Sri Lankan case because it is not associated as explicitly with ideological liberalism as liberal nationalism, while at the same time, it concerns itself with many of the normative questions that liberal nationalism and liberal plurinational constitutionalism are concerned with in opposition to traditional liberalism, including the critique of pure individualism and the critique of the claim to state neutrality.

---

<sup>10</sup> Unlike in the Indian case, there has been no focussed research on liberalism as a political tradition in Sri Lanka, but any informed observer would readily agree that liberalism, if it plays any role at all, is a distinctly minority ideology in Sri Lankan politics. Ethnic nationalism is of course the predominant ideological driver of politics, in a historical context in which the democratisation of electoral politics was largely driven by an anti-imperialist and anti-capitalist Leftist tradition. Collective identity – ethnicity and religion – and an overdeveloped welfare state are thus major features of the resulting political culture. Such a political culture is not obviously conducive to either Liberalism I or II. However, see Sivasundaram (2013): Ch.8; C. Amaratunga (Ed.) (1991) *Liberalism in Sri Lanka, 1981-1991* (Colombo: CLD): Introduction and Ch.1; H. Kumarasingham (2013) *‘The Jewel of the East yet has its Flaws’: The Deceptive Tranquillity surrounding Sri Lankan Independence*, Working Paper No.72, Heidelberg Papers in South Asian and Comparative Politics (Heidelberg: Univ. of Heidelberg). On the liberal tradition in the sub-continent, see C.A. Bayly (2012) *Recovering Liberties: Indian Thought in the Age of Liberalism and Empire* (Cambridge: CUP), which contains a very brief discussion of Sri Lanka at pp.338-9, R. Bajpai (2011) *Debating Difference: Group Rights and Liberal Democracy in India* (New Delhi: OUP).

<sup>11</sup> M. Rosenfeld (2011) *Law, Justice, Democracy and the Clash of Cultures: A Pluralist Account* (Cambridge: CUP): pp.11-12.

Likewise, with regard to constitutional form and practice, it has already been established that the historical antecedents with which to redefine the contemporary state as a 'union state' in appreciation of the plurinational reality do not exist in Sri Lanka, or not at least with sufficient clarity as to serve as viable bases for reconstituting a union state structure in the present. Similarly, the disposition of Western host-states to respect without recourse to military force the prospect of peaceful, negotiated, consent-based secession of sub-state nations in the event of a failure of plurinational accommodation has no resonance whatsoever in the Sri Lankan case.

As we have seen in Chapter 2, territorial division is such an anathema to the Sinhala-Buddhist nation that it is wholly unlikely that a 'two-state solution' can be regarded as a remotely viable means of a stable settlement on the island. It is also unlikely that such a precedent would be welcomed by Sri Lanka's South Asian neighbours, who have their own secessionist movements, and in particular India, which would fear the irredentist potential within its own large Tamil state in the south. Accordingly, Indian intervention in Sri Lanka, including in the 1980s by the use of considerable coercive power against both the Sri Lankan state and Tamil armed secessionists, has consistently been based on the premise of power-sharing and devolution, but never secession. These political realities seem to forcefully indicate that Sri Lanka's national pluralism must find a constitutional settlement that is within the framework of an undivided Sri Lankan state. The cogency of constitutional theory therefore would be enhanced by an *a priori* commitment to the unity of the state, and as I have pointed out before, ruling out secession as an option within the parameters of the present project is theoretically justifiable in that the establishment of a separate state in the settlement of the sub-state national claim would constitute a solution that is in an altogether separate category from the plurinational model of constitutional accommodation within the state.

It was apparent in a preceding overview that liberal plurinational constitutionalism's major focus was on the autonomy of sub-state national societies, and its concern with

the host-state national society was mainly a critical one. This is explicable by the fact that these Western host-states are long-established democracies, which reflect many of the inclusive institutions associated with traditional liberalism, and the function of constitutional theorists in these contexts is to address the ‘post-modern’ challenge of plurinationalism. By contrast, the incomplete process of modernity in Sri Lanka changes the constitutional theorist’s frame of reference, which must simultaneously address the issue of the statal nation’s modernity in addition to the issue of sub-state national autonomy. The theoretical refocusing necessitated by these contextual differences is effected through the introduction of the idea of the ‘state-nation’ to the argument as a facilitating mechanism through which, in addition to the radical sub-state autonomy contemplated by a plurinationalist reform of the state, an equally profound transformation is actively advocated at the level of the statal nation. In other words, plurinational autonomy at the sub-state level must be accompanied by a reactivation of the retarded modernisation of the statal nation, and a reversal, or at the very least a containment, of the process of ethnocratism, if a state-wide plurinational constitutional system is to succeed.

The discussion of these issues in what follows, together with the historical arguments presented in Chapter 2 with regard to the pre-colonial state, forms the ideational basis for the elaboration of the constitutional norm of asymmetry (as opposed to equality) that must govern the accommodation of multiple nations within the state in polities like Sri Lanka.

## **2. Problematising the Post-Colonial Democratic State**

This section deals with the theoretical implications of colonialism for post-colonial democratic statehood, and outlines the theoretical model of ethnocracy as the state form that best describes the Sri Lankan state. Taken together, these two aspects of Sri Lankan state-formation underscores the ‘hard state’ as it relates to the sociological condition of national pluralism, and establishes the necessary diagnostic background for the normative discussion to follow.

## 2.1 Colonial Modernity and Post-Colonial Nation-State Building: Difference and Exception

Unlike the development of nationalism(s) discussed elsewhere in this thesis – a gradual and uneven historical process over which there is much scholarly disagreement – the advent of the modern state can be identified with relatively more historical exactness. The constitutional framework established as a result of the Colebrooke-Cameron reforms in 1833 is uniformly regarded by political and legal historians as the date at which the modern state took shape within the island.<sup>12</sup> By the 1830s, the British had already established many basic physical elements of a modern state – transport and communication networks, education reforms, administrative and technical services, police and courts and a military – but it was these “radical and innovative” reforms that rationalised political structures in terms of territory and institutions.<sup>13</sup> Nira Wickramasinghe’s claim that they “brought a change in the life of the people and their perceptions, anchoring them firmly in modernity” is hyperbolic, but it is undeniable that these reforms marked a very deliberate attempt at constitutional modernisation.<sup>14</sup> The island was territorially united under the single sovereignty of the British Crown, new administrative provinces and an executive

---

<sup>12</sup> A.J. Wilson (1988) *The Break-Up of Sri Lanka: The Sinhalese-Tamil Conflict* (London: Hurst & Co.): Ch.1; L. Marasinghe (2007) *The Evolution of Constitutional Governance in Sri Lanka* (Colombo: Vijitha Yapa): Ch.1; J.A.L. Cooray (1995) *Constitutional and Administrative Law of Sri Lanka* (Colombo: Sumathi): Ch.1; T. Nadaraja (1972) *The Legal System of Ceylon in its Historical Setting* (Leiden: E.J. Brill): Ch.II. Cf. Sivasundaram (2013), who cautions that “...liberal reforms should not be seen as a package that somehow came to Ceylon through the agency of the two men who led the Commission of Inquiry: Colebrooke and Cameron”: p.284. My point can still be made while taking on-board Sivasundaram’s observations about the broader context within which these pivotal reforms were introduced and implemented, because his focus is primarily on the press and the schools system as ‘instruments of liberal debate’ whereas my interest is in the legal evolution of the state.

<sup>13</sup> N. Wickramasinghe (2006) *Sri Lanka in the Modern Age: A History of Contested Identities* (London: Hurst & Co.): p.29.

<sup>14</sup> *Ibid*: p.27.

structure established, Executive and Legislative Councils founded, and an independent judiciary under a Charter of Justice instituted.<sup>15</sup>

The Colebrooke-Cameron reforms were an instance of the concrete implementation of the abstract principles of liberal imperialism,<sup>16</sup> “in which imperial domination was argued to be an effective and legitimate tool of moral and material progress”<sup>17</sup> for native peoples, at the height of that model and before it gave way later in the nineteenth century to the ‘culturalist’ paradigm of British imperial ideology.<sup>18</sup> In consciously obliterating the territorial and demographic markers of the last domestic kingdom of Kandy, remnants of which had survived within the British administrative system between the cession of Kandy in 1815 and 1833, and uprooting forever the galactic model of the pre-colonial state, these reforms conformed conventionally to the ‘diffusionist model’ of colonial state-formation.<sup>19</sup> While undergoing several subsequent constitutional reforms rearranging its institutional structures during both the colonial and post-colonial periods, this model of centralised state has remained essentially constant in the Sri Lankan state tradition ever since.<sup>20</sup>

Although the territorial character and technological aspects of the European model<sup>21</sup> were exported throughout the British Empire, colonial *constitutional* modernity nevertheless reflected two key departures from European modernity. As Terence Halliday and Lucien Karpik observe,

---

<sup>15</sup> Ibid: pp.40-41; G.C. Mendis (Ed.) (1956) *The Colebrooke-Cameron Papers: Documents on British Colonial Policy in Ceylon, 1796-1833* (Oxford: Oxford University Press): Vols.1 & 2.

<sup>16</sup> See U.S. Mehta (1999) *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago: Chicago UP); J. Pitts (2005) *A Turn to Empire: The Rise of Liberal Imperialism in Britain and France* (Princeton: Princeton UP). See also A. Sartori, ‘The British Empire and its Liberal Mission’ (2006) *Journal of Modern History* 78: pp.623-43.

<sup>17</sup> K. Mantena (2011) *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism* (Princeton: Princeton UP): p.1; Wickramasinghe (2006): pp.28-29.

<sup>18</sup> Mantena (2011), *Introduction*: pp.1-20.

<sup>19</sup> C.A. Bayly (2004) *The Birth of the Modern World, 1780-1914: Global Connections and Comparisons* (Malden, MA: Blackwell): pp.254-6.

<sup>20</sup> See also A. Welikala, ‘The Sri Lankan Conception of the Unitary State: Theory, Practice and Historiography’ in A. Amarasingham & D. Bass (Eds.) (forthcoming, 2014) *Post-War Sri Lanka: Problems and Prospects* (London: Hurst & Co.).

<sup>21</sup> Bayly (2004): pp.256-8.

“British colonies shared a fundamental contradiction. On the one hand, British imperial authorities and jurists insisted that the British colonial project was built upon a foundation not merely of force, but of the *universality* of the rule of law. On the other side, the colonisers insisted upon two reservations to law’s radical equality and universality: (a) a reservation in the form of a *law of exception* and (b) a reservation embodied in a *rule of difference*.”<sup>22</sup>

The law of exception related to the arbitrary and dictatorial emergency powers, often involving the invocation of martial law, which were reserved for periodic use when and if the authorities apprehended a threat to the colonial order. But in revealing “the iron fist that lay behind the velvet glove of law,” these occasions “not only threaten[ed] the normative foundations of the colonial order, but question[ed] the very legitimacy of the law’s universality.”<sup>23</sup> Thus, according to Nasser Hussain, the relationship between the rule of law and the use of emergency powers in British colonies represented “an intractable tension.”<sup>24</sup> The difference in the application of exceptional powers between the colonies and within Britain was the frequency and extent of those powers. Likewise, the rule of difference contaminated the pristine ideal of the rule of law with racial discrimination in the British colony. As Halliday and Karpik argue, “While the rule of law was promised on universality, colonial rule depended on particularity...at one and the same time [the British] insisted on a universality and neutrality of law and asserted a rule of racial difference.”<sup>25</sup> The rule of difference was manifested in an array of practices across the empire, from outright racial segregation and even slavery in some colonies to more subtle forms of differentiation in most others. Within the legal system of Ceylon, no form of differentiation between the colonisers and colonised was ever recognised, although in other realms of social, economic and political life, there were implicit divisions in varying forms.

---

<sup>22</sup> T.C. Halliday & L. Karpik, ‘*Political Liberalism in the British Post-Colony: A Theme with Three Variations*’ in T.C. Halliday, L. Karpik & M.M. Feeley (Eds.) (2012) *Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex* (Cambridge: Cambridge UP): pp.3-55 at pp.11-12. Italics in original.

<sup>23</sup> Ibid: pp.12-13.

<sup>24</sup> N. Hussain (2003) *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: Univ. of Michigan Press): p.133.

<sup>25</sup> Halliday & Karpik (2012): p.13.

Replicated and expanded after independence, both these central qualifications to legal equality at the heart of the modern state were to have far more pernicious consequences than under colonialism.<sup>26</sup> The rise of Sinhala-Buddhist nationalism and its claims to the ownership of the post-colonial state reproduced the rule of difference with regard to minorities, and the resulting tension and extra-institutional violence has necessitated recourse to the law of exception, moreover as the norm rather than the exception. Thus the distorted modernity introduced by the colonial state instantiated a state tradition that was continued after independence, due to the new uses to which the rule of difference and the law of exception could be put by the post-colonial Sinhala-Buddhist owners of the state. In Halliday and Karpik's typology of British post-colonies, this has made the Sri Lankan state a 'despotic order',<sup>27</sup> although as will be argued below, the characterisation of the state as an ethnocratic regime is both more appropriate and analytically useful for our purposes.

What theoretical implications does this incomplete and distorted modernity of the Sri Lankan nation-state have for plurinational constitutionalism? In the West, plurinational constitutionalism is premised on 'the story of historical development' that both the state nation and the sub-state national societies have passed through the process of nation-building and "have evolved from pre-modern community to fully modern society."<sup>28</sup> Does this imply that, due to the retarded, or at best on-going, nature of that process in post-colonial states like Sri Lanka, attempts to introduce plurinational concepts would be premature? To borrow an apposite metaphor from conflict resolution discourse, is there a 'ripe moment'<sup>29</sup> of constitutional development, determined by the extent and depth of a society's modernity, only at which a sociologically plurinational polity could be deemed to be fully prepared for

---

<sup>26</sup> Ibid: p.15; D. Udagama, 'The Sri Lankan Legal Complex and the Liberal Project: Only Thus Far and No More' in Halliday, Karpik & Feeley (2012): Ch.6. Marxist social scientists have addressed this problem with the concept of the 'overdeveloped state': Alavi (1972); see also J. Uyangoda, 'The United Front Regime of 1970 and the Post-Colonial State of Sri Lanka' in T. Jayatilaka (Ed.) (2010) *Sirimavo: Honouring the World's First Woman Prime Minister* (Colombo: The Bandaranaike Museum Committee): pp.31-45.

<sup>27</sup> Halliday & Karpik (2012): pp.15-16, 26-35.

<sup>28</sup> S. Tierney (2006) *Constitutional Law and National Pluralism* (Oxford: OUP): p.6.

<sup>29</sup> I.W. Zartman, 'The Timing of Peace Initiatives: Hurting Stalemates and Ripe Moments' (2001) *Global Review of Ethnopolitics* 1(1): pp.8.18.

the reception of a plurinational constitution? More particularly, is the mainstream Sri Lankan scholarly consensus right in continuing to argue that the principal conceptual answer to Sri Lanka's mismanaged pluralism is to recommit to the course of nation-building from which it deviated after independence? In this view, a fully modern, democratic state, synonymous with an inclusive, civic 'Sri Lankan' nation, founded on the norm of equal citizenship and transcending ethnic particularity, constitutes a comprehensive regime of 'unity in diversity' that would address all but the extremist viewpoints on either side of the ethnic divide.<sup>30</sup> As we saw in Chapter 2, the proponents of this orthodox view ethnic nationalism, and especially its demands for politico-constitutional accommodation (if not for cultural recognition, a less fundamental set of demands that may be addressed through policies of secularism, multiculturalism and minority rights within the rubric of the modern nation-state) as a regressive form of primordialism, the vexing persistence of which it is the task of post-colonial – and now post-war – nation-building to overcome. They would moreover likely regard the radically autonomist schema of plurinationalism as a dangerously fissiparous recipe for disintegration and instability in the context of competing ethnic nationalisms.<sup>31</sup>

I counter-pose two arguments to this civic nationalist view. The first counterargument relates to the nation-state itself, and draws from the critique of the Westphalian model presented by plurinational constitutionalism. The failure to build a post-colonial civic state nation, underscored by decades of violent conflict, and a triumphalist victor's peace post-war that has not merely reproduced the constitutional anomalies at the heart of the conflict but also reinforced them, seems to require not a rededicated commitment to the failed model of post-colonial nation-statehood, but a fundamental reconsideration of it. Except for the familiarity of its nostrums, there is

---

<sup>30</sup> See e.g., Wickramasinghe (2006): pp.199; R. Coomaraswamy, 'The Politics of Institutional Design: An Overview of the Case of Sri Lanka' in S. Bastian & R. Luckham (Eds.) (2003) *Can Democracy Be Designed? The Politics of Institutional Choice in Conflict-torn Societies* (London: Zed Books): Ch.5; S. Bastian (Ed.) (2006) *Sri Lanka: The Devolution Debate* (5<sup>th</sup> Ed.) (Colombo: ICES); G. Moonesinghe (Ed.) (2010) *Nation Building: Priorities for Sustainability and Inclusivity* (Colombo: Shramaya); H. Rambukwella, 'Reconciling What? History, Realism and the Problem of an Inclusive Sri Lankan Identity' (2012) ICES Research Paper No.3 (Colombo: ICES); D. Jayatilleka (2013) *Long War, Cold Peace: Conflict and Crisis in Sri Lanka* (Colombo: Vijitha Yapa).

<sup>31</sup> Jayatilleka (2013): Ch.5. See also A. Welikala, 'Realist Modernism in an Age of Kulturkampf', *Groundviews*, 8<sup>th</sup> June 2014.

little sense in regurgitating an orthodox model of statehood that might have been useful at the mid-twentieth century decolonising moment, but which has subsequently globally demonstrated its severe limitations in respect of the accommodation of democratic pluralism and especially national pluralism, and which therefore has now been superseded by major developments in both the theory and practice of democratic constitutionalism. With regard to plurinational polities, the inadequacy of the model has been encapsulated in the critique of the monistic demos thesis and the unitary conception of sovereignty. As I will show below, the ethnocentric tendency of the Sri Lankan state under the dominating influence of Sinhala-Buddhist nationalism adds a decisive, further layer of illegitimacy to monistic conceptions of the constitutional order, which in turn calls for more radical responses to the accommodation of national pluralism than anything traditional liberal democracy or the orthodox Westphalian nation-state have to offer. More insidiously, by its failure to account for the democratic aspiration to recognition as a distinct *nation* that has been registered by Tamils of the north and east in every election since 1956, it is not only the theoretical inadequacies of the nation-state model in relation to national pluralism that are apparent, but also how it serves to actively *deny* the sociological reality of multiple nations and thereby the normative challenge of national pluralism. While therefore the process of modernity with regard to both nations and the state in Sri Lanka must be encouraged, it must be seen as a process that is conceived in complementarity to the more pressing requirement of the pluralisation of the constitutional order, rather than a condition precedent to the latter imperative.

I have addressed the issue of how the basic logic of the plurinational state could be extended beyond the ‘civic-societal’ to ‘ethnic-communal’ models of nationalism in Chapter 4. However, a plurinational dispensation that either ‘essentialises the fragment’<sup>32</sup> or fosters a one-directional centrifugal dynamic at the periphery without

---

<sup>32</sup> Wickramasinghe (2006): pp.199; see also the observations on the ‘issue of cultural pluralism’ and the ‘issue of fluid identity patterns’ in Tierney (2006): pp.127-8. This echoes the well-known debate on this question between consociationalists and centripetalists: see S. Choudhry, ‘*Bridging Comparative Politics and Comparative Constitutional Law: Constitutional Design in Divided Societies*’ and J. McGarry, B. O’Leary & R. Simeon, ‘*Integration or Accommodation? The Enduring Debate in Conflict Regulation*’ in S. Choudhry (2008) *Constitutional Design for Divided Societies*:

regard to the unity of the whole<sup>33</sup> would not be a plurinational constitution at all. The answers to these questions are developed below in the discussion of the ideas of ‘comprehensive pluralism’ and the plurinational ‘state-nation.’

My second counterargument against the monistic ‘Sri Lankan’ nation-statists again draws from plurinational constitutionalism’s use of pre-modern or early modern history in looking to constitutional models that preceded the modern nation-state, as prototypes from which contemporary constitutional theory can learn in addressing the challenge of national pluralism in the present.<sup>34</sup> This expands the possible empirical resources available for theorising democratic norms for the constitutional accommodation of plural nations beyond the orthodox tools available within the standard nation-state model. Even more so than in the Western experience, the deployment of the ‘usable past’ has importance as both a methodological technique and as a substantive component of theorising plurinational constitutionalism in post-colonial societies like Sri Lanka, because of the high premium accorded to authenticity in the light of lingering sensitivities about the experience of colonial domination.<sup>35</sup> The exploration of the pre-colonial state, undertaken in Chapters 2 and 3, revealed not only an historically organic state tradition upon which a plurinational constitutional order may be contextualised in and for the present, but also served the related and equally important purpose of counteracting the historical arguments of contemporary hegemonic Sinhala-Buddhist nationalism in favour of unitary constitutional order. I extend this to non-chauvinist defenders of unitary order as well, in reiterating that there is nothing especially sacred about the modern nation-state that demands allegiance to this model, when it is so demonstrably inadequate to the central constitutional problem facing Sri Lanka.

---

*Integration or Accommodation?* (Oxford: OUP): Chs.1,2. Cf. Tierney (2006): p.125, on the accommodation of plural demoi within one state. See also, J.B. Meyers, ‘Rethinking ‘Constitutional Design’ and the Integration/Accommodation Dichotomy’ (2010) *Modern Law Review* 73(4): pp.656-78.

<sup>33</sup> See trenchant (but narrow and misdirected) critique of Ferran Requejo and Miquel Caminal in A. Stepan, J.J. Linz & Y. Yadav (2011) *Crafting State-Nations: India and Other Multinational Democracies* (Baltimore: JHU Press): pp.12-13.

<sup>34</sup> M. Keating (2001) *Plurinational Democracy: Stateless Nations in a Post-Sovereign Era* (Oxford: OUP): p.ix, Ch.2.

<sup>35</sup> Although paradoxically, as has been discussed in Chapter 2, it is precisely the indigenist ethnocratic Sinhala-Buddhist nationalists who most usually uphold constitutional ideas introduced through colonialism, in particular, the Diceyan conception of the unitary state.

## 2.2 The Shift from Monistic *Demos* to Hegemonic *Ethnos*: The Process of Ethnocratic State Formation

Mirroring the manner in which the modern state was introduced in 1833, the rights and institutions of universal electoral democracy were introduced by the imperial power in 1931 in a single act of radical reform that was expressly intended to initiate the next stage of modernity – the construction of a united Ceylonese *demos* – in the process towards self-government. The Donoughmore reforms were aimed at eradicating the ‘canker of communalism’ that was held to retard Ceylon’s progress, in a context in which various reformulations of the basic system of ‘communal representation’ by which Ceylon’s ethnic communities had found representation in the colonial state during the preceding decades of the nineteenth and twentieth centuries were deemed to have failed. Ethnic relations between the Sinhalese and Tamils were already demonstrating the divides that would erupt in violence after independence, with the Sinhalese favouring an expansion of territorial representation and the Tamils preferring to maintain communal representation. Except for the minor Labour Party, moreover, not a single Sinhala or Tamil political leader advocated the instant introduction of the universal franchise that the Donoughmore Commission recommended; indeed they were opposed on mainly elitist grounds to such an expansion of the electorate.<sup>36</sup>

---

<sup>36</sup> On all these issues, see J. Russell (1982) *Communal Politics under the Donoughmore Constitution, 1931-1947* (Colombo: Tisara Prakasakayo); N. Wickramasinghe (1995) *Ethnic Politics in Colonial Sri Lanka, 1927-1947* (New Delhi: Vikas). In light of subsequent political history, two fascinating aspects of the Ceylonese representations and reactions to the Donoughmore Commission and resulting constitution which I do not have space to discuss at length are that: firstly, the initial demand for a federal constitution on distinctively *multinational* grounds came not from the Tamils but from a section of the Sinhalese, the Kandyans, through the Kandyan National Assembly; and secondly, that the Jaffna Tamil community under the aegis of the Jaffna Youth Congress boycotted the first elections under universal franchise to the new State Council on the basis that the Donoughmore constitution did not grant full self-government to the *Ceylonese* nation. See Donoughmore Report (1928): Cmd.3131 at pp.60-62 for the Kandyan Claim (and its polite dismissal by the Commission); C. Ratwatte, ‘Federalism and the Kandyans’ (n.d.) *Rootsweb*; L. Kiriella, ‘Kandyans urged for 3 federal states in 1928 and 1947’, *The Daily News*, 20<sup>th</sup> December 2002; J. Russell, ‘The Dance of the Turkey Cock – The Jaffna Boycott of 1931’ in J.C. Holt (Ed.) (2011) *The Sri Lanka Reader: History, Culture, Politics* (Durham, NC: Duke UP): p.471; S. Kadirgamar, ‘The Jaffna Youth Congress’ in S. Kadirgamar (Ed.) (2012) *Handy Perinbanayagam: A Memorial Volume* (Colombo: Kumaran Book House): pp.1-124; R. Cheran, ‘Pathways of Dissent: An

The Donoughmore Commission, which viewed the diversity of Ceylon's polity as a debilitating source of racial, religious and caste divisions, felt that this "lack of homogeneity and of corporate consciousness" made it difficult to achieve "any national unity of purpose."<sup>37</sup> It therefore strongly felt that only the rapid introduction of universal franchise, together with the innovative model of legislative representation and qualified self-government that they proposed,<sup>38</sup> could transform communal politics into ideological or policy-based politics, which would in turn facilitate "the development of Ceylon into a free, united and democratic nation."<sup>39</sup> The Donoughmore proposals' conceptual foundations therefore were reflective of the classical liberal assumptions that guided contemporary imperial ideology. While some later historians would regard these views about an Asian society as marred by Orientalist assumptions and the implied superiority of Western modernity, the Donoughmore Commission was certainly prescient in observing that,

"It is almost true to say that the conception of patriotism in Ceylon is as much racial as national, and that the best interests of the country are at times regarded as synonymous with the welfare of a particular section of its people."<sup>40</sup>

The Donoughmore framework was idealistic in conception with regard to the prospect of a trans-communal Ceylonese *demos*, and as became apparent within a short time of its operation, territorial democracy only facilitated the political institutionalisation of Sinhala dominance by virtue of their numerical majority.<sup>41</sup> In

---

*Introduction to Tamil Nationalism in Sri Lanka* in R. Cheran (Ed.) (2009) *Pathways of Dissent: Tamil Nationalism in Sri Lanka* (New Delhi: Sage): pp.xvi-xix.

<sup>37</sup> *Ceylon: Report of the Special Commission on the Constitution* (1928): Cmd.3131 (Donoughmore Report), reproduced in R. Edrisinha, M. Gomez, V.T. Thamilmaran & A. Welikala (Eds.) (2008) *Power-Sharing in Sri Lanka: Constitutional and Political Documents, 1926-2008* (Colombo: CPA): pp.60-97 at p.66.

<sup>38</sup> Edrisinha et al (2008): Ch.2.

<sup>39</sup> Ibid: p.67. As historians have noted, the Donoughmore Constitution for Ceylon was a remarkable experiment in constitutional innovation within the British Empire at the time: Russell (1982): pp.xviii-xx; M. Wight (1946) *The Development of the Legislative Council, 1606-1945* (London: Faber & Faber): pp.74,78,94.

<sup>40</sup> Cmd. 3131: p.21. The reference here is to the Sinhala majority.

<sup>41</sup> Russell (1982): Ch.IX; K.M. de Silva (2005) *A History of Sri Lanka* (Colombo: Vijith Yapa): Chs.31,32.

other words, the tendency to ethnocracy in the Sinhala-Buddhist nationalist claims to primacy within the state was clearly visible even at the moment that the universal franchise was introduced, if in more benign form than the more aggressive version which was to characterise majoritarian nationalism from the late 1940s onwards.<sup>42</sup>

In the next major stage of constitutional reform, which led to the independence of Ceylon as a Dominion of the British Commonwealth, the Soulbury Commission was animated by much the same heuristic model of the nation as a democratic community. Like its predecessor, this reform commission also noted the country's ethnic and religious diversity and observed,

“To these differences, which need not in themselves have led to friction in a static community, have been applied the dynamic Western conceptions of nationalism and democracy, which naturally tend to break up a stratified society. Nationalism, if it is to be a unifying force, requires the elimination of communalism from political life...Democracy in which ‘each shall count for one and not for more than one’ demands for its free operation a wider tolerance in religion, an understanding of the conflicting claims of race and language and a willingness to compromise on major political issues after full and free discussion.”<sup>43</sup>

These similar views on nationality and state expressed by both the Donoughmore and Soulbury Commissions reflected a consistent official British policy with regard to Ceylon in the late-colonial period. While consistent, it also reveals, however, that the official attitude was informed by one set of arguments in a major debate concerning these matters within the British intellectual tradition in which, had the counter-position informed official policy, then a radically different trajectory of constitutional evolution might have occurred in Ceylon. It was, moreover, a debate that commenced during Britain's colonisation of Ceylon in the nineteenth century

---

<sup>42</sup> K.M. de Silva, ‘Sri Lanka in 1948’ in Holt (2011): Ch.591-98.

<sup>43</sup> *Ceylon: Report of the Commission on Constitutional Reform* (1969 [1945]) (Soulbury Commission Report) (Colombo: Ceylon Govt. Press): p.11.

and was still taking place in the mid-twentieth when it was contemplating independence for Ceylon.

As Walker Connor reminds us, John Stuart Mill had instituted the dominant liberal perspective on the necessary coincidence of nationality and state in 1861, when among other things he stated in *Considerations on Representative Government* that, “it is in general a necessary condition of free institutions that the boundaries of government should coincide in the main with those of nationality.”<sup>44</sup> Mill’s detractor was no less eminent a Victorian liberal authority. Mounting a strong defence on liberal grounds of multinational states in 1862, Lord Acton contended in *On Nationality* that, “The presence of different nations under the same sovereignty ... provides against the servility which flourishes under the shadow of a single authority, by balancing interests, multiplying associations and giving the subject the restraint and support of a combined opinion.”<sup>45</sup> Connor describes how this debate within liberalism about the virtues of mono-national and multi-national states was continued by others such as Sir Ernest Barker and Alfred Cobban in the first half of the twentieth century.<sup>46</sup>

For present purposes what is interesting about this debate is that it raises the tantalising counterfactual possibility that had the multinational as opposed to the monistic demos perspective informed British colonial policy in Ceylon, then the development of the colonial state, and the constitution that it bequeathed Ceylon at

---

<sup>44</sup> Cited in W. Connor (1994) *Ethnonationalism: The Quest for Understanding* (Princeton: Princeton UP): p.6.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid: Ch.1, esp. pp.5-8. More recently, this is of course a debate that is directly engaged within plurinational constitutionalism, through its reliance on the political philosophy of Liberalism II and liberal nationalism, to show that: (a) liberalism and non-state nationalisms are not mutually incompatible; (b) that the sociological reality of many of the states in the world today do not conform to the classical modernist ideal as articulated by Mill and others; and (c) that multination states are a discrete category of polity that can be defended on liberal democratic grounds. See W. Kymlicka (1995) *Multicultural Citizenship* (Oxford: OUP): Chs.4,9 esp. at pp.52,186; W. Norman (2006) *Negotiating Nationalism: Nation-Building, Federalism and Secession in the Multinational State* (Oxford: OUP): pp.1-9; Keating (2001): Ch.2; Tierney (2006): Chs.2,3,4; A. Stepan, ‘Modern Multinational Democracies: Transcending a Gellnerian Oxymoron’ in A. Stepan (2001) *Arguing Comparative Politics* (Oxford: OUP): pp.181-199; N. MacCormick (1999) *Questioning Sovereignty: Law, State, and Nation in the European Commonwealth* (Oxford: OUP); C. Taylor, ‘The Politics of Recognition’ and M. Walzer, ‘Comment’ in A. Gutmann (1994) *Multiculturalism: Examining the Politics of Recognition* (Princeton: Princeton UP): pp.25-73, 99-103; M. Guibernau (2013a) *Belonging: Solidarity and Division in Modern Societies* (Cambridge: Polity Press).

independence, could have assumed a fundamentally different character. There may be many historical reasons as to why this position was not adopted, but perhaps the most important factor was that throughout the colonial period and certainly in constitutional negotiations in the run-up to independence, the Tamils were articulating their claims as a ‘minority community’ in a plural society rather than as a distinct nation.<sup>47</sup> The nationality claim was in fact only properly articulated in 1949-51,<sup>48</sup> and it was only then that the top-down and bottom-up process of competing nationalisms, in the manner theorised by Charles Tilly, became the defining characteristic of both ordinary and constitutional politics.<sup>49</sup>

Thus it was the Millian view that prevailed, and as K.M. de Silva has noted, that idea of nation-statehood was fully subscribed to by the Ceylonese leader who led the constitutional negotiations towards independence. D.S. Senanayake’s vision of an independent Ceylon,

“...emphasised the common interests of the island’s various ethnic and religious groups. It had as its basis an acceptance of the reality of a plural society and sought the reconciliation of the legitimate interests of the majority and minorities within the context of an all-island polity...In 1948, this version of nationalism seemed to be a viable alternative to the narrower [ethnic] sectionalisms...and held out the prospect of peace and stability in the vital first phase of independence.”<sup>50</sup>

In these British and Ceylonese viewpoints at the moment of independence, we see implicit the traditional liberal critique of ethnic nationalism (communalism or sectionalism) and the civic conceptualisation of the demotic nation founded on individual liberty and tolerance. To their otherwise conventional recommendations on a Westminster constitutional form to underpin such a nation-state, however, the

---

<sup>47</sup> Edrisinha et al (2008): Ch.6; A.J. Wilson (2000) *Sri Lankan Tamil Nationalism: Its Origins and Development in the 19<sup>th</sup> and 20<sup>th</sup> Centuries* (New Delhi: Penguin): Ch.5.

<sup>48</sup> Edrisinha et al (2008): Ch.8; Wilson (2000): Ch.6.

<sup>49</sup> See Chapter 4, *supra*.

<sup>50</sup> De Silva (2005): p.609. As de Silva also noted however, “This Sri Lankan nationalism had a crucial flaw. It was basically elitist in conception and it had little popular support extending beyond the political establishment”: *ibid*.

Soulbury Commission concurred with a unique improvisation in the form of a procedurally entrenched constitutional provision that limited Parliament's power to enact legislation having discriminatory effects among diverse 'communities' and 'religions' that had been proposed by the Ceylonese Ministers with the advice of Sir Ivor Jennings.<sup>51</sup> While such limitations on legislative power were unusual in the orthodox Westminster model, Section 29 of the Independence Constitution was no more than a codification of the liberal normative principle of the state's cultural neutrality, which required the 'privatisation' of ethnicity and religion, especially in plural societies.

I have discussed the plurinationalist critique of this traditional liberal claim in Chapter 3, but for present purposes, what is important to note is that neither this vision of civic nationhood nor the constitutional protections for minorities designed to achieve it was able to withstand the intense pressure of Sinhala Buddhist nationalism post-independence.<sup>52</sup> With the establishment of the Sri Lankan republic in 1971, Sinhala-Buddhist nationalism's appropriation of the state was complete, with its three major constitutional entitlements – the centralised unitary state and the constitutional privileging of the Sinhala language and Buddhism – receiving constitutional recognition.<sup>53</sup>

In conceptual terms, this meant that the dominant model of post-colonial nation-building in the mid-twentieth century<sup>54</sup> was unhelpful in two key respects. Firstly, in promoting policies like modernisation, integration or even assimilation,<sup>55</sup> and consensus-building in relation to the challenges of pluralism including national pluralism, this theoretical model espoused a centripetal and unitary discourse of nationality, sovereignty, and statehood, almost to the point of normative dogmatism.

---

<sup>51</sup> See A. Welikala, 'The Failure of Jennings' Constitutional Experiment in Ceylon: How 'Procedural Entrenchment' led to Constitutional Revolution' in Welikala (2012): Ch.3; and Welikala in Kumarasingham (forthcoming, 2015).

<sup>52</sup> H. Kumarasingham (2013) *A Political Legacy of the British Empire: Power and the Parliamentary System in Post-Colonial India and Sri Lanka* (London: I.B. Tauris): Ch.7.

<sup>53</sup> See Welikala (2012): Chs.1,2,4,9,19.

<sup>54</sup> See for e.g. K.W. Deutsch & W. Folz (Eds.) (1966) *Nation Building* (New York: Aldine-Atherton); S.N. Eisenstadt & S. Rokkan (Eds.) (1973) *Building States and Nations*, Vols.1 & 2 (London: Sage).

<sup>55</sup> For the distinction between integration and assimilation, see McGarry et al in Choudhry (2008): Ch.2.

As early Tamil federalists learnt, it has been difficult to dissent from this orthodoxy from sub-state pluralist viewpoints without also facing allegations of ethnic revanchism and separatism. Secondly, the application of this model has been analytically misleading, in that it has served to obscure a proper appreciation of the ideological project of majoritarian hegemony (or ethnocracy) with regard to the state undertaken by Sinhala-Buddhist nationalism behind relatively benign explanations like democratic majoritarianism, with the implication that to the extent this is problematic in a plural polity, it could be addressed through standard counter-majoritarian solutions like bills of individual rights and other minority protection devices. On the other hand, due to its conceptual incapacity to meet the specific normative and constitutional challenges of national pluralism (due to the limitations plurinational constitutionalists have highlighted in the Westphalian nation-state discussed before), this model of statehood has served to consistently disallow any meaningful response to the claims of Sri Lankan Tamils as a distinct sub-state nation.

If the rise of Sinhala-Buddhist nationalism (together with the Tamil nationalist response it generated) derailed these assumptions and expectations of post-colonial nation-building, what is the nature of the state that emerged under its dominant influence? Conventional concepts of the democratic state cannot fully account for its deep and pervasive influence, which extended beyond an undoubted dominance over electoral politics and procedural democracy, to a determining impact on the character of the state itself. It is here that the continuum of models under the rubric of 'ethnic democracy' becomes useful in formulating a theoretical account of the post-colonial Sri Lankan state.

The concept of ethnic democracy was originally developed as a descriptive and explanatory theory of the divided society and state-regime of Israel.<sup>56</sup> Ethnic

---

<sup>56</sup> See for e.g., S. Smooha, 'Types of Democracy and Modes of Conflict Management in Ethnically Divided Societies' (2002) *Nations and Nationalism* 8(4): pp.423-31; S. Smooha, 'The Regime of the State of Israel: Civil Democracy, Non-Democracy or Ethnic Democracy?' (2000) *Israeli Sociology* 2(2): pp.565-630; S. Smooha & T. Hanf, 'The Diverse Modes of Conflict Regulation in Deeply Divided Societies' (1992) *International Journal of Comparative Sociology* 33(1-2): pp.26-47; Y. Peled, 'Ethnic Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State' (1992) *American Political Science Review* 86(2): pp.432-43; Y. Peled & D. Navot, 'Ethnic Democracy Revisited' (2005) *Israel Studies Forum* 20(1): pp.3-27; I. Peleg (2007) *Democratizing*

democracy sought to account for the character of the state of Israel as ‘a Jewish and democratic state’ in the context of the presence of a large homeland minority of Palestinian citizens (as opposed to non-citizen Palestinians now under the jurisdiction of the Palestinian Authority). The ethnic democratic state is basically committed to procedural democracy and extends individual civil rights to all without discrimination, but it constitutionally privileges one ethnic group, which constitutes the majority, as the absolute majority that is entitled to govern. While certain collective rights may even be granted to the ethnic minority, an ethnic democracy permits no constitutional equality, territorial autonomy or sharing of sovereignty. The simultaneous foregrounding of both a dominant ethnicity and democracy makes this a discrete type of state, distinguishable from liberal, republican or consociational democracies.<sup>57</sup> The particular model of ‘ethnocracy’ that has been theorised by Oren Yiftachel from within the broader school of ethnic democracy (and by comparative reference *inter alia* to Sri Lanka) offers a number of highly salient insights for our comprehension of the Sri Lankan state.<sup>58</sup> Ethnocracy is distinct from the concept of ‘nationalising states’ propounded by Rogers Brubaker, which also feature projects of ethnic hegemony, by the significant *structural* feature that ethnocratic regimes are fundamentally constructed *against* their minorities.<sup>59</sup>

The accounts of Sinhala-Buddhist nationalism in relation to the post-colonial state as well as the sub-state response by Tamil nationalism in previous chapters correlate closely with Yiftachel’s framework, wherein the Sri Lankan state represents itself as democratic, and replicates many rights and institutions associated with democratic states, while the dominant ethnic nation simultaneously pursues, through the capture and control of the state, its hegemonic ethno-cultural and political agenda. This

---

*the Hegemonic State: Political Transformation in the Age of Identity* (Cambridge: CUP); I. Peleg, ‘Transforming Ethnic Orders to Pluralist Regimes: Theoretical, Comparative and Historical Analysis’ in A. Guelke (Ed.) (2004) *Democracy and Ethnic Conflict* (New York: Palgrave Macmillan): pp.7-25; A. Harel-Shalev (2010) *The Challenge of Sustaining Democracy in Deeply Divided Societies: Citizenship, Rights and Ethnic Conflicts in India and Israel* (Lanham, MD: Lexington Books): Ch.1.

<sup>57</sup> Harel-Shalev (2010): pp.8-9.

<sup>58</sup> O. Yiftachel (2006) *Ethnocracy: Land and Identity Politics in Israel/Palestine* (Philadelphia, PA: Univ. of Penn. Press): Ch.2. Observations on Sri Lanka at pp.22-25; for a concise conceptual definition of ethnocracy, see pp.295-6.

<sup>59</sup> *Ibid*: pp.20-22; R. Brubaker (1996) *Nationalism Reframed: Nationhood and the National Question in the New Europe* (New York: CUP).

ethnicising dynamic at the heart of state-formation has in turn generated a sub-state challenge in ethnonationalist terms, which however, is contained (if contingently) by the ethnocratic regime through its ‘selectively open’ character, or ‘illiberal democracy’ to use Fareed Zakaria’s concept.<sup>60</sup> The ethnocratic regime draws external legitimacy from its exclusive membership in the international community of states, which is itself buttressed internally by a formal façade of democratic institutions.<sup>61</sup> Moreover, echoing the plurinational critique of narrow positivism and the positivist character of Sri Lankan public law, Yiftachel observes how in ethnocracies “...legalism often depoliticises and legitimises patterns of ethnic control. Such controls are often premised on redundant, absurd, non-existent, or only partially functional constitutional settings. These are often presented as the law of the land, and subsequently placed outside the realm of legitimately contested issues.”<sup>62</sup> The dominant constitutional discourse around the unitary state is conducted precisely in these terms in the Sri Lankan case.<sup>63</sup>

These ‘surface level’ democratic *features*, however, must be distinguished from the deeper regime *structure*, which “which facilitates and promotes the seizure of territory, resources, and power by one expanding ethnos.”<sup>64</sup> The structural elements of ethnocratic regimes include demographic control and manipulation,<sup>65</sup> land and settlement,<sup>66</sup> an ethnicised military and constitutional law.<sup>67</sup> In his extension of Yiftachel’s work towards developing a descriptive theory of the Sri Lankan ethnocratic state, Jayadeva Uyangoda adds a further structural dimension, which are “the social foundations that enable the production and reproduction of the ethnocratic

---

<sup>60</sup> F. Zakaria (2007) (Rev. Ed.) *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: W.W. Norton).

<sup>61</sup> Yiftachel (2006): pp.19-20, 13-14.

<sup>62</sup> Ibid: p.37.

<sup>63</sup> See Chapters 2 and 3, *supra*.

<sup>64</sup> Yiftachel (2006): p.35.

<sup>65</sup> See various documents in Tamil United Liberation Front (1988) *Towards Devolution of Power in Sri Lanka: Main Documents, August 1983 to October 1987* (Madras: TULF).

<sup>66</sup> R. Muggah (2008) *Relocation Failures in Sri Lanka: A Short History of Internal Displacement* (London: Zed Books).

<sup>67</sup> I have briefly noted in the previous discussion of Tamil nationalism, the central importance of demography and land settlement to conceptions of the nation for both Sinhalese and Tamils, and the role of policy disagreements over these issues in the deterioration of ethnic relations from the late colonial period onwards: Chapter 2, *supra*.

state.”<sup>68</sup> Uyangoda observes how in the post-colonial period, “the social ownership of ethnocracy in Sinhalese society” has shifted from “the upper stratum of the social elite with inter-ethnic links to social groups that are relatively isolated from other ethnicities.”<sup>69</sup> The ethnocratic elite is dependent on a much wider electoral support base of “an ensemble of social classes in the majority Sinhalese society” which fully subscribes to the majoritarian ethnonationalist ideology that underpins the ethnocratic state-formation project. These groups together constitute a wide cross-section of Sinhala society, from the rural peasantry to the urban bourgeoisie, constituting a majoritarian democratic political base to the ethnocratic state that further rigidifies its “reform-negating and reform-resisting” nature.<sup>70</sup>

Yiftachel also delineates a number of ‘key principles’ that characterise an ethnocratic regime, of which three are especially relevant for the present discussion. Firstly, “Despite declaring the regime as democratic, ethnicity (and not territorial citizenship) is the main determinant of the allocation of rights, powers and resources, and politics is characterised by constant democratic-ethnocratic tension.”<sup>71</sup> While at the level of the constitution the Sri Lankan dispensation does not reflect a principle of unequivocal Sinhala ethnic ownership of the state as in the Israeli principle of ‘a Jewish and democratic state,’ it does recognise in Article 9 a ‘foremost place’ for Buddhism and the state’s constitutional duty to ‘protect and foster’ it.<sup>72</sup> The Sri Lankan constitution also only recognised Sinhala as the official language of the state until 1987, when it was provided that ‘Tamil shall also be an official language.’<sup>73</sup>

---

<sup>68</sup> J. Uyangoda, ‘*Travails of State Reform in the Context of Protracted Civil War in Sri Lanka*’ in K. Stokke & J. Uyangoda (Eds.) (2011) *Liberal Peace in Question: Politics of State and Market Reform in Sri Lanka* (London: Anthem Press): Ch.2 at p.54.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid: p.53; see also: pp.52-61.

<sup>71</sup> Yiftachel (2006): pp.16.

<sup>72</sup> See B. Schonthal, ‘*Buddhism and the Constitution: The Historiography and Postcolonial Politics of Section 6*’ in Welikala (2012): Ch.4; S. Shankar, ‘*The Substance of the Constitution: Engaging with Foreign Judgments in India, Sri Lanka and South Africa*’ (2010) *Drexel Law Review* 2: pp.373-425; G.J. Jacobsohn & S. Shankar, ‘*Constitutional Borrowing in South Asia: India, Sri Lanka and Secular Constitutional Identity*’ and D. Udagama, ‘*The Democratic State and Religious Pluralism: Comparative Constitutionalism and Constitutional Experiences of Sri Lanka*’ in S. Khilnani, V. Raghavan & A.K. Thiruvengadam (Eds.) (2013) *Comparative Constitutionalism in South Asia* (New Delhi: OUP): Chs.6,5.

<sup>73</sup> The original Article 18 of the 1978 Constitution merely said, ‘The Official Language of Sri Lanka shall be Sinhala.’ The Thirteenth Amendment to the Constitution added that ‘Tamil shall also be an official language’ and ‘English shall be the link language’: see Article 18 (2) and (3). The ungenerous

Sinhala ethnocentric dominance, rather, is secured through more diffuse political and cultural discourses, as Yiftachel's second principle recognises: "The logic of ethnic segregation is diffused into the social and political system, enhancing multidirectional processes of essentialising political ethnicisation."<sup>74</sup> Thirdly, "Significant (though partial) civil and political rights are extended to members of the minority ethnation, distinguishing ethnocracies from *Herrenvolk* (apartheid) or authoritarian regimes."<sup>75</sup> The Sri Lankan constitution extends fundamental civil and political rights on the basis of territorial and individual rather than ethnic citizenship, but resists claims to power-sharing and territorial autonomy, and violently opposes any claim to distinct Tamil nationality.

The mobilising power of ethnonationalism is of course the main political and historical force that shapes an ethnocracy. Underscoring the role of ethnonationalism in the formation of the Westphalian world order and its central principles of sovereignty and self-determination,<sup>76</sup> Yiftachel observes how once a 'homeland state' is created for a group entitled to self-determination, "the principle is reified and issues such as territory and national survival become inseparable from ethnonational history and culture."<sup>77</sup> Unlike liberal democratic states that are underpinned by an historical process of modernity and an inclusive, civic conception of the state nation, in ethnocratic regimes, "the dominance of the ethnonational concept generates forms of ethnic territoriality that perceive control over 'homeland' territory and its defence as central to the survival of the group in question, often basing the perceptions on selective and manipulative historical, cultural and religious interpretations."<sup>78</sup> The centrality of the *vamsa* tradition of historiography to Sinhala-Buddhist nationalism

---

and *ad hoc* nature of these reforms, which moreover were only undertaken by the Sri Lankan government on the forceful intervention of India, has not gone unnoticed. See D. Nesiya (2012) *Tamil Language Rights in Sri Lanka* (Colombo: CPA); N. Jayawickrama, 'Reflections on the Making and Content of the 1972 Constitution: An Insider's Perspective' in Welikala (2012): Ch.1.

<sup>74</sup> Yiftachel (2006): p.16.

<sup>75</sup> Ibid.

<sup>76</sup> A. Murphy, 'The Sovereign State System as a Political-Territorial Ideal: Historical and Contemporary Considerations' in T. Biersteker & S. Weber (Eds.) (1996) *State Sovereignty as a Social Construct* (Cambridge: CUP): pp.93-112; W. Connor (1996) *Ethnonationalism: The Quest for Understanding* (Princeton, NJ: Princeton UP); W. Connor, 'Nationalism and Political Illegitimacy' in D. Conversi (Ed.) (2002) *Walker Connor and the Study of Nationalism* (London: Routledge): pp.19-36.

<sup>77</sup> Yiftachel (2006): p.14.

<sup>78</sup> Ibid.

by which the ‘ownership’ claims to the island are sustained, how that ownership is projected as being crucial to the very survival of the Sinhalese and pristine Theravada Buddhism, and the selective and manipulative uses of history in that narrative, especially in relation to the provenance of the unitary state form, have all been extensively discussed in preceding chapters.<sup>79</sup>

The dominant majority’s use of its ‘institutionalised and politicised religion’ is a particularly resonant feature of ethnocracy in the Sri Lankan case. Yiftachel notes the ‘reciprocal relations’ between ethnonationalism and religion: “The expansive type of ethnonationalism typical to ethnocracies is thus able to develop resilient forms of internal legitimations based on the mutual reinforcement of nationalism and religion.”<sup>80</sup> Moreover, the corresponding use of religion is its role in ‘othering’ the minorities: “Religious logic is instrumental for most ethnocratic regimes because it generates a discourse of rigid political and social boundaries...[which are] commonly justified...as stemming from divine or ancient roots and is thus portrayed as ascriptive and insurmountable.”<sup>81</sup> As we have seen in previous chapters, this dynamic of ‘internal legitimation’ and ‘external othering’ is precisely the role that political Buddhism has played in Sinhala nationalism and its relations with ethnic and religious minorities from the days of the nineteenth century anti-colonial revival onwards.

Despite the dominance of the ‘founding charter group,’<sup>82</sup> however, ethnocratic nation-states are “far from stable, as a pervasive nation-building discourse and material reality are continually remoulding the collective identity of homeland ethnic minorities. Such minorities often develop a national consciousness of their own that destabilises political structures with campaigns for autonomy, regionalism, or sovereignty, intensifying, in Anderson’s words, ‘the impending crisis of the hyphen’

---

<sup>79</sup> See also N. DeVotta (2007) *Sinhalese Buddhist Nationalist Identity: Implications for Politics and Conflict Resolution in Sri Lanka*, Policy Studies 40 (Washington: East-West Center); M. Roberts (2002) *Primordialist Strands in Contemporary Sinhala Nationalism in Sri Lanka: Urumaya as Ur*, No.20 of Marga Monograph Series, *A History of Ethnic Conflict in Sri Lanka: Recollection, Reinterpretation and Reconciliation* (Colombo Marga).

<sup>80</sup> Yiftachel (2006): p.17.

<sup>81</sup> Ibid: p.17; A.D. Smith (1995) *Nations and Nationalism in a Global Era* (Cambridge: Polity Press).

<sup>82</sup> Yiftachel (2006): p.13; Y. Soysal (1994) *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: Chicago UP).

between nation and state.”<sup>83</sup> This dynamic is amply demonstrated in the preceding discussion of Sri Lankan Tamil nationalism, especially the ‘defensive and reactive’ theory advanced by Tamil nationalists. <sup>84</sup> Uyangoda goes even further in characterising the counter-majoritarian sub-state nationalist response as itself ethnocratic. Tamil nationalism in its militant separatist phase was built upon a conception of a separate state “which [was] the mirror image of the Sinhalese ethnocratic state.” The “mutually antagonistic war” between the two ethnocratic state projects “helped each other’s renewal and re-production.”<sup>85</sup>

Beyond the sub-state response and the conditions of armed conflict, however, the unstable nature of ethnocratic states is still relevant for our purpose. According to Yiftachel, this stems from “...the inherent tension between the parallel regime projects of (ethnically centred) nation building and (civil) state building.”<sup>86</sup>

“Ethnocratic nation building fully exposes the tension between the use of ethnic and civil categories because it entails an active exclusion of groups...represented as external by the...dominant nation...Yet at the same time these groups are incorporated (often coercively) into the project of state building. The crises emanating from the process of ‘incorporation without legitimation’...are at the heart of the *chronic instability* experienced by ethnocratic regimes.”<sup>87</sup>

This is a critical aspect of the ethnocratic model for the present discussion, because it illustrates not merely the normative unjustness of this regime-type in conditions of national pluralism, but also why ethnocracies face state-failure in the long term. It thus provides two forceful rationales for the meta-constitutional and institutional restructuring of the Sri Lankan state contemplated in this thesis. It underscores the

---

<sup>83</sup> Yiftachel (2006): p.14; B. Anderson, ‘Introduction’ in G. Balakrishnan (Ed.) (1996) *Mapping the Nation* (New York: Verso): p.8.

<sup>84</sup> See Chapters 2 and 4, *supra*.

<sup>85</sup> Uyangoda (2011): p.55. Note the resonance with Tilly’s account of competing nationalisms discussed in Chapter 4, *supra*. See also, R. Edrisinha & A. Welikala, ‘The Interim Self Governing Authority Proposals: A Federalist Critique’ in R. Edrisinha & A. Welikala (Eds.) (2008) *Essays on Federalism in Sri Lanka* (Colombo: CPA): Ch.XII at pp.298-301.

<sup>86</sup> Yiftachel (2006): p.19.

<sup>87</sup> *Ibid*, emphasis in original. Reference in parenthesis to M. Mann, ‘The Dark Side of Democracy: The Modern Tradition of Ethnic and Political Cleansing’ (1999) *New Left Review* 235: pp.18-45.

need for a radical departure from unitary approaches to constitutional order if stability is to be ensured in the context of national pluralism, and, given the susceptibility to ethnocratism of the conventional Westphalian state form, it also demonstrates the need in such an exercise of state restructuring to go beyond the normative and substantive dictates of the nation-state in the constitutional accommodation of national pluralism. In this regard, Uyangoda's use of the concept of ethnocracy is limited to providing a persuasive, if bleak, descriptive theory of the Sri Lankan state and its 'reform-negating and reform-resisting' nature.<sup>88</sup> Beyond the level of analysis, however, his work does not provide us with the normative tools with which to reconceptualise the state in view of the continued assertion of Tamil nationhood and attendant collective rights claims. Likewise, I have devoted considerable attention to Yiftachel's conceptualisation of ethnocracy because it is useful for the purpose of establishing a defined understanding of the character of the present Sri Lankan state order. In proceeding to the next, prescriptive, stage of the argument from this analytical exercise, however, two reservations with regard to Yiftachel's work must be addressed.

Yiftachel's critical account of ethnocratic regimes is founded on a strong commitment to both the principle of equality and the modernist conception of the civic nation that conceptually underpins the democratic state: "...while recognising that even in the most advanced democracies full equality can never be achieved, the demos forms a necessary basis for the establishment of democracy (demos-cracy). It forms a foundation for the most stable and legitimate form of governance known to human society."<sup>89</sup> This is the central normative precept constituting the very basis of Yiftachel's critical theory in general and for one of his main analytical arguments in particular: the idea of the 'ruptured demos.'<sup>90</sup> The notion that in ethnocracies the demos is severely ruptured means that "...the community of equal resident citizens (the demos) does not feature high in the country's policies, agenda, imagination, symbols, or resource distribution and is therefore not nurtured or facilitated."<sup>91</sup>

---

<sup>88</sup> Uyangoda (2011): p.52-61.

<sup>89</sup> Uyangoda (2011): p.16.

<sup>90</sup> Yiftachel (2006): pp.16, 32, 39, 296.

<sup>91</sup> Ibid: p.16.

While for analytical purposes I have relied on Yiftachel's descriptive and explanatory account of the ethnocratic model (including the notion of the ruptured demos as the preceding discussion on Sri Lanka readily shows), I do not necessarily share his commitment either to strong equality (i.e., as between intra-state nations rather than individual legal equality) or the unitary demos. His ideal of the normative alternative to ethnocracy is articulated exactly in terms of the 'monistic demos thesis' that plurinational constitutionalists have critiqued in relation to dominant discourses of modernist nation- and state-building, and as a critical theoretical lacuna in traditional liberalism in relation to plurinational societies. Both these weaknesses are inherent in Yiftachel's formulation, wherein the demos is not only exalted as the exemplification of progressive modernity, but by virtue of being defined in monist terms, seems to negate at both theoretical and practical levels the possibility of the recognition of *national pluralism* in a 'true' democracy, especially where such nationalisms are articulated in ethnic terms. Thus he shares the jaundiced view of ethnicity and particularly ethnic nationalism with traditional liberals, and suggests that civic modernity is the panacea to these undesirable forms of political mobilisation.

Given these reservations, it becomes necessary to make use of Yiftachel's theorisation of ethnocracy for the analytical purpose of defining the character of the Sri Lankan state, while rejecting his alternative monistic ideal of democracy on plurinational grounds. As his brief discussion of democratic theory shows,<sup>92</sup> Yiftachel does not contemplate the existence or the constitutional possibilities of *plurinational democracy* as an alternative to ethnocracy in his work, although he makes passing mention, through references *inter alios* to Arend Lijphart and Will Kymlicka, that "In multiethnic or multinational polities...a certain parity, recognition, and proportionality between enduring ethnic collectivities is a prerequisite for democratic legitimacy and political stability."<sup>93</sup> The influence of consociational rather than plurinational thinking seems redolent in this formulation. To be fair, it must be added that Yiftachel's primary concern is the descriptive and

---

<sup>92</sup> Ibid: p.32-34.

<sup>93</sup> Ibid: p.34.

critical theorisation of ethnocracy, not its normative alternatives: “This is not the place to delve deeply into democratic theory.”<sup>94</sup> His focus is therefore not on the “perfect and complete democracy” in multinational polities but how “ethnocratic regimes are conspicuous in breaching the spirit, purpose, and major tenets of the democracy ideal.”<sup>95</sup>

Taking Yiftachel’s work on these qualified terms, the concept of ethnocracy helps define a critical view of the Sri Lankan state. In the empirical context of national pluralism, it does not follow that the democratic alternative to ethnocracy lies *solely* or *chiefly* in the construction of a civic and territorial, but monistic, ‘Sri Lankan’ demos; which may ameliorate, but does not eliminate, the potential for majoritarian hegemony. More particularly, it is a model of democracy that does not answer to the needs of a multinational polity. Thus, as noted before, the encouragement of the democratisation of the presently ethnocratic nation-state is *complementary* to the radical pluralisation of the constitutional order in appreciation of national pluralism: the question is not either/or.

On the other hand, his normative commitment to equality in divided societies, which, as his reliance on class categories and the concept of ‘ethnaclass’ demonstrates, springs from a left-wing ideological orientation. Setting aside a putative ideological debate on equality, the more important point is that equality is here defined in individual rather than sub-state national terms, as determined by the orthodox conception of the demos and thus of the democratic state. Yiftachel therefore simply does not consider the question of plural nations, but if his equality postulate is extended to a plurinational context nonetheless, it would seem that an *a priori* normative commitment to equality between multiple nations does little to advance plurinational accommodation in the Sri Lankan context, given the asymmetrical historical and spatial relationship between the two competing nations in the island. Indeed, it is for the same reason that the principle of equality defended on liberal democratic grounds in Western plurinational constitutionalism will be argued to require modification, or more precisely, to be replaced by a principle of

---

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

constitutional asymmetry, in applying plurinational constitutionalism to the Sri Lankan case.<sup>96</sup>

### **3. The Plurinational State and Sri Lanka: Exploratory Propositions for a Plurinational Democracy**

The preceding discussion has established a critical and analytical basis of understanding the ‘hard state’ in Sri Lanka, in terms of its deformed modernity and its ethnocratic structure. In all these respects, the Sri Lankan state reflects a constitutional order that is substantially incongruent with the ethno-cultural diversity of its polity, and one that is categorically incapable of accommodating its multinational character. Beneath the stiff carapace of ethnocratic state sovereignty, therefore, lurks a fundamental crisis of legitimacy and chronic instability. This pathological crisis of the state has hitherto been addressed through ethnocratic strategies of intensifying control and militarisation rather than democratic reform. However, if both democracy and (national) pluralism are to survive on the island, and indeed the unity of the state and peace are to be preserved over the *longue durée*, a thoroughgoing reappraisal of the normative foundations of the state becomes necessary. Such an alternative account must provide a coherent theoretical basis for the reconstitution of the state towards a democratic and non-coercive accommodation of national pluralism, under a new constitutional architecture that de-ethnocratises, decentralises and re-territorialises the state. The next two sub-sections undertake this task: first, to articulate a new theory of pluralism that can generate the meta-constitutional norms capable of meeting the democratic challenge of national pluralism; and second, to propose a constitutional strategy to address the problem of arrested modernity at the level of the statal nation.

#### **3.1 From Liberal Democracy to Comprehensive Pluralism**

---

<sup>96</sup> See Chapter 6, *infra*.

In Western plurinational constitutionalism, the main discursive and normative debates – about nationalism and constitutional norms, concepts and forms – are conducted within a liberal democratic framework, the basic values of which are broadly shared between host states and sub-state nations. Accordingly, liberal nationalism and plurinational constitutionalism have in common with traditional liberalism a conception of the good life in which the individual remains the subject of moral and political choice and the purpose of society is to maximise the scope for individual self-fulfilment, together with the commitment to overarching values such as liberty, equality, justice and fundamental human rights. Consistent with these commitments, but against most accounts of traditional liberalism, the central object of liberal nationalism in plurinational polities is to emphasise the importance of the societal context in terms of a primary (sub-state) demos within which individual autonomy can be best exercised, and for the constitutional structures of the plurinational state to better reflect the reality of multiple national spaces within which such contextualised individualism can be optimally expressed. That said, the “alternative model of liberalism” upon which plurinational constitutionalism is built has also been concerned, in Stephen Tierney’s words, “in highlighting the value of the vernacular alongside that of the cosmopolitan, and in offering an alternative universalisable value – that of pluralism.”<sup>97</sup> Against the “individualistic uniformity of classical and increasingly outmoded liberalism,” Tierney argues that,

“The universal promise of this more nuanced model of liberalism is not homogenisation but the general application of the principle of difference; a recognition that throughout the world cultural and national diversity is to be valued not traduced, particularity celebrated rather than assimilated.”<sup>98</sup>

While wholly agreeing with these sentiments, the question that arises for the present enquiry is whether the ‘universalisable value of pluralism’ that is so central to the plurinational constitutional worldview can only be sustained through one or other

---

<sup>97</sup> S. Tierney, ‘Rights versus Democracy? The Bill of Rights in Plurinational States’ in C. Harvey & A. Schwartz (Eds.) (2012) *Rights in Divided Societies* (Oxford: Hart): Ch.1 at p.32.

<sup>98</sup> Ibid.

school of political liberalism,<sup>99</sup> or, in view of liberalism's lack of resonance as a discourse and language of constitutional reform in the empirical context of the case study, whether some other philosophical basis can be used in order to construct a serviceable normative theory of democratic pluralism. It is here that the idea of 'comprehensive pluralism' developed by Michel Rosenfeld assumes relevance as a theoretical foundation that could serve a plurinational constitutional framework in Sri Lanka more plausibly than one derived from political liberalism.<sup>100</sup> In addition to this 'strategic' advantage, the ceaselessly dialectical nature of comprehensive pluralism also reverberates, as will be seen, with the 'pulsating' and dynamic spirit of the pre-colonial galactic state form, which I have advanced earlier as providing an historical grounding for a plurinational constitutional settlement in the present. While the scope of Rosenfeld's theory of comprehensive pluralism is extremely ambitious (claiming among other things a 'superiority' over liberalism, republicanism and communitarianism as a governing philosophy for plural societies<sup>101</sup>), the essential features of the model as are relevant to the present discussion can be delineated as follows.

Comprehensive pluralism is a 'counterfactual ideal,' which seeks to articulate an encompassing norm of pluralism for societies that are pluralist in fact. It is "predicated on the conviction that pluralism is itself desirable and should therefore be endorsed and promoted."<sup>102</sup> Its central thesis is encapsulated in the idea that 'pluralism as norm is best for pluralism in fact.' This requires an elaboration of what is meant by 'pluralism in fact' and 'pluralism as norm,' and the relationship between them. Rosenfeld defines pluralism in fact as "societies whose members adhere respectively to a multiplicity of conceptions of the good."<sup>103</sup> A 'conception of the good' in turn is "a particular ethic [that] amounts to a comprehensive integrated perspective. A conception of the good may be primarily religious, ethnic, cultural or

---

<sup>99</sup> As Tierney notes *pace* Kymlicka, "it was within liberalism itself that the real action took place": *ibid*, p.14.

<sup>100</sup> M. Rosenfeld (1998) *Just Interpretations: Law between Ethics and Politics* (Berkeley: Univ. of Calif. Press): Ch.7.

<sup>101</sup> *Ibid*: pp.216-24.

<sup>102</sup> *Ibid*: p.200.

<sup>103</sup> *Ibid*.

ideological.”<sup>104</sup> In Sri Lanka, therefore, both ethnic nations, other ethnic and religious communities, Marxists, liberals and even hegemonic ethnocrats represent conceptions of the good, in terms of the definition that an integrated perspective framed by a conception of the good prescribes certain intersubjective value preferences as determined by the ethical norms subscribed to by the members of that community.<sup>105</sup> Thus a society that is pluralist in fact is “a society composed of diverse ethnic, religious, cultural or ideological groups who do not see eye to eye concerning at least some fundamental ethical, legal, and political issues.”<sup>106</sup>

Rosenfeld’s phenomenology of pluralism extends beyond ‘communal pluralism’ defined in this way to include ‘individualistic pluralism’ based on individuals’ values and objectives.<sup>107</sup> The crucial factor here is the split between a conception of self and other, both in communal and individual terms. Both types of pluralism being incorporated within the definition of pluralism in fact, “all contemporary constitutional democracies can be deemed to be in fact pluralistic.”<sup>108</sup> Importantly, the split into self and other cannot be regarded as necessarily fixed or permanent, but rather, “this split is multiple, fragile, and context dependent” and must be understood in “relational terms.”<sup>109</sup> Accordingly, conceptions of the good in pluralism as fact settings “are never likely to remain rigid or immutable,” but “their actual degree of elasticity ultimately depends on the kind of polity involved.”<sup>110</sup>

“Greatest elasticity is likely to occur under ‘melting pot’ conditions in highly interactive societies typified by a broad-based intertwining of individualistic and communal pluralism. At the other end of the spectrum, least elasticity is likely to occur in societies that are predominantly communally pluralistic and that experience a very low level of intercommunal interpenetration.”<sup>111</sup>

---

<sup>104</sup> Ibid: p.204.

<sup>105</sup> Ibid; J. Habermas (1996) *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Trans. W. Rehg) (Cambridge, Mass: MIT Press): pp.255-6.

<sup>106</sup> Rosenfeld (1998): p.201.

<sup>107</sup> Ibid: pp.201-3; J. Rawls (1971) *A Theory of Justice* (Cambridge, Mass: Belknap Press): pp.92-4.

<sup>108</sup> Rosenfeld (1998): p.202.

<sup>109</sup> Ibid: p.203.

<sup>110</sup> Ibid: p.205.

<sup>111</sup> Ibid: p.205-6.

Leaving aside the question whether it qualifies as a ‘constitutional democracy’ or not, it is clear that the Sri Lankan polity can also be characterised as pluralistic in fact somewhere in the middle of the continuum of elasticity, but tending towards the less elastic end by virtue of its predominantly communally plural character. However, there is a substantial measure of inter-communal interaction and territorial intermingling, and the legal order recognises civil and political rights of all individuals equally, albeit subsumed within the ethnocratic regime of majoritarian hegemony discussed above. In other words, pluralism in fact does not correspond to pluralism as norm, which in turn “stands for the proposition that pluralism in fact is good and that it ought therefore to be encouraged and protected.”<sup>112</sup> In Rosenfeld’s account,

“Normative pluralism is distinguishable from both monism – roughly defined as the view that there is a single conception of the good that is correct and that all value preferences are to be judged in terms of that conception – and relativism – the view that all value preferences are ultimately purely subjective and so contextually bound to the conception of the good from which they emerge that it would be meaningless to gauge them from the standpoint of any other perspective. In other words, against monism, normative pluralism holds that the good extends beyond any single conception of the good; against relativism that not all conceptions of the good are equivalent as the mere projection of contingent perspectives.”<sup>113</sup>

This is a crucial normative proposition against the Sri Lankan ethnocratic regime inasmuch as the latter defends a simultaneously monist and relativist worldview in the pursuit of its hegemonic politico-constitutional agenda. It is monist in imposing its conception of the good on a society that is pluralist in fact, and it does so through relativist arguments about history and ethno-religious culture that rejects any universal conception of rights claims emanating from pluralism in fact. Similarly, if less egregiously, Sri Lankan proponents of modernist nation-building, because of their orthodox subscription to the monistic demos thesis, also represent an anti-

---

<sup>112</sup> Ibid: p.206.

<sup>113</sup> Ibid.

pluralistic monism in the face of the constitutional challenge of national pluralism. These two dominant perspectives have combined to present a monist obstacle to theorising a genuinely pluralist normative order that has not been overcome by either pluralist liberals or sub-state nationalists so far.

Before delving into the dialectics of comprehensive pluralism, however, a few associated sub-concepts need clarification. Firstly, comprehensive pluralism is a concept of substantive rather than methodological pluralism.<sup>114</sup> As such, it “embraces a particular conception of the good that prescribes inclusion and accommodation of as large a plurality of conceptions of the good as possible.”<sup>115</sup> It is not therefore indifferent towards multiple conceptions of the good as a relativist account would be, but in asserting a superiority of the value of pluralism, it comes “perilously close” to a monistic account. It is saved from this fate, however, by the fact that it “both acknowledges the value of other conceptions of the good and cannot dispense with them.”<sup>116</sup> Secondly, in order to better grasp the dialectic of comprehensive pluralism, we need to understand what Rosenfeld terms first and second order norms. Second-order norms are those emanating from comprehensive pluralism as a conception of the good, whereas each of the multiplicity of conceptions of the good constitutes first-order norms. Thus what the privileging of comprehensive pluralism as a conception of the good entails is a privileging of second-order norms over first-order norms. The import of this becomes clearer when we consider the ‘two logical moments’ through which the dialectical process of comprehensive pluralism operates.

Rosenfeld’s “comprehensive pluralism confronts the status quo through a dialectical process that involves two distinct *logical* moments.”<sup>117</sup> The first logical moment of the dialectic is a ‘negative’ one in which comprehensive pluralism imposes “strict equality and neutrality” among the “multiplicity of first-order norms vying for predominance.”<sup>118</sup> The aim of the negative moment thus is to radically equalise all

---

<sup>114</sup> For the distinction, see *ibid.*

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*: p.207.

<sup>117</sup> *Ibid.*: p.209; see also p.210, n.10.

<sup>118</sup> *Ibid.*: p.209.

competing conceptions of the good, and eliminate any existing hierarchy of inclusion and exclusion in the pluralism-in-fact *status quo*. However, the negative moment carried to its logical conclusion leads to comprehensive pluralism's self-destruction, because if "all first-order norms are completely neutralised through a levelling negation, then the very pursuit of pluralism would become meaningless. In the absence of a plurality of viable conceptions of the good, no first-order norms would remain for pluralism to protect."<sup>119</sup> It thus becomes necessary for comprehensive pluralism to "supplement its negative moment with a positive [moment]," the objective of which is to "foster readmittance of previously levelled and equalised conceptions of the good into the pluralist universe."<sup>120</sup> However, "[n]ot all conceptions of the good excluded in the course of...the negative moment can gain readmission in [the] positive moment."<sup>121</sup> Thus for example, the ethnocratic version of the Sinhala-Buddhist nation, which represents an anti-pluralist conception of monistic first-order norms, would *not* qualify for readmission into the reconstituted pluralist normative order, because to do so would be to invalidate all other competing first-order norms, including most prominently, the conception of the good represented by the sub-state Tamil nation. Moreover, even those conceptions of the good that qualify for readmission may not automatically hope to be reinstated to the same position they occupied before the equalisation.<sup>122</sup> Accordingly, while comprehensive pluralism does not preclude state endorsement of a particular religion,<sup>123</sup> and consequently it may be possible for Buddhism to be reinstated to the constitutional 'foremost place' it occupied before, this can only happen to the extent that that status, and the proponents that status, pose "no serious threat to other religions or to nonreligious conceptions of the good."<sup>124</sup>

---

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

<sup>123</sup> See *ibid*: p.211, n.10.

<sup>124</sup> *Ibid*: p.209. This is an acutely topical issue in Sri Lanka with the rise of anti-minority, regime-sanctioned Buddhist vigilante groups: A. Strathern, 'Why Are Buddhist Monks Attacking Muslims?', *BBC News Magazine*, 2<sup>nd</sup> May 2013; C. Haviland, 'The Hardline Buddhists Targeting Sri Lanka's Muslims', *BBC News Asia* 25<sup>th</sup> March 2013; H. Beech, 'The Face of Buddhist Terror', *Time*, 1<sup>st</sup> July 2013.

The normative order that is produced from the application and operation of this dialectic affords the space for the widest possible plurality of conceptions of the good consistent with the superior norm of comprehensive pluralism, but its major implication is that an *equality* of all such multiple conceptions of the good is inconsistent with the more fundamental commitment to *pluralism*. Given the centrality of this proposition to this thesis, it is worth quoting Rosenfeld *in extenso* on this point.

“Because comprehensive pluralism cannot equally readmit in its positive moment all the conceptions of the good that it has equally excluded in its negative moment, it inevitably falls short of its ideal of equal accommodation for all conceptions of the good. At best, comprehensive pluralism can undertake to better approximate equality among all first-order norms without ever reaching its goal of providing full equality among all first order norms.”<sup>125</sup>

Thus the inequality that is the product of comprehensive pluralism relates to those first-order norms that are *excluded* by the dialectic,<sup>126</sup> while the first-order norms that are readmitted into the pluralism-as-norm order enjoy full equality.<sup>127</sup> In the Sri Lankan case this implies that, with the majoritarian logic displaced in favour of pluralism, both majority and minority nations would enjoy equality as valid first-order norms. The exclusion of monist ethnocracy<sup>128</sup> and the inclusion of national pluralism into the new normative order of the state are both crucially necessary steps in the construction of a plurinational constitutional order in Sri Lanka.<sup>129</sup>

---

<sup>125</sup> Rosenfeld (1998): p.210.

<sup>126</sup> Sinhala-Buddhist ethnocracy as well as the now defeated militant/terrorist Tamil secessionism, which as Uyangoda has observed, was itself an ethnocratic project, would clearly be excluded by the application of the dialectic as conceptions of the good that are inconsistent with comprehensive pluralism. The more difficult question would be whether a peaceful and democratic form of sub-state nationalist *secessionism* would also be similarly excluded.

<sup>127</sup> Rosenfeld (1998): p.209.

<sup>128</sup> The monistic demos thesis would not be excluded by comprehensive pluralism, but its readmission would not reinstate its preeminent pretensions and it would now have to compete on equal terms with the first-order norms of plural nations as well as plurinationalism.

<sup>129</sup> Rosenfeld (1998): p.213.

However, it is important to bear in mind that comprehensive pluralism is a ‘counterfactual ideal’ of normative political philosophy that is aimed at overcoming the “historical contingency and perspectival partiality” of a given “spatiotemporal setting.”<sup>130</sup> Its importance lies in affording “a critical ideal that allows for a principled determination of how a polity that happens to be pluralistic in fact might be better stirred toward the objectives of substantive pluralism.”<sup>131</sup> Functional normativist constitutional theory, on the other hand, “speaks specifically to the on-going dynamics of constitutional activity”<sup>132</sup> and part of this context of constitutional practice is the relative positions of the Sinhala-Buddhist and Tamil nations within the historical and territorial space of the island. As preceding chapters have shown, the former’s dominance is not merely numerical, but extends to strong historic claims to a dominant position, and the Tamil assertion to constitutional rights claims based on nationhood, while entirely democratically valid, *cannot viably* be addressed without due regard to the spatiotemporal position of the majority. There is thus a useful distinction made by Rosenfeld between ‘limited’ and comprehensive pluralism that needs to be brought into this account. Limited pluralism, like comprehensive pluralism, is a model of substantive – as opposed to merely methodological<sup>133</sup> – pluralism, but unlike the latter, it is “prepared to accept existing hierarchies...while mainly preaching tolerance of a plurality of conceptions of the good and peaceful coexistence.”<sup>134</sup> As Rosenfeld helpfully concedes,

“Actual constitutions in established democracies tend to promote limited pluralism inasmuch as they make room for tolerance *without dislodging certain deeply entrenched traditions*. Comprehensive pluralism, on the other hand, is *unlikely to be embraced in actual constitutional practice* [but is an] apt normative standard for counterfactual reconstruction.”<sup>135</sup>

---

<sup>130</sup> Ibid: p.209.

<sup>131</sup> Ibid: p.207.

<sup>132</sup> S. Tierney, ‘*Sub-State Nations and the Constitutional State: Embedding Normative Principles within a Plurinational Constitution*’ in Welikala (2012): p.515. I have described ‘functional normativity’ as a method of constitutional theory in Chapter 1, *supra*.

<sup>133</sup> See Rosenfeld (1998): p.206.

<sup>134</sup> Ibid: p.207.

<sup>135</sup> Ibid: p.207, emphasis added.

Consistently with this, what is proposed in relation to the Sri Lankan case in terms of limited pluralism in *constitutional practice* is that the historical context mentioned above is factored into the equation. Consequently, while in the pluralist normative order that emerges from the ‘positive moment’ the two first-order norms represented by the majority and minority nations are strictly equal, translated into constitutional practice, the historic element necessitates an *inequality* of status between them, albeit in a pluralism-as-norm setting that did not exist before the ‘negative moment.’ This then is the theoretical norm of ‘unequal pluralism’ that constitutes the foundation for the articulation, in the next chapter, of a constitutional principle of *asymmetry* that can guide constitutional design with regard to autonomy, recognition, representation and reciprocity in the accommodation of national pluralism in Sri Lanka.

Before concluding this part of the argument, there is a final point to be gleaned from comprehensive pluralism in relation to the deployment of the ‘usable past’ that this thesis shares with Western plurinational constitutionalism.<sup>136</sup> From my earlier account of the pre-colonial state, it will be recalled that, contrary to the centralised unitary state appropriated by contemporary Sinhala-Buddhist nationalism as a non-negotiable constitutional postulate, the pre-colonial Sinhala-Buddhist galactic polity or mandala-state was hierarchical and encompassing in intent, but pulsating, fissiparous and asymmetrical in practice.<sup>137</sup> In Ronald Inden’s oft-quoted description, galactic polities comprised “continually reconstructed and reconstructing agents with both dispersed and unitary moments.”<sup>138</sup> Or in de Silva Wijeyeratne’s words, they “...exhibited a significant degree of decentralisation that received an ontological impetus through a cosmic order, which, although hierarchical in intent, was essentially non-bounded and so resistant to a determinant moment of closure.”<sup>139</sup> In my view, the type of normative order envisaged by comprehensive pluralism functions in a strikingly similar way. As Rosenfeld notes,

---

<sup>136</sup> See Chapter 3, *supra*.

<sup>137</sup> See Chapter 2, *supra*.

<sup>138</sup> R. Inden (1990) *Imagining India* (London: Blackwell): p.138 and Ch.6, also p.267.

<sup>139</sup> R. de Silva Wijeyeratne, ‘Buddhism, the Asokan Persona, and the Galactic Polity’ (2007) *Social Analysis* 51(1): pp.156-178 at p.158.

“[C]omprehensive pluralism, once unleashed, becomes engaged in a ceaseless dialectic marked by a constant succession of negative and positive moments, without ever reaching a final resting point. Indeed, since at the completion of every positive moment...some first-order norms are altogether left out and others included but displaced, there are bound to be calls for greater inclusiveness and equality, and hence a need for further negative levelling [and positive reinstatement].”<sup>140</sup>

Thus the ‘ceaseless dialectic’ of comprehensive pluralism can be regarded as recasting the ‘pulsating’ galactic logic of the pre-democratic state in a contemporary form. More specifically, we can draw the following relations between the two models. The principle of encompassment determined by Buddhist cosmology and the idea of *Sinhalē* in the pre-colonial state is replaced by the normative superiority claimed by the value of pluralism, which is in other words an *encompassment* all first-order norms by the second-order norms. The pre-modern principle of hierarchy, again determined by Buddhist cosmology and the doctrine of ‘tributary overlordship,’ while retaining a residual relevance in terms of the politico-historical relationship between the two nations, re-emerges as the democratically defensible principle of ‘unequal pluralism’ as outlined above. For these reasons, it can convincingly be argued that a normative order rooted in comprehensive pluralism is a modern re-characterisation of the best features of the old mandala-state, and further that, a plurinational democratic constitutional order anchored on these two foundations is both normatively sound and historically grounded.

I readily concede that the argument in respect of a meta-constitutional normative order in support of a putative plurinational constitutional order that I have just made is unlikely to meet with the approval of liberal nationalists and civic modernists with strong commitments in their different ways to the value of equality, or to federalists with strong commitments to the republican ideal of ‘non-domination.’<sup>141</sup> In response

---

<sup>140</sup> Rosenfeld (1998): p.210, see also n.8.

<sup>141</sup> H. Kong, ‘*Republicanism and the Division of Powers in Canada*’ (2014) *University of Toronto Law Journal* 64(3): pp.359-401 [draft paper presented at Edinburgh Centre for Constitutional Law, 1<sup>st</sup> June 2012.]

I reiterate the assumptions that have guided the direction of my argument in this thesis with respect to the historic spatiotemporal location of the two ethnic nations in relation to each other within the island. I have critiqued the ethnocentric dominance to which this unequal relationship has led, while trying to restore a more pluralistic interpretation to the past. In this light, it is my contention that the framework of comprehensive and limited pluralism outlined above provides the best possible normative foundation for a plurinational constitution in Sri Lanka, by foregrounding pluralism and asymmetry rather than an elusive and intangible equality. In addition to the exclusion of ethnocentric Sinhala-Buddhist nationalism from this new normative order by the application of the dialectic of comprehensive pluralism, I propose a further safeguard below by actively advocating a civic modernisation of the Sri Lankan state nation, which addresses the problem of its conflation with the Sinhala-Buddhist nation.

### **3.2 From Plurinational Union State to Plurinational State-Nation**

My final consideration in this chapter therefore is about the transformation at the level of the host-state that is required by the induction of plurinationalism into the Sri Lankan context, consistent with the overarching commitment to the unity of the state. While theorists of the Western plurinational state and liberal nationalism have also shown concern with maintaining the unity of the plurinational state and fostering the state national society,<sup>142</sup> consistent with general values of liberal autonomy and the politics of ‘rational persuasion,’<sup>143</sup> this concern does not translate into an unequivocal normative or constitutional principle against secession. As Will Kymlicka observed,

“A fundamental challenge facing liberal theorists ... is to identify the sources of unity in a democratic multinational state ... A.V. Dicey once said that a

---

<sup>142</sup> See Tierney’s ‘principle of representation’ and ‘principle of reciprocity’: Tierney (2006): pp.126-7; Keating (2001): pp.vi,ix; Kymlicka (1995): Ch.9.

<sup>143</sup> R. Dahl (1976) *Modern Political Analysis* (New York: Prentice-Hall): pp.45-6. See also Rawls (1971); J. Habermas (2002) *The Inclusion of the Other* (London: Polity Press).

stable multination federation requires ‘a very peculiar sentiment’ among its citizens, since ‘they must desire union, and must not desire unity’... Liberal theory has not yet succeeded in clarifying the nature of this ‘peculiar sentiment.’”<sup>144</sup>

This may seem an over-modest statement of liberal theory in view of the sophisticated discussion that precedes it,<sup>145</sup> and yet, something more than this seems clearly necessary in the Sri Lankan case. As already mentioned, a key empirical difference between a Western plurinational state and a South Asian one is that separatism is categorically off the constitutional agenda in the latter case *ab initio*. A pre-nation-state, ‘union state’ history is also not readily discernible. More specifically, due to the failure of post-colonial nation-building, the sharply-defined divisions determined by ethnic nationalisms, the injustice of the ethnocratic state, sub-state mistrust of central institutions, and the history of violent ethnonational conflict, there is a high probability that the radical autonomy of a plurinational constitution in the Sri Lankan case could lead to ethnic division and disintegration unless it is counterbalanced by guarantees for the integrity of the state-wide constitutional order that are stronger than the weak incentives contemplated by liberal plurinationalism. Such an eventuality would constitute a resounding failure of the thesis advanced in the present work, that both unity and autonomy can be secured by a plurinational constitution in Sri Lanka. At the same time, it is important to marshal those residual attachments to a united Sri Lanka and Sri Lankan identity that have survived protracted ethnic antagonism and conflict. As even R. Sampanthan, the most senior Sri Lankan Tamil nationalist politician put it recently,

“If there is justice and equality, and if there is a sense of belonging, if people are able to live in dignity and self-respect, we would all be looking towards a

---

<sup>144</sup> Kymlicka (1995): p.192.

<sup>145</sup> See also J.H. Carens (2000) *Culture, Citizenship and Community* (Oxford: OUP): pp.162-66; Guibernau (2013a): Ch.6.

Sri Lankan nationalism and a Sri Lankan nation, where you can be a Tamil but nevertheless a true, proud Sri Lankan.”<sup>146</sup>

A fresh approach is therefore needed, and above all, this involves a critical need to inculcate an inclusive, shared, state national society and national identity<sup>147</sup> that balances the constitutionalisation of sub-state national identity and autonomy. As Hugh Kearney pointed out in the UK case, “there has been a ‘British’ history over and above our ‘multi-national’ history” and therefore the central question of national and institutional pluralism is not so much ‘four nations *or* one’ as ‘four nations *and* one.’<sup>148</sup> Transposed to the Sri Lankan case, this approach can be articulated as recognising an overarching Sri Lankan national identity at the state level as well as the Sinhala and Tamil nations at sub-state level, together with the non-national diversity represented by the smaller ethnic and religious minorities. Moreover, such a statal nation, which is necessarily to be conceived mainly in civic-societal and constitutional terms rather than ethnic-communal and ascriptive terms, is a valuable opportunity to incorporate an element of civic-constitutionalist values into a plurinational system that is otherwise primarily concerned with ethnic forms of the nation. The concept of the ‘state-nation’ advanced by Alfred Stepan, Juan Linz and Yogendra Yadav seems to meet these requirements.<sup>149</sup> According to these authors,

“State-nation policies involve crafting a sense of belonging (or ‘we-feeling’) with respect to the state-wide political community, while simultaneously creating institutional safeguards for respecting and protecting politically salient sociocultural diversities. The ‘we-feeling’ may take the form of a

---

<sup>146</sup> R. Sampanthan, ‘The Ilankai Tamil Arasu Katchi (*Federal Party*) and the Post-Independence Politics of Ethnic Pluralism: Tamil Nationalism Before and After the Republic’ in Welikala (2012): Ch.24 at p.958.

<sup>147</sup> As already noted, this is a process that has already occurred in advanced liberal democracies, and which Western plurinational constitutionalists have been able to regard as a given.

<sup>148</sup> H. Kearney, ‘Four Nations or One?’ in B. Crick (Ed.) (1991) *National Identities: The Constitution of the United Kingdom* (Oxford: Blackwell): p.4.

<sup>149</sup> As I have noted in Chapter 4, this normative conception should be distinguished from the descriptive way in which ‘state-nation’ has been used elsewhere, e.g., M. Guibernau (1999) *Nationalisms: The Nation-State and Nationalism in the Twentieth Century* (Cambridge: Polity Press): Ch.6; P. Saravanamuttu, ‘Governance and Plural Societies: Sri Lanka’ in P.R. Chari (Ed.) (2001) *Security and Governance in South Asia* (Colombo: RCSS): Ch.6 at pp.130-4; P. Saravanamuttu, ‘Sri Lanka: The Intractability of Ethnic Conflict’ in J. Darby & R. MacGinty (Eds.) (2000) *The Management of Peace Processes* (London: Macmillan): pp.195-227.

defining tradition, history, and shared culture in an inclusive manner, with attachment to common symbols of the state, or of inculcating some form of ‘constitutional patriotism.’<sup>150</sup>

The state-nation model, while permitting plurinational-type sub-state autonomy, provides for a robust yet non-coercive framework for the preservation of the unity of the whole. It does so by providing an incentive for the modernisation of the state nation, *not* by a resumption of teleological, monistic nation-building,<sup>151</sup> but according to a specific politico-institutional logic that is meant to implant (or ‘craft’) a pattern of *multiple but complementary* collective identities across the plurinational polity. A central feature of a plurinational constitutional order of course is its facilitation of multiple national identities, but the value added by the state-nation is the insistence on ‘complementarity.’ The substance of this complementary and shared state-national identity is to be developed as the new ‘*mythomoteur*’<sup>152</sup> for the plurinational state-nation. There are two aspects of the “nested policy grammar”<sup>153</sup> of state-nation theory that are especially important in this regard. The first is that a plurinational state-nation, unlike the nation-state, eschews cultural assimilation but *actively promotes* political integration more robustly than the Western plurinational state, through a number of strategies including a common rights-based citizenship.<sup>154</sup> Secondly, by virtue of the plurinational state-nation’s recognition of sub-state national autonomy and other practical and symbolic acknowledgements of ethno-cultural identity, it becomes entitled to expect reciprocal loyalty not only legally to the state but also culturally to the state-wide polity (i.e., the state-nation).<sup>155</sup> A Sri Lankan state-nation conceived in these terms, and incorporated into a putative plurinational constitutional settlement, would represent the most significant democratic-constitutional tie that binds the whole together. It would also represent a ‘plurinationalism’ not merely for historically extant ethnic nations, but also a plurinationalism of civic *and* ethnic conceptions of nationality that co-exists within

---

<sup>150</sup> Stepan et al (2011): pp.4-5.

<sup>151</sup> See *ibid*: Ch.5, where the authors demonstrate how the pursuit of ‘hard nation-state policies’ in Sri Lanka led to secessionism and armed conflict.

<sup>152</sup> See Chapter 4, *supra*.

<sup>153</sup> *Ibid*: p.17.

<sup>154</sup> *Ibid*: p.21.

<sup>155</sup> *Ibid*: p.22.

the state, providing, as I will show in Chapter 6, a more responsive and democratic kind of state.

#### **4. Concluding Remarks**

In this chapter I have established a systematic analytical foundation for understanding the Sri Lankan state in terms of colonial modernity and ethnocracy, which lays bare its fundamental unfitness of purpose in a sociologically plurinational polity. On this basis, I then set out, through an historically contextualised application of comprehensive pluralism, a coherent normative framework for addressing the problem of national pluralism. I also established, through the concept of the state-nation, how the unity of the whole may be ensured, in the context of the radical pluralisation of the constitutional order involved in an accommodation of plural nations (i.e., Sinhala, Tamil and Sri Lankan) and conceptions of nationality (i.e., ethnic and civic) through the deployment of plurinational constitutional principles. From this emerged the principle of ‘unequal pluralism’ as the central norm of a putative pluralised normative order. It was suggested that such a normative principle would translate into a constitutional principle of asymmetry. The elaboration of this principle as a constitutional concept, and its relationship to plurinational values and principles as well as the Sri Lankan politico-historical context, is the task of the next chapter.

## CHAPTER 6

### NATIONAL PLURALISM AND CONSTITUTIONAL ASYMMETRY

1. Introduction
2. The Idea of Constitutional Asymmetry: A Short Conceptual Outline
3. The Meta-Constitutional Foundations of a Plurinational Sri Lanka: Asymmetrical Pluralism v. Constitutional Equality
  - 3.1 Asymmetrical National Histories, Democracy and Contemporary Constitutional Form
  - 3.2 Plural Nations, Asymmetrical and Relational Sovereignties
  - 3.3 Institutional Asymmetry: Guiding Principles
4. Concluding Remarks

#### 1. Introduction

A notable aspect of plurinational constitutionalism is its methodological attention to the socio-political asymmetries brought about by national pluralism – of histories, territories, national identities, societal cultures, political vernaculars and institutions – and its substantive concern to ensure that such differences are constitutionally accommodated in a manner consistent with liberal democratic values. As Michael Keating argues,

“If nationality is interpreted in a political mode as carrying the implication of a right to self-government of some sort, then the multinational state can resolve the issue through federalism, and the multiethnic state through consociationalism. The plurinational state, however, will be driven in the direction of more complex and asymmetrical arrangements.”<sup>1</sup>

---

<sup>1</sup> M. Keating, ‘Rival Nationalisms in a Plurinational State: Spain, Catalonia, and the Basque Country’ in S. Choudhry (Ed.) (2008) *Constitutional Design for Divided Societies: Accommodation or Integration?* (Oxford: OUP): Ch.11 at p.317.

Accordingly, a significant part of its reform agenda involves amendatory and interpretational critiques of existing institutions and conceptual assumptions, so that both normatively and structurally, the governing arrangements of the plurinational state have a greater capacity to respect and fully reflect major asymmetries within its constitutional framework. The plurinational state is therefore not only a model of constitutional pluralism, but also usually one of asymmetrical constitutionalism.<sup>2</sup> This latter field is of course both older and much broader than plurinational constitutionalism. From tentative and originally rather sceptical explorations in the study of federalism and federations,<sup>3</sup> asymmetrical arrangements and practices in diverse societies have today become a major scholarly concern among political scientists and constitutional lawyers,<sup>4</sup> and it is now a widely deployed strategy among constitution-makers dealing with ethnic conflict management, federalism, and other forms of territorial autonomy in deeply divided societies.<sup>5</sup>

There is therefore a rich seam of knowledge and comparative practice that can potentially inform constitution-making in Sri Lanka in addressing the asymmetrical demands of national pluralism. If such constitutional borrowing is to evade the trap

---

<sup>2</sup> M. Keating (2001) *Plurinational Democracy: Stateless Nations in a Post-Sovereignty Era* (Oxford: OUP): Ch.4; S. Tierney (2006) *Constitutional Law and National Pluralism* (Oxford: OUP): pp.96-7.

<sup>3</sup> C.D. Tarlton, 'Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation' (1965) *Journal of Politics* 27: pp.861-74. See also, W.S. Livingstone, 'A Note on the Nature of Federalism' (1952) *Political Science Quarterly* 67: pp.81-95; I.D. Duchacek (1970) *Comparative Federalism: The Territorial Dimension of Politics* (New York: Holt, Reinhart & Winston): p.288; R.L. Watts (1966) *New Federations: Experiments in the Commonwealth* (Oxford: Clarendon Press): pp.149-55, 176-7, 248-51.

<sup>4</sup> R. Agranoff (Ed.) (1999) *Accommodating Diversity: Asymmetry in Federal Systems* (Baden-Baden: Nomos); A. Mullins & C. Saunders, 'Different Strokes for Different Folks? Some Thoughts on Symmetry and Difference in Federal Systems' in B. de Villiers (Ed.) (1994) *Evaluating Federal Systems* (London: Juta): Ch.3

<sup>5</sup> See e.g., Y. Ghai & S. Woodman (Eds.) (2013) *Practicing Self-Government: A Comparative Study of Autonomous Regions* (Cambridge: Cambridge UP); M. Suksi (2011) *Territorial Autonomy: A Comparative Study in Constitutional Law of Powers, Procedures and Institutions* (Heidelberg: Springer); M. Weller & K. Nobbs (Eds.) (2010) *Asymmetric Autonomy and the Settlement of Ethnic Conflicts* (Philadelphia: Univ. of Penn. Press); D. Brancati (2009) *Peace by Design: Managing Intrastate Conflict through Decentralization* (Oxford: OUP); M. Burgess & J. Pinder (Eds.) (2007) *Multinational Federations* (London: Routledge); M. Weller & S. Wolff (Eds.) (2005) *Autonomy, Self-Governance and Conflict Resolution: Innovative Approaches to Institutional Design in Divided Societies* (London: Routledge); U.M. Amoretti & N. Bermeo (Eds.) (2004) *Federalism and Territorial Cleavages* (John Hopkins UP); J. Coakley (Ed.) (2003) *The Territorial Management of Ethnic Conflict* (2<sup>nd</sup> Ed.) (London: Frank Cass); H. Catt & M. Murphy (2002) *Sub-State Nationalism: A Comparative Analysis of Institutional Design* (London: Routledge); A. Reynolds (Ed.) (2002) *The Architecture of Democracy: Constitutional Design, Conflict Management and Democracy* (Oxford: OUP); A-G. Gagnon & J. Tully (Eds.) (2001) *Multinational Democracies* (Cambridge: CUP).

of the cherry-picking comparativism that has doomed many previous attempts at liberal constitutional reform,<sup>6</sup> however, it is necessary to establish the theoretical case as to why constitutional asymmetry is in the Sri Lankan case not merely useful, but also required by its circumstances. The central analytical argument of this thesis from the outset was the characterisation of the island as a multinational polity rather than one of mere ethnic and religious pluralism, and further, that a serious commitment to the central democratic norm of pluralism in such a context requires fundamental changes in both the conceptual underpinnings as well as the constitutional architecture of the Sri Lankan state. To this end, an historical argument by reference to the devolutionary antecedents in the pre-colonial state tradition was set out in Chapter 2, and a meta-constitutional normative foundation – in the form of the principle of ‘unequal pluralism’ – was established in Chapter 5. This chapter continues those discussions to a conclusion in presenting a theoretical framework for the consequential institutional reforms.

The presence of the Tamil sub-state national challenge, together with the absence of any sustained nationality claims among other minority groups, makes Sri Lanka an ethnically bi-national polity, the constitutional accommodation of which would require asymmetrical arrangements for the north and east of the island in which the territory claimed by the Tamil nation is situated. The asymmetry contemplated here is not merely in the recognition of a distinctive Tamil territorial nationality in symbolic or sociological terms. The normative and substantive demands that flow from that recognition require institutional arrangements for Tamil self-government and representation at the centre that would be different from sub-state arrangements in the rest of the island, making the constitutional architecture of the state inevitably asymmetrical.

While this constitutes the principal challenge, the need for asymmetrical arrangements does not end there. It was mentioned in passing in Chapter 2 that the initial constitutional demand for a proto-plurinational federation was made before the Donoughmore Commission not by Tamils but by a section of the Sinhalese, the

---

<sup>6</sup> See my observations on this issue in Chapters 2 and 3, *supra*.

Kandyans, who felt that their cultural distinctiveness, articulated in the form of a nationality claim, from the low-country Sinhalese required preservation through federal autonomy. Likewise, it was a Sinhalese politician, S.W.R.D. Bandaranaike, who first proposed the idea of federalism within Ceylon (as well as federation with India) even earlier in 1926.<sup>7</sup> In the post-colonial era, however, these memories of Kandyan and other regional distinctions have faded away, and the rise of Sinhala-Buddhist nationalism – and its control of the state and conflation of its own identity with that of the ‘Sri Lankan’ nation as whole – has homogenised the Sinhalese identity to an extent that it is now very unlikely that similar claims would arise in the future.

Yet at the same time there is evidence of a desire for devolution even in Sinhala-majority provinces, or at least for the retention of the Provincial Councils system introduced by the Thirteenth Amendment to the Constitution.<sup>8</sup> For example, in May 2008, at a ‘National Conference on Strengthening the Provincial Council System’, a statement endorsed by all Provincial Councils reaffirmed not only the current scheme of devolution, but also the need to go beyond the framework of the Thirteenth Amendment in devolving more powers to the Provincial Councils. Among a wide set of agreed recommendations, they requested the central government: (a) to transfer and fully implement powers devolved on the Provincial Councils by the Thirteenth Amendment; (b) to undertake further constitutional and statutory reforms to enhance devolution; and (c) to abolish central ministries which replicated devolved functions.<sup>9</sup> Thus as Ranjith Amarasinghe has observed:

---

<sup>7</sup> R. Edrisinha, M. Gomez, V.T. Thamilmaran & A. Welikala (Eds.) (2008) *Power-Sharing in Sri Lanka: Constitutional and Political Documents, 1926-2008* (Colombo: CPA): Ch.1.

<sup>8</sup> On the Provincial Council system, see R. Amarasinghe, A. Gunawardena, J. Wickramaratne & A.M. Navaratna-Bandara (Eds.) (2010) *Twenty Two Years of Devolution: An Evaluation of the Working of Provincial Councils in Sri Lanka* (Colombo: Institute for Constitutional Studies); K.C. Kamalabayson (2009) *Devolution of Powers: The Sri Lankan Experience* (Colombo: Kamalabayson Foundation); A. Welikala, ‘Devolution within the Unitary State: A Constitutional Assessment of the Thirteenth Amendment with reference to the Experience of the Eastern Province’ in Centre for Policy Alternatives (2010) *Devolution in the Eastern Province: Implementation of the Thirteenth Amendment and Public Perceptions, 2008-2010* (Colombo: CPA); Edrisinha et al (2008): Ch.17.

<sup>9</sup> Centre for Policy Alternatives (2008) *Strengthening the Provincial Council System* (Colombo: CPA): Part 2.

“It is indisputable that after two decades of operation the Provincial Councils have earned a niche in the political system of Sri Lanka. This system of political power centred in the provincial capitals, where the players engage in intense competition at the periodic elections has been accepted by the people as legitimate, even if it is yet to earn their respect as an efficient system of administration.”<sup>10</sup>

These devolution needs in Sinhala-majority areas are exceedingly modest compared to the Tamil-majority areas, and of course they are pleas for regionalism that are conceptually distinct from the Tamil *national* claim. But even these are constantly overridden by the centralising tendencies of the unitary state, ethnocentric practices, and the leader-centric structure of political parties.<sup>11</sup> The resulting tensions are however relatively easily managed within the greater unity cohering in the Sinhala-Buddhist identity (which also denotes an overall adherence to the unitary state) or by means of party political management and patronage, and increasingly, by the fear of repercussions from an authoritarian central government.<sup>12</sup> Nonetheless, this demonstrates that in a more democratic constitutional environment, even the Sinhala-majority provinces may desire some form of devolution, and further, that these demands may vary from province to province.<sup>13</sup>

The situation is different in the two provinces in which the population consists of a Tamil-speaking majority (and especially the Northern Province where ethnic Tamils are an overwhelming majority), because this is where territorial institutions meet the ethnonational divide within the island as between the majority and minority ethnic nations. But the constitutional issues in this region are also distinctive from a more ‘internal’ point of view. Tamil nationalists have used the term ‘Tamil-speaking peoples’ from the inception to encompass within the Tamil nation the Tamil-speaking Muslims, who constitute the second major community within the Eastern

---

<sup>10</sup> R. Amarasinghe, ‘*Provincial Councils under the 13<sup>th</sup> Amendment – Centres of Power or Agencies of the Centre?*’ in L. Marasinghe & J. Wickramaratne (Eds.) (2010) **13<sup>th</sup> Amendment: Essays on Practice** (Colombo: ICS): Ch.4 at p.131.

<sup>11</sup> Ibid: pp.131-2.

<sup>12</sup> See for the experience of the ethnically mixed Eastern Province: Centre for Policy Alternatives (2010).

<sup>13</sup> Centre for Policy Alternatives (2008): Part 2.

Province and in a small southern region of that province even constitutes a demographic majority.<sup>14</sup> The territorial claim to a Tamil majority homeland as encapsulating both the Northern and Eastern Provinces relies to a significant extent therefore on the acquiescence of the Muslims with the Tamil national claim.<sup>15</sup>

This has however always been a contentious matter between the two communities with the Muslims asserting a separate identity based on their Islamic culture and Arab heritage.<sup>16</sup> They have been concerned not only about the prospects of becoming a minority within a minority in a Tamil autonomous region, but also, given the dispersion of Muslims in the Sinhala majority areas, that their constitutional requirements are fundamentally different to that of the territorially concentrated Tamils of the north and east.<sup>17</sup> It is important also to recall that during the peace process of 2001-4 when extensive federal autonomy based on the right of internal self-determination of ‘Tamil-speaking peoples’ in the north and east was on the constitutional reform agenda, the Muslims proposed elaborate institutional arrangements to address their own aspirations separately from the Tamils,<sup>18</sup> and on one occasion even sought to make a distinctive nationality claim.<sup>19</sup> These were, however, claims made in the specific context of that peace process, whereas Muslim political relations with the majority nation and the state have more typically centred on what Farzana Haniffa has described as the practice of ‘goodwill politics.’<sup>20</sup>

---

<sup>14</sup> For critiques of the ‘Tamil-speaking peoples’ formulation, see H.L. de Silva (2008) *Sri Lanka A Nation in Conflict: Threats to Sovereignty, Territorial Integrity and Democratic Governance and Peace* (Colombo: Visidunu Prakashakayo): pp.331-334; E. Hobsbawm (1990) *Nations and Nationalism since 1780: Programme, Myth, Reality* (Cambridge: CUP): pp.6-7.

<sup>15</sup> In addition to the persistent and serious doubts about the historical claim to the east as part of the ‘Tamil traditional homeland’ raised by some historians and geographers, see K.M. de Silva (1995) *Separatist Ideology in Sri Lanka: A Historical Appraisal* Rev. 2<sup>nd</sup> Ed. (Kandy: ICES); G.H. Peiris (1991) ‘An Appraisal of the Concept of a Traditional Homeland in Sri Lanka’, *Ethnic Studies Report*, Vol. IX, No.1.

<sup>16</sup> A.R.M. Imtiyaz & S.R.H. Hoole (2011) ‘Some Critical Notes on the Non-Tamil Identity of the Muslims of Sri Lanka, and on Tamil–Muslim Relations’, *South Asia: Journal of South Asian Studies* 34(2):208; D.B. McGilvray & M. Raheem (2007) ‘Muslims Perspectives on the Sri Lankan Conflict’, *Policy Studies* 41 (Washington: East-West Centre); D.B. McGilvray (2008) *Crucible of Conflict: Tamil and Muslim Society in the East Coast of Sri Lanka* (Durham, NC: Duke UP).

<sup>17</sup> F. Haniffa, ‘Conflicted Solidarities? Muslims and the Constitution-making Process of 1970-72’ in A. Welikala (Ed.) (2012) *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Colombo: CPA): Ch.5.

<sup>18</sup> Edrisinha et al (2008): Chs.32,33.

<sup>19</sup> Ibid: Ch.31.

<sup>20</sup> Haniffa (2012): p.238.

In addition to this, there is the issue of the Indian Tamils dispersed across several of the Sinhala-majority provinces.<sup>21</sup> There is a limited territorial dimension to Indian Tamil claims to accommodation in relation to local government in the plantation districts of several of the central provinces, but in the main, their focus, like the Muslims, has been on more traditional practices of minority politics, especially the clientelist practice of securing executive office (and the attendant resources for patronage allocation) in exchange for communal vote blocs.<sup>22</sup>

Thus while my concern in this thesis is primarily with the Tamil national claim, even this brief survey of the broader context of communal pluralism and regional differences in Sri Lanka serves to illustrate the point that any comprehensive constitutional response to these conditions would necessarily have to employ a wide array of group-differentiated arrangements at state, sub-state, provincial and local government levels. The constitutional problems demanding attention are not restricted to the accommodation of the sub-state Tamil nation, and Tamil national autonomy entails significant implications for other communities, which in turn demand complex and asymmetrical solutions. Moreover, such arrangements would be asymmetrical not only because of the different types and extents of territorial autonomy required in different parts of the island, but also asymmetrical by virtue of the combination of territorial and non-territorial mechanisms that would have to be used in response to diverse claims made by plural nations and communities.<sup>23</sup>

In other words, a constitutional order premised on the normative value of respecting multiple 'contexts of choice'<sup>24</sup> cannot be built on the assumptions of either the monistic demos thesis or the atomised individual traditionally associated with the nation-state, nor on the exclusivist basis of ethno-cultural collectivities, but on an institutional complex of territorial and non-territorial institutions required by the

---

<sup>21</sup> A. Lawrence (2011) *Malayaha Tamils: Power Sharing and Local Democracy in Sri Lanka* (Colombo: SSA).

<sup>22</sup> P.P. Devaraj, 'Indian Tamils of Sri Lanka – Identity Stabilisation and Inter-ethnic Interaction' in Social Scientists' Association (1979) *Ethnicity and Social Change in Sri Lanka* (Colombo: SSA): pp.146-65.

<sup>23</sup> K. Bryan, 'Non-Territorial Federalism: A Panacea For Our Times?' in R. Edrisinha & A. Welikala (Eds.) (2008) *Essays on Federalism in Sri Lanka* (Colombo: CPA): Ch.XI.

<sup>24</sup> W. Kymlicka (1995) *Multicultural Citizenship* (Oxford: OUP): pp.82-84.

multifaceted plurinational constitutional order combining both ethnic and civic elements that I have outlined in Chapter 5. The design of such a complex system requires the close empirical consideration of the sociological reality of communal diversity, understood as distinct but overlapping ‘deliberative communities’<sup>25</sup> represented by the two ethnic nations, by the other communities, and by the overarching civic Sri Lankan nation. Thus for example, the autonomy of the two ethnic nations require to be balanced by the demands of dispersed minorities located within their territorial boundaries, in the normative context of the fundamental Sri Lankan constitutional order. I am guided in this approach by Kyle Scott’s direction that, “...increasing empathy and trust among citizens is not outside the purview of a constitution’s powers. A constitution that requires the collaboration and deliberation from all sides is one that will temper extremism and discrimination.”<sup>26</sup> And if this entails a measure of constitutional and political complexity in devising governing arrangements, then that seems a price worth paying in securing a just and democratic constitutional order for Sri Lanka’s plural polity. For all these reasons then, it is clear that asymmetrical arrangements can be regarded as not only useful, but also necessary and unavoidable in any pluralist constitutional reform of the Sri Lankan state. That general hypothesis should be kept in mind in turning to the specific issues arising from *national pluralism*.

In Section 2 below, I set out a brief conceptual outline of constitutional asymmetry drawing from the explanatory and normative literature, as a starting point to the more context-specific discussion to follow. Section 3 contains the substance of the argument about how constitutional asymmetry can be used in accommodating national pluralism according to a specifically plurinational logic in Sri Lanka. The overarching argument that this section of the discussion seeks to establish is the point mentioned in various places in the preceding chapters, and especially towards the end of Chapter 5, that, departing from the Western model of the plurinational state, a *norm of unequal pluralism* (or ‘asymmetrical pluralism’) rather than a *norm of constitutional equality* provides the more viable meta-constitutional basis upon

---

<sup>25</sup> D. Miller (2000) *Citizenship and National Identity* (Cambridge: Polity Press).

<sup>26</sup> K. Scott (2011) *Federalism: A Normative Theory and its Practical Relevance* (New York: Continuum Books): p.131.

which the sub-state national challenge can be met in Sri Lanka. This argument can be sustained across three sites of theoretical enquiry.

Firstly, the historical dimension of asymmetry concerns the way in which past experience – the ‘usable past’ – can be used to defend asymmetrical institutions in the present. In Western plurinational constitutionalism, historiographical arguments reinterpreting the plurinational state as a ‘union state’ seek to establish the *equality* of the union’s constituent nations. In Sri Lanka by contrast, it has been suggested that the pursuit of equality would be difficult and potentially self-defeating given the particularities of political history and the nature of nationalisms involved.<sup>27</sup> In Chapter 2, I explored the pre-colonial antecedents of pluralism, which, while providing an important corrective to contemporary Sinhala-Buddhist nationalists’ version of state history, nonetheless supports an *hierarchical* conception of multiple national spaces within the polity, rather than one grounded on equality. Building on this further in Chapter 5, through the use of the concepts of comprehensive and limited pluralism, I set out an alternative normative basis to political liberalism and liberal nationalism that could anchor the constitutional accommodation of national pluralism in Sri Lanka, but which would not guarantee equality between such nations. I bring all these contentions together here to suggest that a constitutional principle of unequal pluralism would be best served by a structure of asymmetrical institutions. This argument represents a substantial departure from Western plurinational constitutionalism, inasmuch as constitutional asymmetry is here normatively defended by reference to pluralism rather than equality.

Secondly, asymmetry is not merely a descriptive concept but also reflects an important normative dimension in plurinational contexts in respect of the issue of sovereignty. A genuinely plurinational constitutional order is founded on a plurality of constituent powers and continuing sovereignties, not on a monistic (and hence majoritarian) conception of sovereignty. Moreover, contrary to the traditional theory of the unitary nation-state in which the state assumes sovereignty once constituted, in

---

<sup>27</sup> D. Jayatileka, ‘From Necessary War to Sustainable Peace in Sri Lanka’ *Groundviews*, 27<sup>th</sup> May 2010; M. Roberts, ‘Ethnic Conflict in Sri Lanka and Sinhalese Perceptions: Barriers to Accommodation’ (1978) *Modern Asian Studies* 12(3): pp.353-76.

plurinational constitutionalism sovereignty is understood in ‘relational’ terms, requiring the state to respect the democratic wishes of the multiple deliberative communities that are its constituent peoples on a continuing basis. This pluralised and relational conception of sovereignty, with implications for both constituent power and constituted authority, is therefore a crucial asymmetrical aspect of a plurinational constitutional order.

With regard to Sri Lanka, this argument must be made in a regional context that is fundamentally different from especially the ‘late-sovereign’<sup>28</sup> plurinational states within the European Union, in which sub-state nations pursue their constitutional agendas for autonomy, recognition and representation on multiple sites of constitutional and normative order: below the state, at the level of the state, and beyond the state. In the Sri Lankan and South Asian context, no comparable erosion of the traditional sovereignty claims of the nation-state has taken place at the supra-state level. If anything, as mentioned in Chapter 3, the post-war political realignment of the Sri Lankan state is tending towards the trend that has been described as the ‘Eastphalian’ global order, in which traditional doctrines of the Westphalian system, chief among them state sovereignty, are being further reified and entrenched.

The reconfiguration of sovereignty involved in the accommodation of plural nations within the state therefore must contend with a much stronger sense of external and internal state sovereignty, and the absence of any meaningful institutional-normative order above the state.<sup>29</sup> The pluralisation of sovereignty is also, in the context of Sri Lanka’s narrow positivist and ideologically centralist legal culture outlined in Chapter 3, a highly radical and to some an incomprehensible or even subversive proposition. Finally, the orthodox rendition of sovereignty as a concept inseparable from the state has been perpetuated by separatist Tamil nationalists themselves, for whom the ultimate goal is the creation of a separate nation-state, not accommodation

---

<sup>28</sup> See N. Walker, ‘Late Sovereignty in the European Union’ in N. Walker (Ed.) (2003) *Sovereignty in Transition* (Oxford: Hart): pp.3-32. See also Tierney (2006): p. 88, fn.37 and p.83, fn.10.

<sup>29</sup> Except in the amorphous sense of the existence of an ‘international community’ that may sometimes exert pressure for reform, but which acts within the traditional doctrines, practices and institutions of the international legal order.

within the Sri Lankan state.<sup>30</sup> For all these reasons, staking the re-conceptualisation of sovereignty in the manner contemplated here is the major issue of secession, the threats and fears induced by which must be adequately addressed if plurinational reforms are to succeed.

Thirdly, the institutional dimension of asymmetry concerns the guiding principles of autonomy, recognition, representation and reciprocity that form the basis for concrete design choices in building a multi-level constitutional system. It is not the intention here to make recommendations with regard to the distribution of specific powers, functions and obligations, or how particular institutions should be designed; partly because that would presume to do what a formal constitution drafting process ought to undertake, and partly because the actual drafting of a constitution is a secondary matter at this stage. Indeed the design of such a process is a separate exercise in itself, requiring close consideration of matters such as participation, representation, decision-making procedures, validation mechanisms, and other aspects of the relationship between the process of constitution-making and the substance of the eventual constitution,<sup>31</sup> all of which are rendered more complex, at least from the perspective of orthodox monistic assumptions about the demos, popular sovereignty and constituent power, by the fact in multinational contexts that more than one nation is a stakeholder in the process.<sup>32</sup> I do not deal with these process issues here. Rather, the aim is to help define, structure and discipline the substantive parameters of such a process, or at least a broader ‘constitutional conversation’<sup>33</sup> with regard to the accommodation of plural nations, by elaborating the content of the guiding principles mentioned above. As noted, institutional design in the Sri Lankan context defies symmetrical and generic solutions if competing group-differentiated claims are to be addressed in a manner that respects democratic pluralism.

---

<sup>30</sup> A. Welikala, ‘*The Sri Lankan Conception of the Unitary State: Theory, Practice and History*’ in A. Amarasingham & D. Bass (Eds.) (forthcoming, 2014) *Post-War Sri Lanka: Problems and Prospects* (Lexington, KY: Univ. of Kentucky Press)

<sup>31</sup> H. Lerner (2011) *Making Constitutions in Deeply Divided Societies* (Cambridge: CUP); M. Brandt, J. Cottrell, Y. Ghai & A. Regan (2011) *Constitution-making and Reform: Options for the Process* (Geneva: Interpeace).

<sup>32</sup> See S. Tierney, ‘*We the Peoples*’: *Constituent Power and Constitutionalism in Plurinational States*’ in M. Loughlin & N. Walker (Eds.) (2007) *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* (Oxford: OUP): Ch.12.

<sup>33</sup> V. Hart, ‘*Democratic Constitution Making*’, USIP Special Report 107, July 2003 (Washington: United States Institute of Peace): p.3.

But how do the plurinational constitutional design principles mentioned above, which have been developed in the political, historical and legal context of Western liberal democratic states, work in the different context of Sri Lanka? My purpose in this chapter is to clarify and articulate these three dimensions of asymmetry so that a coherent and comprehensive theoretical basis is laid out for the construction of a plurinational constitution.

## **2. The Idea of Constitutional Asymmetry: A Short Conceptual Outline**

Despite the daily observable evidence of ‘deep diversity’<sup>34</sup> and asymmetries of ethnic relations, both unitarists and federalists in Sri Lanka engage in constitutional discourse as if the rectilinear and orderly concepts of the Westphalian nation-state are a reality. As Keating rightly remarked, “Asymmetry is untidy and irrational to those whose frame of reference is the nation-state. They may also see it as an affront to the equality of citizenship rights, giving undue privileges to one part of the state or one group of citizens.”<sup>35</sup> Confronted with the reality of the multinational and ethnically plural polity, however, this approach is not only unnecessarily rigid and exclusionary, but also analytically misleading in material ways. Western plurinational constitutionalism seeks to overcome the artificiality of the approach by highlighting existing asymmetric features such as the preservation of historic rights of sub-state nations at the establishment of the union state. In the absence of comparable historical resources, this exercise has to be conceived differently in Sri Lanka, and the purpose of the following discussion is to set out the conceptual and methodological basis with which to approach asymmetrical constitutional design.

The scholarly literature on asymmetrical features and practices in multi-level systems is dominated by comparative federalism studies. Nevertheless, this work provides a number of useful insights for our purposes, in both conceptual and methodological

---

<sup>34</sup> C. Taylor, ‘*Shared and Divergent Values*’ in R.L. Watts & D. Brown (Eds.) (1991) *Options for a New Canada* (Toronto: Univ. of Toronto Press): pp.75-6.

<sup>35</sup> Keating (2001): p.123.

terms. Conceptually, it draws attention to key distinctions and categories that inform much of the discussion to follow below, and methodologically, it shows us how to approach asymmetrical multi-level systems as a separate category of polity notwithstanding wide divergences between individual cases and experiences. One of the first and most important issues here is the well-established conceptual distinction between ‘federations’ and ‘federalism’.<sup>36</sup> The former denotes a particular category of state, whereas the latter is a much broader concept that captures a wider variety of multi-level systems that may not formally be classified as federal.<sup>37</sup> Thus for example, Neil MacCormick has observed that even before devolution, the United Kingdom has historically displayed “...a federalism of political management and judicial separation rather than a federalism of constitutional form,”<sup>38</sup> and Luis Moreno has noted in the *Estado de las Autonomías* in Spain a “plural and asymmetrical reality” that could be seen as reflecting a “federalising philosophy.”<sup>39</sup> Consequently, we can make use of analyses of federal-type asymmetrical practices in outlining a concept of constitutional asymmetry in the Sri Lankan case, without necessarily pre-committing to federation as a constitutional form in giving expression to plurinational principles.

Conceptual treatments of asymmetry focus on descriptive analyses that identify certain preconditions for its occurrence, as well as asymmetrical outcomes of particular institutional arrangements. They also include normative arguments for asymmetrical arrangements, which are mostly concerned with multinational federations. According to Michael Burgess, federalism is likely to be advocated in polities which share certain ‘preconditions’. These include the existence of political cultures and traditions that advocate federalism in social, philosophical and constitutional discourses; social cleavages like religious, linguistic and ethnonationalist pluralism, especially if sub-state national or regional mobilisation is territorially based; and from a political economy perspective, the socio-economic

---

<sup>36</sup> P. King (1982) *Federalism and Federation* (London: Croom Helm).

<sup>37</sup> For a widely accepted definition of these terms, see M. Burgess (2006) *Comparative Federalism: Theory and Practice* (London: Routledge): p.2.

<sup>38</sup> N. MacCormick (1999) *Questioning Sovereignty: Law, State, and Nation in the European Commonwealth* (Oxford: OUP): p.60.

<sup>39</sup> L. Moreno, ‘Asymmetry in Spain: Federalism in the Making?’ in Agranoff (1999): Ch.IX at pp.149,151.

configuration of the polity and its demographic patterns.<sup>40</sup> With regard to asymmetrical outcomes in the operation of federal-type systems, Burgess makes several general observations that have importance for us.

“First, it is necessary to acknowledge different kinds of asymmetrical relations and different degrees of asymmetrical outcomes. Second, it is important to distinguish between two types of asymmetry that occur in federal systems, namely *de facto* and *de jure*. The former refers to asymmetrical practice or relationships which result from the impact of the socio-economic and cultural-ideological preconditions ... while the latter is formally entrenched in constitutional and legal processes so that constituent state units are treated differently under the law.”<sup>41</sup>

He also notes that the empirical focus in analysing the types of asymmetry identified above is on ‘horizontal’ asymmetry, that is, the differential relationships between constituent units, and between constituent units and the central government.<sup>42</sup> I have already noted the different kinds and degrees of asymmetry that arise in the Sri Lankan case. The distinction between *de facto* and *de jure* asymmetry is particularly relevant for us, as this defines the very purpose of plurinational constitutionalism: it seeks to provide the constitutional resources (analytical, normative and structural) in building the most appropriate *de jure* model for the *de facto* reality of national pluralism. And in considering asymmetry in this discussion, we are concerned with its horizontal aspect as defined by Burgess.

For plurinational constitutionalists, the normative foundations of asymmetrical arrangements are particularly important because these are the arguments which provide a deeper foundation of political morality to constitutionalising asymmetry beyond purely instrumental or practical rationales. As Alain Gagnon and Charles Gibbs have suggested, there are three types of normative argument that are generally presented in defence of asymmetry, all of which resonate closely with plurinational

---

<sup>40</sup> Burgess (2006): pp.215-6.

<sup>41</sup> Ibid: p.217.

<sup>42</sup> Ibid.

constitutionalism. In this typology, the communitarian principle evokes the importance of communities in social life in similar ways to plurinational constitutionalism's arguments about the sub-state nation as a 'deliberative community' that must receive constitutional recognition.<sup>43</sup> The functional principle relates to the necessity of asymmetries in multi-level arrangements in addressing the needs of a diverse and multinational polity.<sup>44</sup> The democratic principle, which is defined in terms similar to the way plurinationalism locates itself within broader debates in liberal democratic theory, is particularly important to us. As Gagnon and Gibbs argue, asymmetric federalism in multinational polities,

“...has been credited with enhancing the liberty of individuals within a society, encouraging public participation in the decision-making process, establishing legitimacy in segmented states, and promoting the equality of citizens.”<sup>45</sup>

These then are the basic conceptual tools which help design and justify constitutional asymmetry in multinational polities. I now turn to the Sri Lankan context in more detail.

### **3. The Meta-Constitutional Foundations of a Plurinational Sri Lanka: Asymmetrical Pluralism v. Constitutional Equality**

The following discussion addresses the idea of asymmetry in three key areas of constitutional concern in the accommodation of national pluralism in Sri Lanka. These are the issues arising from asymmetries of multiple national histories and their relationship to contemporary constitutional form, the issues arising from reconceiving sovereignty in plural and relational terms (and the related but

---

<sup>43</sup> A-G. Gagnon & C. Gibbs, 'The Normative Basis of Asymmetrical Federalism' in Agranoff (1999): Ch.V at pp.78-83. See also F. Requejo, 'Political Liberalism in Multinational States: The Legitimacy of Plural and Asymmetrical Federalism' and A-G. Gagnon, 'The Moral Foundation of Asymmetrical Federalism: A Normative Exploration of the Case of Quebec and Canada' in Gagnon & Tully (2001): Chs.4,13.

<sup>44</sup> Gagnon & Gibbs (1999): pp. 83-85.

<sup>45</sup> Ibid: p.85.

conceptually distinct issue of secession), and finally, the heuristic principles of constitutional organisation that ought to inform the design of a plurinational constitution. The discussion engages several of the general concepts that underlie all constitutions and the discipline of constitutional law more broadly, such as political community, sovereignty, legitimacy, democracy and so on, but its purpose is to clarify these general concepts as they relate to the specific circumstances of a multinational polity. From this emerges a series of propositions that form what might be called the ‘meta-constitutional foundations’ of a plurinational Sri Lankan constitutional order, which describe those foundational concepts and superior values (some of which may possibly remain unwritten) that inform the making, interpretation and implementation of such a constitution.<sup>46</sup>

### 3.1 Asymmetrical National Histories, Democracy and Contemporary Constitutional Form

In Western plurinational constitutionalism, underpinning arguments for asymmetrical institutional structures is a deeper normative claim to the *constitutional equality* of the constitutive nations of the plurinational state. As Stephen Tierney maintains, if “...plurinational states [...] share one generic feature in terms of constitutional identity, it is that these states are founded upon the principle of a union of free and equal nations...”<sup>47</sup> Even as citizens subscribe to ‘hierarchies of belonging’ at the level of personal loyalty to and identification with sub-state and statal nations,<sup>48</sup> *constitutionally* the “...nations within the state relate to one another *égal à égal*...”<sup>49</sup>

---

<sup>46</sup> This exercise is distinct from Neil Walker’s idea of ‘metaconstitutionalism’, which he has proposed in the European context to redefine the scope and nature of constitutional law in light of institutional and normative developments that have eroded the traditionally state-centred focus of the discipline. See N. Walker, ‘*Scottish Self-Government and the Unitary Constitution*’ in L. Farmer & S. Veitch (Eds.) (2000a) *The State of Scots Law* (Edinburgh: T & T Clark): pp.112-3; N. Walker, ‘*Flexibility within a Metaconstitutional Frame: Theoretical Reflections on Flexibility and the Future of Europe*’ in G. de Burca & J. Scott (Eds.) (2000b) *Constitutional Change in the EU: From Uniformity to Flexibility?* (Oxford: Hart): Ch.2.

<sup>47</sup> Tierney (2007): p. 234.

<sup>48</sup> M. Guibernau (2013a) *Belonging: Solidarity and Division in Modern Societies* (Cambridge: Polity Press): Chs.2, 6; A. Henderson (2007) *Hierarchies of Belonging: National Identity and Political Culture in Scotland and Quebec* (Montreal: McGill/Queen’s UP).

<sup>49</sup> Tierney (2006): p.235. See also Kymlicka (1995): pp.108-115.

The aim here is not merely to uncover the mono-national pretensions of the host state in favour of a plural conception of national identities, but also to establish that, consistent with liberal democracy, plural nations in a multinational polity should enjoy equal politico-legal status in terms of recognition as well as autonomy and representation. As Ferran Requejo and Miquel Caminal argue,

“... the key question for a plurinational democracy is to establish, not how the *demos* can become a *cratos* – that would be the traditional view of democracy – but how different *demoi* (majorities and minorities) that co-exist within the same democracy can be politically and constitutionally recognised and accommodated on equal terms.”<sup>50</sup>

As I have outlined in Chapter 3, this claim to equality is substantiated in constitutional theory in two steps. Firstly, with historiographical arguments that critique the monistic *demos* thesis as well as the functionalist equation of nation and state that have taken root in Western nation-states in the modern era, and reinstating original constitutional self-understandings of the state as a union of constitutive nations.<sup>51</sup> This historical reimagining is reinforced, secondly, with normative arguments for a “...more refined interpretation of the most basic values of the liberal and democratic tradition (liberty, equality, pluralism, and justice) than that offered by traditional constitutionalism.”<sup>52</sup> Thus the host state must constitutionally reflect its plurinational character not only if it is to remain true to its historical origins, but also because, as a liberal democracy, it must normatively respect the ‘variations in empirical reality’<sup>53</sup> of the coexistence of multiple nations rather than a single *demos* within the state.<sup>54</sup>

---

<sup>50</sup> F. Requejo & M. Caminal, ‘*Liberal Democracies, National Pluralism and Federalism*’ in F. Requejo & M. Caminal (Eds.) (2011) *Political Liberalism and Plurinational Democracies* (London: Routledge): Ch.1 at p.5.

<sup>51</sup> McCormick (1999): Ch.4; Keating (2001): Ch.2; Tierney (2006): pp.6-8; Kymlicka (1995): pp.116-20.

<sup>52</sup> Requejo & Caminal (2011): p.5.

<sup>53</sup> *Ibid.*

<sup>54</sup> Tierney (2006): p.54.

A central normative aim of plurinational scholars in this exercise is thus to *extend the norm of equality* (including the ancillary principle that equal respect might require differential treatment), which is well established in relation to the equal treatment of *individuals* within fully modern nation-states, to the multiple *nations* as well. In the Western context, therefore, these debates take place within liberal political philosophy about how best to realise the uncontested ultimate good of equality, and in democratic politics within a shared subscription to “general notions of prudence – that is, understanding, deliberation, and accommodation.”<sup>55</sup> Asymmetrical institutions are in this sense justified because they redress historic, economic, democratic, or other disparities of power and symbolic recognition, with a view to ensuring equality between intra-state nations consistent with the plurinational reinterpretation of constitutional history and liberal justice. In other words, “If national communities are asymmetrical, then asymmetrical constitutions can be defended on liberal and democratic grounds”<sup>56</sup> because asymmetrical institutions are part of the constitutional package that delivers recognition on a footing of equality for hitherto submerged nations.

While it seems more than possible to make a theoretical case for present-day plurinationalism purely on liberal normativism, it is significant that theorists of plurinational constitutionalism rely so substantially on history. This is partly because the early modern histories of state-formation in so many of the contemporary plurinational states are susceptible to persuasive plurinational and pactist readings,<sup>57</sup> and partly because the re-emergence of sub-state nationalisms has belied the historical determinism of the classical modernist accounts of both nations and states.<sup>58</sup> The historical turn in constitutional theory, however, is also important for contextualising otherwise purely abstract normative arguments within a concrete political imaginary. This is an exercise (to reframe it in Anthony D. Smith’s terminology) in deconstructing what was in the post-industrial modern era the

---

<sup>55</sup> M. Loughlin, ‘*Constitutional Theory: A 25<sup>th</sup> Anniversary Essay*’ (2005) *Oxford Journal of Legal Studies* 25(2): pp.183-202 at p.199. See also S. Benhabib (2002) *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton: Princeton UP).

<sup>56</sup> Keating (2001): p.viii.

<sup>57</sup> Ibid: Ch.2.

<sup>58</sup> Tierney (2006): Chs.2,4.

dominant ‘*mythomoteur*’ of the monistic demos, and rearticulating it so as to accommodate a plurinational ‘myth-symbol complex’ for the state.<sup>59</sup>

It is in this latter sense that the historical focus of plurinational constitutionalism is most germane to the Sri Lankan case, inasmuch as the cogency of arguments for the pluralisation of the constitutional order can be amplified if they can be historically and culturally contextualised. This is highlighted by the experience of recent failures of federalist constitutional reform efforts in Sri Lanka, which were affected by three types of errors. Firstly, federalism was advocated by reference to ideologically liberal values and concepts, and the experience of (mostly) Western federations, rather than indigenous historical experience and intellectual resources. It could thus be rejected as a foreign constitutional model, based on Western political ideals, with no resonance in local traditions. Secondly, federalism was heavily associated with Tamil nationalism, including (if falsely) its secessionist and terrorist manifestations. It could thus be rejected as a capitulation to an overweening minority that could potentially use federal autonomy to break up the state. Thirdly, federalist critiques of majoritarian nationalism and its constitutional claims to the state have been etic rather than emic, i.e., from the extraneous normative perspective of (Western) liberalism rather than from within the world of Sinhala-Buddhist nationalism. There were several political consequences to this strategy, including the alienation of ordinary Sinhala-Buddhists from federalist arguments. But the least appreciated, and for constitutional theory, the most important consequence was that it took Sinhala-Buddhist nationalists’ rhetoric at face value, with the result that especially the *merits* of the latter’s *historiographical* arguments with regard to unitary constitutional form and order largely escaped critical scrutiny. The foregoing discussion in this thesis has tried to avoid these pitfalls in a number of ways, but specifically by following plurinational constitutionalism’s methodological attention to history, and by mooring normative arguments for accommodating national pluralism to that history.

Thus, in Chapter 4, the conceptual distinction between nations and nationalisms was drawn upon in order to separate the hyperbolic historiographical claims of

---

<sup>59</sup> A.D. Smith (1986) *The Ethnic Origins of Nations* (Oxford: Blackwell): pp. 57-68. These issues have been discussed at length in Chapter 4, *supra*.

contemporary Sinhala-Buddhist *nationalism* from the history of the Sinhala-Buddhist *nation*. This built on the historical exploration of the island's state tradition in Chapter 2, which yielded two main insights. Firstly, that the historiographical arguments of post-colonial ethnocrats in support of their ideological commitment to the centralised unitary state are mostly self-serving fallacies (indeed, as should be obvious, the unitary state is a constitutional concept that is very much a part of the colonial inheritance, which is otherwise anathema to Sinhala-Buddhist nationalists). In contrast, the centre-periphery relations in the galactic state form that characterised the pre-British kingdoms were pulsating, devolutionary and asymmetrical, allowing substantial practical autonomy at the periphery including in Tamil chieftaincies in the Vanni. Secondly, notwithstanding this, it was established that in the absence of a strong concept of territoriality in the galactic model, cohesion was maintained by the principles of hierarchy and encompassment, that is, by the administrative practices of tributary overlordship and the hierarchical inclusion of all including Tamils within the kingly domain. This revealed a spatiotemporal picture of the island in which the Sinhala-Buddhists could certainly claim a dominant position, but the Tamils likewise could claim significant autonomy at the periphery. Accordingly, in Chapter 5, using the concepts of comprehensive and limited pluralism, a systematic normative foundation was laid out for the accommodation of plural but historically unequally placed nations in the modern constitutional order.

As noted in those discussions, these enquiries necessitate two departures from Western plurinational constitutionalism. Firstly, the historical enquiry did not provide any evidence with which to reconceive the Sri Lankan state as a union state, and consequently, to reconceptualise the majority and minority nations on terms of constitutional equality. However, it did provide evidence of a highly pluralistic Asian state form that can be used to contextualise the constitutional accommodation of ethnonational pluralism in the present, in part by demonstrating how incongruous the contemporary ethnocratic state is with the Sinhala-Buddhist national past. Secondly, the normative enquiry established that, not only are there more appropriate philosophical alternatives to political liberalism for purposes of constitutional theory in the Sri Lankan case, but also that, in keeping with the findings of the historical

enquiry, it is more useful to foreground asymmetrical pluralism, rather than a dogmatic adherence to equality, in constitutional approaches to the claims of competing nations.

What then would be the character of a plurinational constitution informed by these perspectives? At the heart of such a constitutional order would be a balance between two competing dynamics – the autonomy of the sub-state Tamil nation, and the hierarchy of status dictated by the historical predominance of the Sinhala-Buddhist nation – both of which demand an asymmetrical institutional structure.<sup>60</sup> On the one hand, it would recognise the fact of two ethnic nations (together with all the other types of pluralism) as the socio-political foundation of the constitutional state, and it would affirm the protection and promotion of national, communal and individual pluralism as one of the cardinal normative values of the state. It would therefore reject the mono-national thesis, and acknowledge the scope for multiple national identities to which an individual can give allegiance (e.g., Tamil *as well as* Sri Lankan, not one *or* the other). Throughout the constitutional order, the nation and the state would be treated as discrete concepts, influencing the way in which the state's symbols, social foundations and sources of democratic authority (sovereignties) are articulated, and structurally, how the state's governing institutions are constructed. This would not be inconsistent with a commitment to a common citizenship and the fundamental rights of citizenship, including the equal legal treatment of individuals state-wide, notwithstanding asymmetrical territorial jurisdictions. Moreover, a plurinational constitution would reflect a commitment to an overarching Sri Lankan 'state-nation' (as distinct from 'nation-state'<sup>61</sup>), because such a state-national identity would be predicated upon the full recognition of sub-state national and other communal identities, rather than their exclusion from the constitutional domain.

While Western plurinational constitutionalism fully acknowledges that citizens belonging to sub-state nations would likely also entertain simultaneous attachments

---

<sup>60</sup> See Chapter 5, *supra*, for the principled process of normative reasoning, informed by the 'ceaseless dialectic' of comprehensive pluralism, by which this tension or balance can be resolved on an on-going basis in the operation of the constitution.

<sup>61</sup> See Chapter 5, *supra*.

to the overarching statal nation – or ‘compound *demos*’ in Tierney’s term<sup>62</sup> – our conceptualisation of plurinationalism nonetheless underscores another instance of departure from the Western model. A plurinational constitution in the Sri Lankan case would not only be plurinational in terms of recognising multiple nations (minority, majority and statal nations), but also be plurinational in respect of the civic and ethnic conceptions of the nation. Whereas in the Western context both state and sub-state nations are civic-societal entities, in the Sri Lankan case, plurinationalism involves a combination of ethnic conceptions of the nation at sub-state level and a civic conception of the nation at the state level. This too is an asymmetrical feature, which would maximise the democratic space – or widen the ‘contexts of choice’ – for individual self-expression. For those to whom the ethnic nation (or other ascriptive collective identity) is a central element of their individual identity, sub-state national autonomy would allow full scope for the expression of that identity, while assuring the civic rights of citizenship through membership in the state-nation. For others to whom ethnicity may be irrelevant or relatively unimportant, the state-nation would continue to perform those functional and identificatory roles they expect of citizenship in a modern state.

On the other hand, the constitution would have to recognise the historic predominance of the Sinhala-Buddhist nation and its cultural heritage within the island. Many of these would be symbolic in nature, while important other elements such as the ‘foremost’ status of Buddhism may have substantive implications.<sup>63</sup> In plurinational constitutionalism, symbolism has a special significance. As Keating noted, “To the outsider, the issues in contention here can often look merely trivial or ‘symbolic’ yet the symbolism takes us to the heart of political legitimacy and self-determination.”<sup>64</sup> The reference here is to sub-state nations, but in the Sri Lankan case, it would also be of central importance to the majority nation that their historic status is constitutionally recognised. Within a plurinational framework, therefore, the Sinhala-Buddhist identity would be treated as a kind of national *primus inter pares*,

---

<sup>62</sup> Tierney (2007): p.233.

<sup>63</sup> The Constitution of Sri Lanka (1978): Article 9. As noted in Chapter 5, *supra*, Article 9, which for some compromises the secular principle, can be allowed to remain consistently with comprehensive pluralism.

<sup>64</sup> Keating (2001): p.102.

but *only* as a first order norm that is consistent with the second order norm of pluralism. That is, the application of the dialectic of comprehensive and limited pluralism would ensure that such symbolic acknowledgements of primacy do not entail a devaluation of pluralism to the material disadvantage of the minority nation and minority communities. It would certainly eliminate the now prevalent ethnocratic type of Sinhala-Buddhist nationalism – which demands ‘authoritarian loyalty’<sup>65</sup> from ethnic and ideological ‘others’ and is therefore wholly inconsistent with any form of pluralism – from the new constitutional order altogether.<sup>66</sup> I reiterate that this strong normative foundation of pluralism would adequately counteract any potential for dominance and hegemony in this historically informed scheme of unequal or asymmetrical pluralism, taken together with the significant scope for symbolic recognition and the real and meaningful structural autonomy that it affords the sub-state Tamil nation (and other minority groups as appropriate), whereas neither the status quo nor orthodox federalist reforms would provide a comparable level of accommodation.

### **3.2 Plural Nations, Asymmetrical and Relational Sovereignties**

The recognition of the sociological reality of the existence of multiple nations within the state carries with it the normative implication that the constitutional order of such states is, or ought to be, derived from and constantly renegotiated on the basis of these multiple sources of democratic authority. In other words, in these contexts the concept of sovereignty itself requires to be understood in plural terms, and it is as outlined in Chapter 3, an issue that has been extensively theorised in plurinational constitutionalism.<sup>67</sup> In drawing on this work, however, it is again necessary to identify those aspects which do not apply to the Sri Lankan case. In this regard,

---

<sup>65</sup> Guibernau (2013a): p.122. Paradoxically, the dominant ethnicity’s expectation of ‘authoritarian loyalty’ in the highly intolerant and militarised post-war regime may also lead to ‘instrumental loyalty’ (ibid: pp.122-3) being offered by minorities for purely existential reasons. Neither fosters a stable and democratic constitutional dispensation in a nationally and communally plural polity.

<sup>66</sup> See Chapter 5, *supra*.

<sup>67</sup> Tierney (2006): Ch.4; Tierney (2007): pp.238-9; S. Tierney, ‘*Reframing Sovereignty? Sub-State National Societies and Contemporary Challenges to the Nation-State*’ in Requejo & Caminal (2011): Ch.7.

firstly, for reasons already mentioned, the arguments for pluralistic sovereignties that are derived from the retreat of the European nation-state from a number of sites of formerly exclusive authority,<sup>68</sup> but especially in the context of the unique supra-state constitutional order of the European Union, have no application in the Sri Lankan context.

Secondly, the arguments for a plural understanding of sovereignty that are grounded on an historical founding moment and resultant union state also have no application, again for reasons already discussed. Consequently, these arguments in the Sri Lankan case have to be grounded on the *present-day exigency* of reforming the anomaly of a unitary constitutional order – introduced at first instance for colonial administrative purposes but subsequently appropriated by the majority nation for ethnocratic ends – in the light of national pluralism. Here we might benefit from the contribution of Alfred Stepan to the theoretical link between the strategy of federalisation and the broader agenda of democratisation, in which he identified two models of state-formation, *viz.*, ‘coming-together’ and ‘holding-together’ federations.<sup>69</sup> The union state model associated with plurinational constitutionalism is similar to the former category, whereby the state is created as “...the result of a bargain whereby previously sovereign polities agree to give up part of their sovereignty in order to pool their resources to increase their collective security and to achieve other goals, including economic ones.”<sup>70</sup> The states in the second, ‘holding together’ category, were all previously “...political systems with strong unitary features. Nevertheless, political leaders in these ... multicultural polities came to the decision that the best way – indeed, the only way – to hold their countries together in a democracy would be to devolve power constitutionally and turn their threatened polities into federations.”<sup>71</sup>

Whether or not a Sri Lankan plurinational order ultimately adopts a federal form –

---

<sup>68</sup> Tierney (2006): pp.82-9.

<sup>69</sup> A. Stepan, ‘Federalism and Democracy: Beyond the U.S. Model’ (1999) *Journal of Democracy* 10(4): pp.19-34.

<sup>70</sup> Ibid: p.21.

<sup>71</sup> Ibid: p.22. Although Stepan uses the term ‘multicultural’ in this passage, he has multinational polities in contemplation in the article and clearly defines Sri Lanka as a multinational polity in underlining the incongruity of its unitary constitutional form: p.20.

and from a plurinational point of view, formal classifications are not the most important factor – it is clear that this is the model of state-formation, or more precisely, *state-reformation*, that engages the deeper constitutional changes advocated in this thesis. The examples in Stepan’s ‘holding-together’ model demonstrate that this can not only be a successful strategy where circumstances demand it, but also a normatively valid procedure for reforming existing state constitutions in addressing the challenge of national pluralism consistent with democracy. In other words, a ‘coming-together’ or union-creating event at the moment of plurinational state-formation is entirely a contingency of particular historical circumstances; it need not be treated as a condition precedent to the establishment or operation of a plurinational constitution in all cases. It shows also that there are no inherent reasons why a conception of sovereignty previously defined in strongly unitary terms cannot be radically pluralised in line with the institutional changes accompanying ‘holding-together’ reforms that grant autonomy to sub-state nations.

Plurinational constitutionalism’s approach to the issue of sovereignty has drawn from recent developments in legal and political theory in two key respects. Firstly, it embraces the expansion of the understanding of sovereignty to include its legal as well as political dimensions, encapsulated in the concepts of not only legal ‘competence’ but also political ‘capacity.’<sup>72</sup> This holistic conceptualisation of sovereignty is crucial for the plurinational reform agenda in displacing the legal formalism that characterises traditional constitutionalism’s understanding of sovereignty, which has long held that sovereignty “...can be understood hermeneutically or immanently in a Kelsenian sense; in other words, it is a vision of legal power operating in a conceptually separate space from the political.”<sup>73</sup> Plurinationalists argue that this approach cannot account for the complex ways in which the legal and political conceptions of sovereignty interact within plurinational constitutional systems, rendering the concept devoid of ontological meaning.<sup>74</sup>

---

<sup>72</sup> M. Loughlin (2004) *The Idea of Public Law* (Oxford: OUP): Ch.5 at pp.83-6.

<sup>73</sup> Tierney (2007): p.238.

<sup>74</sup> Ibid.

In Chapter 3 I noted the dominance of legal formalism within the Sri Lankan constitutional law tradition, and the disingenuous ways in which opponents of Tamil nationalism have deployed it in dismissing sub-state claims to even shared sovereignty implied in demands for federalism, let alone divided or separate sovereignties. I noted in particular the susceptibility of legal formalism to be used as a seemingly politically neutral discourse against sub-state nationalism, while concealing all manner of ideological projects including majoritarian nationalism and/or legal centralism. This highlights the problematic nature of the orthodox legalistic account of sovereignty in the multinational context – indeed much more starkly than in the Western liberal democracies – and it strengthens the call for the alternative, holistic approach. In doing so, pre-colonial history is again helpful. Part of the reason the pre-colonial monarchical state countenanced autonomy at the periphery was because it was based, not on a territorial, but on a performative conception of ‘ritual sovereignty.’<sup>75</sup> So long as peripheral feudatories fulfilled certain ritualistic (and often materially not very exacting) obligations of tribute in the form of the rites of *dakum*, then the synecdochical expectations of the centre were satisfied and the periphery was by and large left to its own devices. And, crucially, this was not merely a function of pre-modern infrastructural conditions, but an integral philosophical feature of the galactic form of state as influenced by Buddhist cosmology.<sup>76</sup> Of course such a system of tributary sovereignty cannot be replicated *in toto* in a modern republican state, or reinterpreted for contemporary relevance in similar ways to Western sub-state historico-constitutional claims to ancient rights (e.g., the sub-state *fueros* of Spain<sup>77</sup>). However, it does suggest strongly once again that the Sinhala-Buddhist *nation* is clearly possessed of a pluralistic constitutional heritage with regard to sovereignty that stands in stark contrast to the ethnocratic notion of sovereignty espoused by contemporary Sinhala-Buddhist *nationalism*, on the basis of a selective reliance on the ideologically ethnonationalist *vamsa* tradition of historiography and a highly literalist appropriation of the modern nation-state’s unitary concept of sovereignty.

---

<sup>75</sup> This concept was discussed in Chapter 2, *supra*.

<sup>76</sup> R. de Silva Wijeyeratne (2014) *Nation, Constitutionalism and Buddhism in Sri Lanka* (London: Routledge): Ch.4.

<sup>77</sup> See Keating (2008).

The second major way in which plurinational constitutionalism places reliance on broader contemporary theoretical developments concerning sovereignty is the way in which it adopts, with certain caveats, the relational understanding of sovereignty. As Martin Loughlin puts it, sovereignty is “...generated as a product of the political relationship between the people and the state.”<sup>78</sup> Loughlin however not only conceives ‘the people’ in this equation in unitary terms, but also holds that sovereignty is indivisible, both of which plurinational constitutionalists reject in adapting relational sovereignty to the multinational context. As Tierney explains, for plurinationalists,

“...sovereignty has a relational essence, but they demand that when used to describe a plurinational democracy the relationship metaphor be made more complex in order to encapsulate the idea of ‘the people’ in a pluralistic way; sovereignty within a plurinational state cannot be posited merely as the ‘relationship between the people and the state’, rather it must be a relationship between the *peoples* who together compose the state, and the state itself.”<sup>79</sup>

These sentiments pervade Tamil nationalist rhetoric, albeit entirely implicitly, in the sense that nowhere has this notion of sub-state national sovereignty been proposed as even a partially theorised concept in Tamil nationalism’s constitutional demands. It is, rather, implicit in various proposals for *institutional* reforms, such as for example in federal autonomy proposals,<sup>80</sup> or for confederation,<sup>81</sup> or in proposals for the institutionalisation of *de facto* sovereignty of rebel-controlled territories.<sup>82</sup> It was perhaps most clearly stated in the submissions by M. Tiruchelvam, Q.C., in the Amirthalingam Trial-at-Bar case (1976).<sup>83</sup> These submissions were part of the defence of prominent Tamil nationalist Members of Parliament who were indicted in

---

<sup>78</sup> Loughlin (2003): p.70. See also, Chapter 3, *supra*.

<sup>79</sup> Tierney (2011): p.116.

<sup>80</sup> See the Federal Party’s *Memorandum and the Model Constitution for a Federal State* (1970) in Edrisinha et al (2008): Ch.11.

<sup>81</sup> See Bates, Wells & Braithwaite, Solicitors (1995) *A Framework for the Constitution of the Union of Ceylon* in Edrisinha et al (2008): Ch.20.

<sup>82</sup> See the *Proposal for an Interim Self-Governing Authority (ISGA)* by the Liberation Tigers of Tamil Eelam (LTTE) (2003) in Edrisinha et al (2008): Ch.29.

<sup>83</sup> Edrisinha et al (2008): Ch.13.

this case for a number of offences under Emergency Regulations for distributing the ‘Vaddukodai Resolution’, which called for a separate state of Tamil Eelam.<sup>84</sup> The first republican constitution in 1972 had been enacted through a legal revolution, i.e., by deliberately affecting a break in legal continuity from the independence constitution by not following the constitutional amendment procedure of the latter.<sup>85</sup> Moreover, upon complete rejection of their proposals for a federal constitution early in the process, Tamil nationalist representatives in the Constituent Assembly had walked out of the constitution-making body, and had neither taken any further part in its proceedings, nor voted for or against the new constitution within this process.<sup>86</sup> In the light of these circumstances, in this case Tiruchelvam challenged the legality of the 1972 Constitution itself, and went on to aver:

“...once there is a break in legal continuity the sovereignties of the inhabitants of the Island then under eclipse, so to speak, appear once again. Hence the sovereignty of the Tamil Nation which was ethnically, geographically and linguistically separately identifiable and distinct, revived ... Therefore if an autochthonous Constitution is to be promulgated the consensus of the majority of the Tamil nation should be unequivocally obtained.”<sup>87</sup>

In these submissions we can clearly detect elements of the plurinational, holistic and relational conception of sovereignty reflected in a number of assertions: the descriptive claim to distinctive nationhood; the normative claim to a separate sovereignty; the re-emergence of this political sovereignty once the legal compact of

---

<sup>84</sup> Ibid: Ch.12.

<sup>85</sup> See N. Jayawickrama, ‘Reflections on the Making and Content of the 1972 Constitution: An Insider’s Perspective’ and A. Welikala, ‘The Failure of Jennings’ Constitutional Experiment in Ceylon: How ‘Procedural Entrenchment’ led to Constitutional Revolution’ in Welikala (2012): Chs.1, 3.

<sup>86</sup> A.J. Wilson (1988) *The Break-Up of Sri Lanka: The Sinhalese-Tamil Conflict* (London: Hurst): pp.86-8; K. Loganathan (1996) *Sri Lanka: Lost Opportunities: Past Attempts at Resolving Ethnic Conflict* (Colombo: CEPRA): pp.45-60.

<sup>87</sup> As summarised in the Order of the High Court in *The Republic of Sri Lanka v. Appapillai Amirthalingam*, Trial at Bar No. 1 of 1976, reproduced in Edrisinha et al (2008): p.268. The High Court disposed of the case on other technical grounds and refused to entertain these constitutional arguments by invoking the ‘political questions’ doctrine, so there is no authoritative judicial pronouncement on the constitutional issues raised by Tiruchelvam.

the independence constitution has been broken; and the requirement of the consent of the sub-state nation to any new constitutional framework, without which, further, there can be no valid exercise of constituent power (autochthony<sup>88</sup>) in a multinational polity. If it is to move towards an accommodation of these claims under a plurinational dispensation, the conception of sovereignty that informs Sri Lanka's constitutional order must be plural, relational, and asymmetrical, rather than the majoritarian and unitary conception that has underpinned its republican constitutional order since 1972.<sup>89</sup> Eschewing enforced uniformity, this conception of sovereignty "...must be one which is flexible enough to accommodate a plurality of peoples or *demoi*, each of which might bring with it a differing and variegated set of claims concerning where sovereignty lies within the state."<sup>90</sup>

The foregoing discussion on sovereignty is unproblematic insofar as it is merely the application of the requirements of a theoretical model to the pluralistic circumstances of the case study. It would be far from complete, however, if it does not address the spectre of secession that frequently complicates arguments in favour of plural sovereignties. Even in Western contexts, where host states may be more willing to countenance democratically expressed desires to secede by sub-state nations, or there are supra-state institutional sites within which to pursue other types of claims to recognition, plurinational theorists expend considerable efforts to establish the point that demands for plurinational accommodation should not be treated as synonymous with separatist models of sub-state nationalism.<sup>91</sup> The extensive autonomy contemplated by the plurinational state, it is argued, obviates the need in many cases for sub-state nations to seek a separate nation-state for their constitutional self-fulfilment.<sup>92</sup> In the Sri Lankan case, however, even far less radical measures of

---

<sup>88</sup> K.C. Wheare (1960) *The Constitutional Structure of the Commonwealth* (Oxford: Clarendon): Ch.4.

<sup>89</sup> See Constitution of Sri Lanka (1978): Articles 3,4; Constitution of Sri Lanka (1972): Sections 3,4. While it can be argued that the unitary conception of sovereignty has been lynchpin of the constitutional order since independence in 1948, the independence constitution in Ceylon was a *granted constitution* by the exercise of imperial power, not one that was the product of an exercise of Ceylonese constituent power(s).

<sup>90</sup> Tierney (2011): p.116.

<sup>91</sup> Tierney (2006): pp.92-8; Tierney (2011): pp.126-32; Keating (2001): p.viii.

<sup>92</sup> See W. Kymlicka, '*Liberalism and Minority Rights – An Interview with Ruth Rubio Marin*' (1999) *Ratio Juris* 12: p.133, cited in support of the proposition that "Liberal nationalists often argue that the concession of autonomy by the state makes secessionism less likely" in Tierney (2006): p.126, fn.3.

devolution in response to Tamil claims continue to be resisted because of the fear that the dilution of centralised authority is only a slippery slope towards secession. Such fears, it needs be added, are not merely the exaggerated claims of paranoid Sinhala-Buddhist nationalists who are ideologically opposed to devolution and accommodation, but held at a much more general level among the ordinary Sinhalese citizenry. These fears have been exacerbated by the experience of Tamil secessionist terrorism, and hence the reason ethnocentric strategies and the unitary state enjoy much electoral support within the majority nation. Notwithstanding occasional separatist rhetoric, the evidence that the main goal of the parliamentary strain of Tamil nationalism has been federal autonomy *within* a united Sri Lanka and not secession seems to do little to allay these fears.<sup>93</sup>

The argument that decentralisation encourages rather than placates fissiparous sub-state movements needs to be seen in the light of a multiplicity of other competing issues, and both empirically and normatively, it is not a proposition that can be asserted as a general truth in all cases.<sup>94</sup> In the Sri Lankan case, two preliminary

---

<sup>93</sup> See R. Sampanthan, *The Ilankai Tamil Arasu Katchi (Federal Party) and the Post-Independence Politics of Ethnic Pluralism: Tamil Nationalism Before and After the Republic* in Welikala (2012): Ch.24.

<sup>94</sup> There is a vast, if inconclusive, comparative politics literature on this issue, which includes the celebrated debate between Arend Lijphart and Donald Horowitz on the accommodationist and integrationist approaches to constitutional design in divided societies, usefully summarised in S. Choudhry, 'Bridging Comparative Politics and Comparative Constitutional Law: Constitutional Design in Divided Societies' in Choudhry (2008): Ch.1 at pp.15-26. Other significant contributions include, E. Nordlinger (1972) *Conflict Regulation in Divided Societies* (Cambridge, Mass: Harvard UP); R.D. Dikshit (1975) *The Political Geography of Federalism: An Inquiry into the Origins and Stability* (New Delhi: Macmillan); S. Rokkan & D. Urwin (Eds.) (1982) *The Politics of Territorial Identity: Studies in European Regionalism* (London: Sage); G. Tsebelis, 'Elite Interaction and Constitution Building in Consociational Societies' (1990) *Journal of Theoretical Politics* 2(1): pp.5-29; P.G. Roeder, 'Soviet Federalism and Ethnic Mobilization' (1991) *World Politics* 43(2): pp.196-232; N. Ornstein & K. Coursen, 'As the World Turns Democratic: Federalism finds Favor' (1992) *The American Enterprise* (Jan/Feb): pp.20-4; R. Hardgrave (1994) *Nationalism, Ethnic Conflict and Democracy* (Baltimore: JHU Press); B. O'Leary & J. McGarry (1994) *Nationalism, Ethnic Conflict and Democracy* (Baltimore: JHU Press); M. Ottaway (1994) *Democratization and Ethnic Nationalism: African and Eastern European Experiences* (Washington, DC: ODC); R. T. Suberu (1994) *Nationalism, Ethnic Conflict and Democracy* (Baltimore: JHU Press); C. Kaufman, 'Possible and Impossible Solutions to Ethnic Civil Wars' (1996) *International Security* 20(4): pp.133-75; M. Keating (1998a) *The New Regionalism in Western Europe* (Cheltenham: Edward Elgar); W. Kymlicka (1998) *Theories of Secessionism* (New York: Routledge); V. Bunce (1999) *Subversive Institutions: The Design and the Destruction of Socialism and the State* (New York: CUP); C. S. Leff, 'Democratization and Disintegration in Multi-national States: The Breakup of the Communist Federations' (1999) *World Politics* 51(2): pp.205-235; Stepan (1999); T.R. Gurr (2000) *Peoples Versus States: Minorities At Risk in the New Century* (Washington, DC: USIP); J. Snyder (2000) *From Voting to Violence: Democratization and Nationalist Conflict* (New York: W.W. Norton);

responses to this argument are particularly important. Firstly, most instances of successful secession across the world are explained by particular political and historical circumstances, none of which apply to the Sri Lankan context (see below). Secondly, the alternative to a principled constitutional settlement of the issue of national pluralism is the ethnocratic dystopia that I have lengthily described in Chapter 5. The premise of this thesis throughout has been that this is not a type of politico-constitutional response to pluralism that is stable, democratic, or just, and thus decentralisation is a necessity, not an option.

My concern in the present discussion is not about how to overcome this challenge politically, but rather to present a principled perspective on how to address the issue of secession in a potential plurinational constitution in Sri Lanka. I argue for a clear presumption *against* an express or implied right to secede for the Tamils in such a constitution, except under extraordinary conditions of oppression (in which the plurinational settlement has been decisively repudiated by the state). I justify this on three grounds: the postulates of plurinational constitutionalism itself; on the functional constraints imposed by the practical political realities within Sri Lanka as well as its geopolitical location; and finally on general normative considerations upon which a presumption against constitutionalising a right to secession can be defended (relying in a substantial but qualified way on Allen Buchanan's account of secession as a 'remedial right only'<sup>95</sup>). I will now elaborate on these three arguments.

It needs to be reemphasised that as a constitutional model, the central aim of plurinationalism is in fact to preserve the unity of the state consistently with the democratic accommodation of sub-state nations, rather than to facilitate secession. Its very purpose is to articulate a model of state that can accommodate multiple nationality claims without creating new nation-states. Moreover, the plurinational

---

Amoretti & Bermeo (2004); I.S. Lustik, D. Miodownik & R.J. Eidelson, 'Secessionism in Multicultural States: Does Sharing Power Prevent or Encourage It?' (2004) *American Political Science Review* 98(2): pp.209-229; Brancati (2009).

<sup>95</sup> See A. Buchanan, 'Uncoupling Secession from Nationalism and Intrastate Autonomy from Secession' in H. Hannum & E.F. Babbitt (Eds.) (2006) *Negotiating Self-Determination* (London: Routledge): Ch.4; A. Buchanan, 'Democracy and Secession' in M. Moore (Ed.) (1998) *National Self-Determination and Secession* (Oxford: OUP): Ch.2. Full account in A. Buchanan (1991) *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder, Colo.: Westview Press).

state is a model of *accommodation* in constitutional law, whereas secession is a definably separate category of legal response to sub-state nationalism, which both disrupts and simultaneously reaffirms the Westphalian global order of nation-states. That is, secession contemplates the territorial division of existing states in order to meet sub-state nationality claims, which also means that it regenerates the traditional nation-state as the sole model of addressing nationality claims, unlike the plurinational state which fundamentally questions the organisational principles and normative precepts of the nation-state while endeavouring to address nationality claims within the overall unity of existing states. This is why it has been noted that the plurinational state presents more fundamental and radical challenges to the nation-state than secession.

Only few constitutions recognise a right to secede and where they do, or as in the case of the old socialist constitutions that did, they are in practice very difficult or impossible to exercise (e.g., Ethiopia<sup>96</sup>). And while the question of whether or not to constitutionalise a right to secession is certainly the subject of debate among constitutional theorists and political philosophers, even those who argue in favour of an express recognition of such a right presuppose an actual or potential failure of internal constitutional accommodation, or slightly differently, a right to secession as an additional guarantee to ensure the implementation of internal autonomy arrangements.<sup>97</sup> For these reasons, it can be argued as a matter of constitutional principle that a presumption against secession is consistent with the plurinational model. Among the Western plurinational states, the United Kingdom is unusual in its openness to the prospect of Scottish independence if a referendum so decides, and in the case of Northern Ireland it has provided a statutory process for a future determination of the matter.<sup>98</sup> More typically perhaps, in Spain, secession is expressly prohibited by the constitution,<sup>99</sup> and in Canada, a constitutional silence on

---

<sup>96</sup> See generally for a recent assessment, A. Fisseha, 'Ethiopia's Experiment in Accommodating Diversity: 20 Years Balance Sheet' (2013) *Ethiopian Journal of Federalism* 1(1): pp.103-53.

<sup>97</sup> See P. Radan, 'Secession in Constitutional Law' and M.A. Jovanović, 'To Constitutionalize or Not? Secession as *Materiae Constitutionis*' in A. Pavković & P. Radan (Eds.) (2011) *The Ashgate Research Companion to Secession* (Farnham: Ashgate): Chs.18, 19. See also the theoretical viewpoints on this issue represented in Moore (1998).

<sup>98</sup> Northern Ireland Act 1998: Section 1 and Schedule 1.

<sup>99</sup> The Constitution of Spain (1978): Article 2.

the issue did not mean that the Supreme Court recognised a unilateral right to secede by Quebec.<sup>100</sup>

It is in this context that we have to consider a presumption against secession in the Sri Lankan case, without which it may be impossible to overcome Sinhalese fears of plurinational autonomy. There is no possibility whatsoever that the majority nation would countenance a constitutionalised right to secession, and indeed they may insist on not merely a presumption against, but an express prohibition of, secession. There is therefore no question of ‘consensual secession’ in the Sri Lankan case.<sup>101</sup> Moreover, as the geopolitical dynamics that contributed to the defeat of Tamil separatism in the Sri Lankan civil war demonstrated, it does not seem likely that regional powers in South Asia or Asia more broadly would welcome the precedent of secession as a method of resolving sub-state national claims.<sup>102</sup> Countries like India and China with their own intra-state nationalisms are not likely to regard the breakup of an existing state with equanimity. On the other hand, this may not prove to be too strenuous a commitment for the Tamil nation to undertake, in exchange for the level of recognition, representation and autonomy it will obtain within a plurinational dispensation.

Furthermore, even within liberal political philosophy and constitutional theory, the question of secession is not settled, with strong arguments being made against the *express* recognition of such a right, or to recognise an *implied* right only in highly exceptional circumstances, from unequivocally liberal normative standpoints.<sup>103</sup> On the other hand, many of the normative theories in favour of the express recognition of the right are based on ideologically *liberal* conceptions of the good, and for reasons set out in Chapter 3, I have tried to avoid political liberalism as a normative

---

<sup>100</sup> *Reference re Secession of Quebec* (1998) 2 SCR 217. See Tierney (2006): Ch.7 for discussion and introduction to the voluminous literature on this decision.

<sup>101</sup> Buchanan (2006): p.82.

<sup>102</sup> D. Jayatilleka (2013) *Long War, Cold Peace: Conflict and Crisis in Sri Lanka* (Colombo: Vijitha Yapa): pp.341-7.

<sup>103</sup> C.R. Sunstein, ‘Should Constitutions Protect the Right to Secede? A Reply to Weinstock’ (2001) *Journal of Political Philosophy* 9(3): pp.350-5; C.R. Sunstein (2001) *Designing Democracy: What Constitutions Do* (Oxford: OUP): Ch.4. For the contrary position, see D. Weinstock, ‘Constitutionalizing the Right to Secede’ (2001) *Journal of Political Philosophy* 9(2): pp.182-203; W. Norman, ‘From *Quid Pro Quo* to *Modus Vivendi*: Can Legalizing Secession Strengthen the Plurinational Federation?’ in Requejo & Caminal (2011): Ch.10; Jovanović (2011).

foundation for constitutional theory in the Sri Lankan case. Yet the theoretical literature is not without relevance in formulating a normatively principled position on the issue of secession, and here the work of Allen Buchanan is especially useful. A qualification in relying on Buchanan's theory of secession, however, is that his overarching concern is to articulate a general theory for regulating secession at international law, whereas my concerns are with constitutional law and more contextually particular. Buchanan's major contribution has been to critique 'primary right' theories of secession (both 'ascriptivist' and 'plebiscitary'), and to propose the alternative 'remedial right only' account as the more defensible basis on which the disruptive potential of secession can be balanced with the requirement of justice for oppressed groups within states.<sup>104</sup> His presumption in favour of intra-state autonomy and against secession (except in grave circumstances of oppression) is not merely consistent with the plurinational state, but strongly supportive of the plurinational logic. The essence of his position as it relates to the present discussion is embodied in the following passage:

“First, uncoupling the right to secede from the legitimate interests that groups may have in various forms of intrastate autonomy is liberating; it allows groups to get what they need without the risks involved in secession. Second, states will be more receptive to legitimate claims for autonomy if they are assured that they can respond to these without implicitly recognizing the group's right to secede. Third, the justice-based account of the unilateral right to secede focuses attention where it belongs: on the need to provide better protection for human rights. States can avoid secession or at least avoid international legal support for secession if they do a creditable job of respecting the basic human rights of all their citizens.”<sup>105</sup>

Here therefore we have a principled framework that meets the challenge of national pluralism by a careful balance of the competing pulls of sub-state national autonomy and the unity of the plurinational state. Buchanan's approach ensures stability by the presumption against secession, and it guarantees justice by allowing the possibility of

---

<sup>104</sup> Buchanan (2006); Buchanan (1998).

<sup>105</sup> Buchanan (2006): p.92.

unilateral secession if the state does not meet its rights obligations, including by serious and persistent violations of the plurinational autonomy settlement.<sup>106</sup>

For all the three sets of reasons discussed above, therefore, it can be concluded that the outer limit of the extensive pluralisation of sovereignty involved in introducing a plurinational constitution will be defined by the guarantee of the unity and territorial integrity of the Sri Lankan state, as reflected in a constitutional presumption against, if not an express prohibition on, secession.

### **3.3 Institutional Asymmetry: Guiding Principles**

Building upon the preceding theoretical discussion, we are now in a position to enunciate more prescriptively the contours of the major principles that should inform the design of a plurinational constitutional system. As noted at the outset, these will deliberately be set down in broad and general terms, so that they articulate the substantive core of a plurinational system, but without overly constraining design options within that framework. The precise institutional specifics of each of these principles are left for some future constitution-making process to articulate. I rely here substantially on Stephen Tierney's work,<sup>107</sup> while adapting these principles to the Sri Lankan context. While these guiding principles promote national pluralism and therefore asymmetric institutional pluralism, some of them are also specifically aimed at preventing certain dangers of authoritarianism and ethnic nationalism that were not in contemplation in the Western experience. In addition to the requirements of plurinational constitutional theory, therefore, they must be framed within the additional concerns that Will Kymlicka identified in applying models developed in Western conditions to contexts elsewhere: "The institutionalisation of ethno-national identities is not, in and of itself, either good or bad. What matters is that this process

---

<sup>106</sup> Ibid: p.93.

<sup>107</sup> Tierney (2006): pp.125-9.

of institutionalisation is done in a peaceful and democratic way, consistent with human rights...”<sup>108</sup>

Accordingly, the first principle is the *principle of autonomy*. This principle involves the right of each sub-state nation within the plurinational state to determine its own path of political and cultural self-development. It ensures that the sub-state nations’ ‘national’ rather than ‘minority’ status is reflected in appropriate autonomy arrangements within the constitutional structure of the plurinational state. In the Western context, Tierney observes that this principle accords with Neil MacCormick’s notion of ‘self-rule’ in which, “the members of a nation are as such in principle entitled to effective organs of political self-government within the world order of sovereign or post-sovereign states; but these need not provide for self-government in the form of a sovereign state.”<sup>109</sup> In the Sri Lankan context, the principle of autonomy would be limited by an *a priori* commitment to the unity of the plurinational state; i.e., there would be no express constitutional right to secession and there would be a constitutional presumption against an implied right, which would be rebuttable only in extremely grave circumstances. However, the level of autonomy contemplated here is extensive, and would enable the sub-state nations to not merely govern themselves in most areas of day-to-day policy, but also ensure they have the full constitutional capacity to protect and preserve their respective ethnic identities, including languages, religions and cultures, consistent with the democratic values of choice, tolerance and pluralism that are integral to the plurinational constitution. The principle of autonomy therefore translates as ‘self-determination’ for sub-state nations, albeit as of a tenet of political morality, rather than the rule in international law. The principle applies not only to a sub-state nation seeking specific legal recognition, but also to the plurinational state to respect the aspirations to recognition of such claims.

---

<sup>108</sup> W. Kymlicka, ‘*Emerging Models of Multination Federalism: Are They Relevant to Africa?*’ in D. Turton (Ed.) (2006) *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (Athens, OH: Ohio UP / Addis Ababa: Addis Ababa UP): p.56

<sup>109</sup> Tierney (2006): p.126

Secondly, the *principle of representation* derives from the understanding that the ‘primary agenda’ of sub-state nations is not secession but full and fair representation in the constitutional and political processes of the host state. This involves power-sharing and representation in central government, particularly the legislature and the judiciary, and also critically, in procedures for constitutional change. The principle of representation ensures the active involvement of sub-state national governments in all aspects of the governance of the plurinational state, and not merely exceptional situations like constitutional amendment. Beyond the powers and institutions of the state, this principle demands conformity from state-wide political parties to devise their internal structures consistently with its dictates, so that political participation in central processes do not exclude citizens within sub-state nations. This principle reflects the interdependent and co-operative nature of the plurinational state, which not only recognises national pluralism in the self-rule dimension, but also the shared-rule dimension in the governance of the whole.

Thirdly, the *principle of recognition* has both a symbolic and practical character, and in both dimensions it has special significance for a plurinational constitutional culture. The recognition of the plurinational character of the state in symbolic commitments and institutions is not in fact merely ‘symbolic’ but crucially important in identifying the plural ethno-social foundations of the state and thereby the plural sources of its legitimacy. These symbols have a significant practical effect in that they “set the tone for the way in which the constitution is in general interpreted and applied, and will determine whether a vision of a plurality of nations, interacting equal to equal, is in fact a constitutional reality.”<sup>110</sup> In the Sri Lankan case, the constitutional interaction of the plurality of nations would be recognised as being based, not on equality, but on pluralism, and the resurrection of a more tolerant history of mutual co-existence. The principle of recognition, however, does more than recognise ethnonational and other forms of diversity; it is also the basis on which the re-articulation of the new *mythomoteur* of the plurinational state-nation would be undertaken. In this unifying function, recognition would be given to the submerged but resilient traditions of goodwill and co-operation as well as shared historical

---

<sup>110</sup> Ibid.

achievements, which will provide the new myth symbol complex for the united plurinational future.

Fourthly, the *principle of reciprocity* stresses the tenet of political morality that in plurinational states in which sub-state nations enjoy the recognition, representation and autonomy ensured by the first three principles, the latter in turn owe certain obligations to the host state. Tierney identifies three such duties; *viz.*, to reciprocally recognise the ‘national status’ of other entities within the state, to work in “good faith to consolidate the state as a common polity,”<sup>111</sup> and to respect the rights and interests of all citizens arising out of the common citizenship of the state as a whole. There is an important caveat attached to this principle: “nationalist movements with an overtly ‘separatist’ programme may not accept these responsibilities, but in turn they must accept that the normative force of any claims they might make of the host state in terms of representation and recognition may, accordingly, be substantially weakened.”<sup>112</sup> In the light of preceding discussions in this thesis, the importance of this principle in the Sri Lankan case is self-evident.

Fifthly, the *principle of democracy* has two dimensions in the Sri Lankan context. Firstly, it relates to the situation of the individual within a sub-state nation, in which an overriding concern is to ensure that its individual members in the exercise of their democratic rights determine the collective political direction of the group, and not the converse. This underscores the fact that the sub-state nation in the plurinational scheme is not only an ethno-cultural entity but also a territorial unit of government. It must therefore respect the democratically expressed wishes of resident citizens and not only the interests of members of the ethnic nation. Moreover, the sub-state level must respect the principle that individuals in the plurinational state have the capacity and the constitutional opportunity to subscribe to multiple national identities, and that this involves respect for the loyalty that a member of the sub-state nation may owe to the state national society. Secondly, the principle of democracy echoes a much older rationale for dividing and decentralising political power and legal authority in terms of the democratic aim of preventing authoritarianism. The

---

<sup>111</sup> Ibid.

<sup>112</sup> Ibid: p.127.

centralising legal discourses of colonial modernity and the unitary state, a monarchical form of presidentialism (since the second republican constitution of 1978), monistic political discourses of ethnocentric Sinhala-Buddhist nationalism, and the normalisation of exceptional powers during a long period of ethnic conflict, have all contributed to institutionalising a post-colonial culture of highly authoritarian government. The radical decentralisation involved in plurinational reforms therefore helps to address this broader reform consideration as well.

Sixthly, the *principle of asymmetrical pluralism* informs both institutional design and the ethos of the new constitutional culture. This norm of pluralism, as elaborated in Chapter 5, is the mainstay of the constitutional system, and this involves the constitutionalisation of asymmetries in a variety of ways, as discussed above. Pluralism and asymmetry will therefore not only describe but also normatively influence: textual choices in constitution-drafting, including preambular or other declaratory sections; the design of governmental institutions at every level of the state; constitutional implementation and constitutional adjudication; official language policies; the fiscal and financial framework; and how non-state democratic institutions such as the public service media, political parties, the public education system, and the ‘legal complex’<sup>113</sup> are restructured.

Finally, the *principle of human rights protection*, which is implicit throughout the preceding discussion in this thesis, but which must constitute an unambiguous principle of the plurinational constitutional order. In a historical context in which human rights have been widely and casually traduced by both the state as well as ethnonationalist actors, especially as a result of violent conflict arising from national pluralism, the express incorporation of such a principle assumes pivotal importance in representing a fundamental commitment to acknowledging the abuses of the past, to redressing those wrongs, and to ensuring that they are not repeated in the future. The respect for universal human rights standards required by this principle also implies that neither the state nor sub-state authorities may defend non-compliance by

---

<sup>113</sup> T.C. Halliday & L. Karpik, ‘*Political Liberalism in the British Post-Colony: A Theme with Three Variations*’ in T.C. Halliday, L. Karpik & M.M. Feeley (Eds.) (2012) *Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex* (Cambridge: CUP): Ch.1 at p.7.

recourse to ethnic, religious or cultural particularities. As I have shown in Chapter 2, if we discount the self-serving practices of contemporary ethnonationalisms, there is nothing about any of the ethnicities in Sri Lanka that is necessarily inconsistent with such universal standards, and in that sense the cultural context is fundamentally different from, for example, certain Islamic societies in which religiously-mandated norms are held to supersede human rights norms. This does not mean that the principles of autonomy, national (or communal) pluralism and asymmetry are displaced if they are in potential conflict with human rights norms, thereby recentralising power (on the assumption that the state is better placed to protect them than sub-state governments). Rather, its presence compels a deliberative process through which those principles can be interpreted consistently with human rights standards, and therefore its purpose is to guard against any tendency for asymmetry to be interpreted as justifying ethnonationalist recidivism within territorial enclaves protected by plurinational autonomy.

The scheme articulated in these seven principles taken together outlines the substantive parameters of a plurinational constitution for Sri Lanka. They are prescriptive but not exhaustive, and hence constitutional designers would have to refine, expand and add to them if this scheme is adopted as the basis of a future constitution-making process.

#### **4. Concluding Remarks**

The foregoing portrayal of a plurinational constitutional order is likely to perplex Sri Lankan constitutional lawyers (including Tamil nationalists among them) steeped in the legal positivist tradition of Austin, Dicey and Wheare, and for those to whom constitutional systems may only make sense if defined in terms of the formalistic epistemology of the unitary / federal classification or through the doctrines associated with the Westphalian nation-state.<sup>114</sup> However, it is precisely these limitations of political and legal imagination that the Sri Lankan constitutional

---

<sup>114</sup> See also Tierney (2007): pp.236-7.

tradition needs to overcome if it is to successfully address the challenge of national pluralism. If nothing else, Western plurinational constitutionalism has shown us that the onus is on constitutional lawyers and political theorists to develop creative responses to the demands of deeply complex and diverse societies. The alternative – that plural societies are reengineered to fit within neat monistic conceptual categories or within a unitary ideological framework – is not only profoundly undemocratic, but also as the post-colonial history of Sri Lanka has shown, invites authoritarianism and violence and much avoidable human misery.

## CHAPTER 7

### CONCLUSION

When the seeds of this project were germinating in my mind in 2006, Sri Lanka was a different place, indeed a ‘foreign country’ in the Nietzschean sense.<sup>1</sup> While the high hopes of the peace process that began with the ceasefire of December 2001 had already frayed beyond recovery, very few would have predicted then that the war, long regarded as unwinnable by either the Sri Lankan state or the Tamil separatists, would be over by May 2009. The end was marked by both the horrific brutality and the macabre romanticism that is unfortunately so typical of ethnonationalist conflict. More predictable has been the post-war direction of the Sri Lankan state. For the Sinhala-Buddhist nationalists, the victory was not merely a contemporary question of overcoming the threat of Tamil separatist terrorism, but a historically ordained triumph of their claim to the ownership of the island as a Sinhala and Buddhist country. The military success, in this view, had now to be followed up with the pervasive entrenchment of the Sinhala-Buddhist nation not only in the architecture of the post-war state, but also in the more informal structures of politics, society, and culture, so as to irreversibly consolidate the ‘*Dhammadipa-cum-Sihaladipa*’<sup>2</sup> *par excellence*. Combining tradition and modernity, this ethnocratic project finds validation in the *vamsa* historiographies, democratic legitimation in ethnicised majoritarianism, and its technological resources in the authoritarian potential of the modern state. A magnanimous post-war constitutional settlement that could reinforce recovery and reconciliation, therefore, is firmly outwith the ontological horizons of the Sri Lankan regime.

Meanwhile, despite the complete physical decimation of the Liberation Tigers of Tamil Eelam (LTTE)’s leadership, the Tamil people of the Northern and Eastern Provinces have voted overwhelmingly for the Tamil National Alliance (TNA) in all

---

<sup>1</sup> See E. Scheffele, ‘*Questioning One’s ‘Own’ from the Perspective of the Foreign*’ in G. Parkes (Ed.) (1991) *Nietzsche and Asian Thought* (Chicago: Chicago UP): Ch.3 at p.34.

<sup>2</sup> M. Roberts (2004a) *Sinhala Consciousness in the Kandyan Period: 1590s to 1815* (Colombo: Vijitha Yapa): p.16.

of the post-war elections: the presidential and parliamentary elections of 2010, the local government elections of 2011, and the provincial elections of 2012 and 2013. In each of these elections, the TNA manifestoes have reiterated Sri Lankan Tamil nationalism's three cardinal precepts: that they are a nation, with a traditional homeland, entitled to the right to self-determination. Acknowledging perhaps the extent of the altered reality reflected in the total defeat of the Tigers, the TNA has also asserted that they seek accommodation of these claims within a united (but not unitary) Sri Lankan state.

In terms of the deep constitutional challenges of ethnic and national pluralism that have afflicted the state of Ceylon and Sri Lanka from the early twentieth century, therefore, the end of the war is merely yet another case of *plus ça change, plus c'est la même chose*. The persistence of the constitutional crisis created by these incommensurable nationalist self-perceptions, alongside the conviction that it needs to be addressed by constitutional means rather than militarised authoritarianism, formed the point of entry in this thesis for the exploration of the plurinational state as a more stable and just constitutional model for Sri Lanka. In applying the theory and practice of the model to the Sri Lankan case, three major empirical differences between the Western plurinational states and Sri Lanka had to be taken into account. Articulated as ideal-types, these were identified as the differences between civic-societal and ethnic-communal nationalism, Western and colonial modernity, and liberal and illiberal democracy. By giving careful regard to these differences, and reformulating its normative foundations and structural principles in alternative ways, I have argued in this thesis that the plurinational state is capable of 'migration' to non-Western contexts, or at least to those that are comparable to the Sri Lankan case such as Burma and Thailand. These Asian states with predominant Theravada Buddhist societies, and therefore a shared pre-European 'galactic' state tradition, all experience serious constitutionally unresolved problems of national pluralism and face similar contemporary challenges of uneven political development and fragile democratic cultures.

By way of conclusions drawn from the discussions in preceding chapters, I make the following descriptive and normative propositions in relation to Sri Lanka and more generally the concept of the plurinational state. Key concepts and terms are highlighted and referenced to the sections of the relevant chapters where they have been discussed in detail.

## **Sri Lanka**

### *Descriptive and Analytical Insights*

- Sociologically, the Sri Lankan polity is characterised not merely by ethnic and religious pluralism but also by **national pluralism**.<sup>3</sup> More precisely, it is ethnically a **bi-national polity**<sup>4</sup> in which two groups, the majority Sinhala-Buddhists and the minority Sri Lankan Tamils, claim to be nations based on distinctive cultures, histories and territories. Sri Lanka's **communal pluralism**<sup>5</sup> extends to caste divisions among the Sinhalese and the Tamils, and other discrete minority groups, such as the Muslims and the Indian Tamils (and even smaller groups such as the Veddas, Malays, Burghers, Colombo Chetties, Barathas, Bohras, Parsees, Chinese, and Kafirs) as well as cross-cutting minorities such as the Christians (divided further into denominational groups such as the Roman Catholic, Anglican, Dutch Reformed, Methodist, Baptist, Presbyterian, and various evangelical groups).
- However, it is the **Tamil sub-state nationality claim**<sup>6</sup> that constitutes the most fundamental challenge for the Sri Lankan state, the unresolved nature of which has questioned the unity, legitimacy and viability of the Sri Lankan state. This must clearly be understood analytically as a problem of national pluralism and not a question of minority rights. As the central concern of this thesis, Sri Lanka

---

<sup>3</sup> Chapter 1, Sections 1.1 and 1.2; Chapter 2.

<sup>4</sup> Chapter 6, Section 1.

<sup>5</sup> Ibid.

<sup>6</sup> Chapter 2, Section 3.1; Chapter 4, Section 3.2.

is therefore a case of national **pluralism-as-fact**<sup>7</sup> but with an incongruous constitutional order that does not reflect national **pluralism-as-norm**.<sup>8</sup>

- Despite its frequent invocation in performances of ‘banal nationalism’ (such as cross-communal support for the Sri Lankan cricket team) and as an inarticulate assumption in mainstream ‘moderate’ scholarly and policy debates, the inclusionary and unifying potential of the **civic modernist ‘Sri Lankan’ nation**<sup>9</sup> has been frustrated by the post-colonial, and now post-war, **ethnocratic state**.<sup>10</sup> There is little point in adhering to this model, because it has been undermined by the persistent Tamil nationality claim and has been superseded by the emergence of better models such as the **plurinational state**,<sup>11</sup> a ‘discrete category of multilevel polity’ that in theory and practice transcends orthodox, formalistic constitutional classifications.
- Contemporary **Sinhala-Buddhist nationalism**<sup>12</sup> instrumentally utilises both traditionalist and modernist discourses in its claims to constitutional primacy. From pre-British history, it focuses on the encompassing and hierarchical aspects of the Sinhala-Buddhist monarchical state, and the concept of the **unitary state**<sup>13</sup> is its chief derivation from modern (colonial) constitutionalism. However, it rejects modernity’s values of secularism, diversity, tolerance and equality, and ignores the devolutionary and asymmetric potential of the **pre-colonial state**.<sup>14</sup>
- Through **democratic majoritarianism**<sup>15</sup> Sinhala-Buddhist nationalism has appropriated the post-colonial state and engaged in a performance of **top-down**

---

<sup>7</sup> Chapter 5, Section 3.1.

<sup>8</sup> Ibid.

<sup>9</sup> Chapter 2, Section 3; Chapter 5, Sections 2.1 and 3.2.

<sup>10</sup> Chapter 5, Section 2.2.

<sup>11</sup> Chapter 3, Section 2.

<sup>12</sup> Chapter 2, Section 2.1; Chapter 4, Section 3.1.

<sup>13</sup> Chapter 2, Section 2.1.

<sup>14</sup> Ibid.

<sup>15</sup> Chapter 2, Section 2.1; Chapter 5, Section 2.2.

**nationalism**<sup>16</sup> in instantiating a Sinhala-Buddhist ethnocracy. This has generated a **bottom-up ‘We are a Nation’ performance**<sup>17</sup> from the Tamils.

- The conceptual distinction between **nation and nationalism**<sup>18</sup> is crucial especially in regard to Sinhala-Buddhist nationalism, because it highlights the dissonance between the pluralist potential of the pre-colonial state and the centralised ethnocracy of the present, as well as dissonance between the homogenising and hegemonic modern Sinhala-Buddhist nationalism and the pluralistic character of the pre-British **collective consciousness of *Sinhalē***.<sup>19</sup>
- Newer explanatory accounts of Sinhala-Buddhist nationalism that emphasise its simultaneously traditional and modern character are to be preferred to the older **post-orientalist**<sup>20</sup> and **ethnicist**<sup>21</sup> accounts, although the latter continue to inform practical constitutional discourse in Sri Lanka.
- Unitary constitutional order is supported on arguments other than Sinhala-Buddhist chauvinism, of which there are two: the discourse of **classical modernist post-colonial nation-building**,<sup>22</sup> and the **positivistic tradition**<sup>23</sup> of constitutional law that buttresses an **ideology of legal centralism**.<sup>24</sup>
- The Sri Lankan conception of the unitary state is a clear product of **colonial modernity**,<sup>25</sup> which also implies two other features of the Sri Lankan state tradition: the **law of exception**<sup>26</sup> and the **rule of difference**.<sup>27</sup> In addition, the post-colonial state has demonstrated highly literalist and rigid (or **Eastphalian**<sup>28</sup>)

---

<sup>16</sup> Chapter 4, Section 4.

<sup>17</sup> Chapter 4, Section 4.

<sup>18</sup> Chapter 4, Section 2.

<sup>19</sup> Chapter 4, Section 3.1.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Chapter 2, Sections 2 and 3.2.

<sup>23</sup> Chapter 3, Section 3.3.

<sup>24</sup> Ibid.

<sup>25</sup> Chapter 5, Sections 1 and 2.1.

<sup>26</sup> Chapter 5, Section 2.1.

<sup>27</sup> Ibid.

<sup>28</sup> Chapter 3, Section 3.3.

understandings of Westphalian doctrines such as **sovereignty**,<sup>29</sup> territorial integrity, and non-interference, rendering it a ‘hard state’ unlike the ‘soft’ **late-sovereign Western plurinational states**<sup>30</sup> in confronting the issues of national pluralism.

- Centralising and monistic conceptualisations of the nation, the state, and constitutional law have been unintentionally assisted by methodological and substantive weaknesses of both **liberal-federalist reformism**<sup>31</sup> as well as **Tamil nationalism**.<sup>32</sup> In particular, these pluralist discourses have suffered from an absence of theory (both descriptive and normative) and have insufficiently questioned the received categories of classical modernism as well as legal formalism (especially the unitary/federal dichotomy). There is a need for these traditions to better theorise their constitutional arguments, and in this they need to pay adequate attention to both functions and norms (**functional normativity**<sup>33</sup>), so that they ensure to neither analytically mischaracterise the nature of Sri Lanka’s sociological pluralism, nor inadvertently reinforce monism.

#### *Normative and Structural Propositions*

- Once the character of the Sri Lankan polity is more accurately understood as outlined above, and in particular the implications of national pluralism are better appreciated, it follows that the **monistic Westphalian nation-state**<sup>34</sup> cannot be regarded as an appropriate type of state for Sri Lanka. If the traditional nation-state is rejected as a model, then so must be the modes of constitutional thinking associated with the discourse of classical modernist post-colonial nation-building. The first constitutional proposition that follows from the adoption of the plurinational logic as a means of organising the state is the **disaggregation of**

---

<sup>29</sup> Ibid; Chapter 6, Section 3.2.

<sup>30</sup> Chapter 3, Section 3.

<sup>31</sup> Chapter 2, Section 3.2; Chapter 3, Section 3.1.

<sup>32</sup> Chapter 2, Section 3.1; Chapter 4, Section 3.2.

<sup>33</sup> Chapter 1, Section 3.

<sup>34</sup> Chapter 3, Section 3.2.

**nation and state**,<sup>35</sup> which enables not only the possibility of accommodating more than one nation within the state, but also the consequential pluralisation of key doctrines like sovereignty.

- While empirically the nature of the island is that of an ethnically bi-national polity, normatively a plurinational dispensation would reflect three nations, i.e., the Sinhala-Buddhist, Tamil, and Sri Lankan nations, together with other minority communities, consistent with the democratic norms of choice, tolerance and pluralism. This follows from the acceptance of nations and communities as ‘deliberative communities’ and ‘contexts of choice’ for the exercise of individual freedoms as citizenship rights, and it meets the requirements of those to whom the ethnic nation or community is central to individual identity as well as those to whom ascriptive identities are unimportant or irrelevant. This is in turn based on the recognition that citizens in a plurinational state must be afforded the space to cultivate **multiple identities**,<sup>36</sup> and that this involves provision for ethnic nations and communities as well as an overarching civic national identity. Sri Lankan plurinationalism therefore reflects **both civic and ethnic conceptions of the nation and nationalism**.<sup>37</sup>
- The ‘Sri Lankan’ nation under a plurinational constitution means neither the hollow and meaningless identity that obtains under the ethnocentric state, nor the teleological monism denoted by the nation-building discourse. It is rather a civic and rights-based collective identity that gives substance and form to the unity of the plurinational state, and it is conceived as a **state-nation**<sup>38</sup> rather than a nation-state. Its unifying content will be derived from a new *mythomoteur*<sup>39</sup> drawing upon shared bonds that have survived protracted conflict, and the goodwill that will accompany the radical pluralisation of the Sri Lankan state.

---

<sup>35</sup> Chapter 3, Section 3.4.

<sup>36</sup> Chapter 5, Section 3.2; Chapter 6, Section 3.3.

<sup>37</sup> Chapter 5, Section 3.2; Chapter 6, Section 3.

<sup>38</sup> Chapter 5, Section 3.2.

<sup>39</sup> Chapter 4, Section 2; Chapter 5, Section 3.2.

- For mainly instrumental reasons, the ideologically liberal political theory and philosophy upon which the Western plurinational state is constructed, is inappropriate as a basis for articulating the normative foundations of a Sri Lankan conception of plurinationalism. A more appropriate source of normative theory is the idea of **comprehensive pluralism**,<sup>40</sup> a ‘counterfactual ideal’. The theory of comprehensive pluralism provides a principled framework for determining the validity of plural conceptions of the good and their admittance into the plurinational constitutional order. The application of the related idea of **limited pluralism**<sup>41</sup> allows practical concessions to be made to political and historical context, including symbolic acknowledgements of the Sinhala-Buddhist nation’s preeminent historic status, while excluding intolerant monistic conceptions such as Sinhala-Buddhist ethnocracy that are inconsistent with the fundamental value of pluralism.
- This in turn leads to a spatiotemporal conceptualisation of the plurinational constitutional order that is based on the **principle of unequal pluralism**.<sup>42</sup> In this view, a certain primacy is afforded to the Sinhala-Buddhist nation, albeit in a way that is consistent with the fullest possible autonomy for the sub-state Tamil nation and respect for other minority communities within the framework of a united state.
- The principle of unequal pluralism demands the wholesale adoption of **asymmetrical constitutionalism**<sup>43</sup> in a plurinational system. Normatively the most important implication of this approach is the **pluralisation of the sources of sovereignty**<sup>44</sup> (as both constituent and constituted power). However, this stops short of a right to sub-state secession, which is justified on practical constraints as well as the **‘remedial right only’ theory of secession**.<sup>45</sup>

---

<sup>40</sup> Chapter 5, Section 3.1.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid; Chapter 6, Section 3.

<sup>43</sup> Chapter 6, Section 1.

<sup>44</sup> Chapter 6, Section 3.2.

<sup>45</sup> Ibid.

- Constitutional asymmetry is most visible in the **seven principles of institutional design**.<sup>46</sup> They are the principles of: autonomy, representation, recognition, reciprocity, democracy, asymmetrical pluralism, and human rights protection. These are articulated in broad and heuristic terms so as to guide the drafting of a plurinational constitution, but with sufficient precision as to discipline such a process.

## The Plurinational State

### *Descriptive and Analytical Insights*

- The plurinational state can be made applicable to ethnic-communal models of the nation and nationalism. While taxonomically useful, the **civic-ethnic dichotomy**<sup>47</sup> has limited use for a deeper understanding of the provenance, nature and function of ethnicity and nationalism in the contemporary world. New arguments from liberal political theory and nationalism theory, in particular the insights offered by the **ethno-symbolic**<sup>48</sup> view, demonstrate the limitations of the civic-ethnic dichotomy. Similarly to the critique by liberal nationalism of traditional liberalism, it is necessary therefore to adopt more **contextualised and hermeneutic approaches to ethnic nationalism**,<sup>49</sup> which, as demonstrated by the Sri Lankan example, yields a more nuanced picture of these entities. In uncovering traditions of pluralism and tolerance against the hyperbolic rhetoric of ethnonationalist political entrepreneurs, these accounts enable us to contextualise plurinational values and structures for societies where ethnic nationalism is the dominant form of collective consciousness and identity.
- Beyond interpretative theory, performative theories of nationalism and state-formation are also useful in understanding why groups engage in **‘We are a**

---

<sup>46</sup> Chapter 6, Section 3.3.

<sup>47</sup> Chapter 4, Section 2.

<sup>48</sup> Ibid; Chapter 5, Section 3.2.

<sup>49</sup> Chapter 4, Section 3.

**Nation’ performances** <sup>50</sup> in multinational contexts. This work provides potentially a general framework for re-theorising the plurinational state for global application.

- It is also not necessary for multinational polities to have reached a **fully modern state**<sup>51</sup> of political development in order for plurinational ideas to be applicable. In non-Western post-colonial contexts, the evolution of the nation-state has more often than not never reached full maturity, and conflict among plural ethnic nations has also often been the result of the failure of modernist nation-building. The pressing need to resolve these conflicts (with serious political, social and economic costs in societies that can ill-afford them), and the new understandings of the severe limitations of the Westphalian nation-state model addressing in this specific type of pluralism that arise from **plurinational constitutionalism’s critiques of traditional democratic constitutionalism**,<sup>52</sup> are both good rationales for introducing plurinational constitutionalism into these non-Western contexts.
- Plurinational constitutionalism need not be restricted in application to Western liberal democracies, and can be extended to non-liberal democracies. What is key is that there is a commitment to some form of procedural democracy. This is important in including sociologically multinational countries that are transitioning to democracy within the scope of application for plurinational ideas. Accordingly, the normative foundations of the plurinational state need not be articulated exclusively within political liberalism and liberal constitutionalism, although where applicable and uncontroversial, these lessons can usefully be extended. In this thesis, the idea of **comprehensive pluralism**<sup>53</sup> has been relied upon to provide normative theory for the Sri Lankan case, but it can be assumed that there are many other ways within the theory of democracy, republicanism, federalism, consociationalism and other traditions of politico-constitutional

---

<sup>50</sup> Chapter 4, Section 4.

<sup>51</sup> Chapter 3, Sections 2 and 3; Chapter 5, Section 2.

<sup>52</sup> Chapter 3, Section 3.

<sup>53</sup> Chapter 5, Section 3.1.

organisation, and even international rights frameworks concerning national minorities or indigenous and tribal peoples,<sup>54</sup> from which normative arguments for plurinational-type accommodation may be constructed.

### *Normative and Structural Propositions*

- While the **post-sovereign or late-sovereign**<sup>55</sup> nature of especially the European plurinational states have no doubt contributed to the pluralisation of their internal constitutional arrangements, the supra-state constitutional order that is the European Union is unique to Europe. This experience therefore must not be projected as having general application to the world beyond the EU. It follows that late-sovereignty should not be treated as a condition precedent to a plurinational constitution, which is, subject to political will, wholly possible in more conventionally Westphalian states.
- Depending on the context, especially historical considerations, it may be more useful to **foreground the norms of pluralism and asymmetry rather than the norm of equality**<sup>56</sup> in framing the relationship between majority and minority nations within non-Western plurinational states. It would be unwise to make a general proposition on the basis of the Sri Lankan case alone, and even there the notion of unequal pluralism might be contentious with Tamil nationalists. This is a matter in which the competing claims and positions of multiple national groups would have to be negotiated in each case with careful attention to specific aspects of history, geography, and even raw power balances. However, what this thesis has shown is that even where strict equality might not be possible, or must give way to strategic considerations, then there are alternative foundations of normative principle that may be deployed in securing plurinational autonomy for sub-state nations.

---

<sup>54</sup> E.g., International Labour Organisation, Indigenous and Tribal Peoples Convention, 1989 (No.169), Convention concerning Indigenous and Tribal Peoples in Independent Countries (entry into force 5<sup>th</sup> September 1991).

<sup>55</sup> Chapter 3, Section 3.

<sup>56</sup> Chapter 5, Section 3.1; Chapter 6.

- The radical structural autonomy and normative pluralisation contemplated in a plurinational constitution could give rise to (legitimate) fears for the unity of the state. Even in Western plurinational states, consensual secession is the exception rather than the norm, as a comparison of recent events in UK/Scotland and Spain/Catalonia demonstrates. While of course plurinational constitutionalism is essentially a model of intra-state accommodation, it may be necessary to provide the additional guarantee of a **presumption against unilateral secession**<sup>57</sup> to countervail the centrifugal forces unleashed by plurinational autonomy, including sub-state nationalists who may use that autonomy instrumentally to fulfil latent ambitions of independence. While there are sound reasons of principle as to why secession should be regarded as a **remedial right only**,<sup>58</sup> in most post-colonial contexts it would be also strategically necessary to provide reassurance that the breakup of the state is not in contemplation, which in turn would facilitate broader support for plurinational reforms. A presumption against secession (that can be displaced in circumstances of extreme oppression) is not inconsistent with plurinational principles.

---

<sup>57</sup> Chapter 6, Section 3.2.

<sup>58</sup> Ibid.

## BIBLIOGRAPHY

- A. Abeyssekera (2002) *Colors of the Robe: Religion, Identity, and Difference* (Columbia, SC: University of South Carolina Press)
- T.B.H. Abeysinghe, 'Princes and Merchants: Relations between the Kings of Kandy and the Dutch East India Company in Sri Lanka, 1688-1740' *Journal of the Sri Lanka National Archives* 2: pp.35-58
- B. Ackerman (1991) *We, the People: Foundations* (Cambridge, Mass.: Harvard University Press)
- R. Agranoff (Ed.) (1999) *Accommodating Diversity: Asymmetry in Federal Systems* (Baden-Baden: Nomos)
- Agreement (with exchange of notes) on trade and intercourse between Tibet Region of China and India, Peking, 29<sup>th</sup> April 1954, (1958) *United Nations Treaty Series* 299:4307, 57
- H. Alavi, 'The State in Post-Colonial Societies: Pakistan and Bangladesh' (1972) *New Left Review* 1(74): pp.59-81
- R. Amarasinghe, 'Provincial Councils under the 13<sup>th</sup> Amendment – Centres of Power or Agencies of the Centre?' in L. Marasinghe & J. Wickramaratne (Eds.) (2010) *13<sup>th</sup> Amendment: Essays on Practice* (Colombo: Institute for Constitutional Studies)
- R. Amarasinghe, A. Gunawardena, J. Wickramaratane & A.M. Navaratna-Bandara (2010) *Twenty Two Years of Devolution: An Evaluation of the Working of Provincial Councils in Sri Lanka* (Colombo: Institute for Constitutional Studies)
- C. Amaratunga (Ed.) (1989) *Ideas for Constitutional Reform* (Colombo: Council for Liberal Democracy)
- C. Amaratunga (Ed.) (1991) *Liberalism in Sri Lanka, 1981-1991* (Colombo: Council for Liberal Democracy)
- D. Ambalavanar, 'Introduction' in R. Cheran, D. Ambalavanar & C. Kanaganayakam (Eds.) (2008) *New Demarcations: Essays in Tamil Studies* (Toronto: Canadian Scholars' Press)
- U.M. Amoretti & N. Bermeo (Eds.) (2004) *Federalism and Territorial Cleavages* (John Hopkins University Press)
- S. Amunugama, 'Ideology and Class Interest in One of Piyadasa Sirisena's Novels: The New Image of the 'Sinhala Buddhist' Nationalist' in M. Roberts (Ed.) (1997) *Sri Lanka: Collective Identities Revisited*, Vol.I (Colombo: Marga Institute)
- B. Anderson (1983) *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso)

- B. Anderson, 'Introduction' in G. Balakrishnan (Ed.) (1996) *Mapping the Nation* (New York: Verso)
- A. Appadurai (2006) *Fear of Small Numbers: An Essay on the Geography of Anger* (Durham, NC: Duke UP)
- S. Arasaratnam, 'Dutch Sovereignty in Ceylon: A Historical Survey of its Problem' (1958) *Ceylon Journal of Historical and Social Studies* 1: pp.105-121
- S. Arasaratnam, 'The Vanniar of North Ceylon: A Study of Feudal Powers and Central Authority' (1966) *Ceylon Journal of Historical and Social Studies* 9: pp.101-111
- J.A. Armstrong (1982) *Nations before Nationalism* (Chapel Hill, NC: Univ. of North Carolina Press)
- R. Bajpai (2011) *Debating Difference: Group Rights and Liberal Democracy in India* (New Delhi: Oxford University Press)
- A. Balasingham (1983) *Liberation Tigers and the Tamil Eelam Struggle* (Political Committee of the LTTE)
- A. Bandarage (2008) *The Separatist Conflict in Sri Lanka: Terrorism, Ethnicity and Political Economy* (London: Routledge)
- T.J. Bartholomeusz (2005) *In Defense of Dharma: Just War Ideology in Buddhist Sri Lanka* (London: Routledge)
- S. Baruah (Ed.) (2010) *Ethnonationalism in India: A Reader* (New Delhi: Oxford University Press)
- B. Bastiampillai, R. Edrisinha & N. Kandasamy (Eds.) (n.d.) *Prevention of Terrorism Act (PTA): A Critical Analysis* (Colombo: CHR)
- S. Bastian (Ed.) (2006) *Sri Lanka: The Devolution Debate* (5<sup>th</sup> Ed.) (Colombo: ICES)
- Bates, Wells & Braithwaite (Solicitors) (1995) 'A Framework for the Constitution of the Union of Ceylon' in R. Edrisinha, M. Gomez, V.T. Thamilmaran & A. Welikala (Eds.) (2008) *Power Sharing in Sri Lanka: Constitutional and Political Documents, 1926-2008* (Colombo: Centre for Policy Alternatives)
- C.A. Bayly (2004) *The Birth of the Modern World, 1780-1914: Global Connections and Comparisons* (Malden, MA: Blackwell)
- C.A. Bayly (2012) *Recovering Liberties: Indian Thought in the Age of Liberalism and Empire* (Cambridge: Cambridge University Press)
- H. Beech, 'The Face of Buddhist Terror', *Time*, 1<sup>st</sup> July 2013
- C. Bell, 'Constitutional Transitions: The Peculiarities of the British Constitution and the Politics of Comparison' (2014) *Public Law*, July 2014: pp.446-471
- R. Bendix (1978) *Kings or People: Power and the Mandate to Rule* (Berkeley: California University Press)

- T. Benedikter (Ed.) (2009) *Solving Ethnic Conflict through Self-Government* (Bozen/Bolzano: EURAC)
- S. Benhabib (2002) *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton: Princeton University Press)
- B. Berman, D. Eyoh & W. Kymlicka (Eds.) (2004) *Ethnicity and Democracy in Africa* (Ohio: Ohio University Press)
- J. Bertrand & A. Laliberté (Eds.) (2010) *Multination States in Asia: Accommodation of Resistance* (Cambridge: Cambridge University Press)
- J. Bertrand & A. Laliberté, 'Introduction' and 'Conclusion' in J. Bertrand & A. Laliberté (Eds.) (2010) *Multination States in Asia: Accommodation of Resistance* (Cambridge: Cambridge University Press)
- A.M. Blackburn (2010) *Locations of Buddhism: Colonialism and Modernity in Sri Lanka* (Chicago: University of Chicago Press)
- S. Bose & A. Jalal (Eds.) (2003) *Modern South Asia: History, Culture and Political Economy* (London: Routledge)
- D. Brancati (2009) *Peace by Design: Managing Intrastate Conflict through Decentralization* (Oxford: Oxford University Press)
- M. Brandt, J. Cottrell, Y. Ghai & A. Regan (2011) *Constitution-making and Reform: Options for the Process* (Geneva: Interpeace)
- J. Brow (1996) *Demons and Development: The Struggle for Community in a Sri Lankan Village* (Tucson: University of Arizona Press)
- M.E. Brown (Ed.) (1993) *Ethnic Conflict and International Security* (Princeton, NJ: Princeton University Press)
- R. Brubaker (1996) *Nationalism Reframed: Nationhood and the National Question in the New Europe* (New York: Cambridge University Press)
- R. Brubaker, 'Charles Tilly as a Theorist of Nationalism' (2010) *American Sociologist* 41, 375-381
- K. Bryan, 'Non-Territorial Federalism: A Panacea For Our Times?' in R. Edrisinha & A. Welikala (Eds.) (2008) *Essays on Federalism in Sri Lanka* (Colombo: Centre for Policy Alternatives)
- A. Buchanan (1991) *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder, CO: Westview Press)
- A. Buchanan, 'Democracy and Secession' in M. Moore (Ed.) (1998) *National Self-Determination and Secession* (Oxford: Oxford University Press)

- A. Buchanan, ‘*Uncoupling Secession from Nationalism and Intrastate Autonomy from Secession*’ in H. Hannum & E.F. Babbitt (Eds.) (2006) *Negotiating Self-Determination* (London: Routledge)
- D.D. Buck, ‘*Dimensions of Ethnic and Cultural Nationalism in Asia – A Symposium*’ (1994) *Journal of Asian Studies* 53: pp.3-9
- V. Bunce (1999) *Subversive Institutions: The Design and the Destruction of Socialism and the State* (New York: Cambridge University Press)
- M. Burgess, ‘*Federalism and Federation: A Reappraisal*’ in M. Burgess & A-G. Gagnon (1993) *Comparative Federalism and Federation: Competing Traditions and Future Directions* (London: Harvester Wheatsheaf)
- M. Burgess (2006) *Comparative Federalism: Theory and Practice* (London: Routledge)
- M. Burgess & J. Pinder (Eds.) (2007) *Multinational Federations* (London: Routledge)
- M. Canovan, ‘*Sleeping Dogs, Prowling Cats and Soaring Doves: Three Paradoxes in the Political Theory of Nationhood*’ (2001) *Political Studies* 49, 203-215
- J.H. Carens (2000) *Culture, Citizenship and Community* (Oxford: Oxford University Press)
- H. Catt & M. Murphy (2002) *Sub-State Nationalism: A Comparative Analysis of Institutional Design* (London: Routledge)
- Centre for Policy Alternatives (2008) *Strengthening the Provincial Council System* (Colombo: Centre for Policy Alternatives)
- Centre for Policy Alternatives (2014) *Forced Evictions in Colombo: The Ugly Price of Beautification* (Colombo: Centre for Policy Alternatives)
- *Ceylon: Report of the Special Commission on the Constitution* (1928): Cmd.3131 (Donoughmore Report) in R. Edrisinha, M. Gomez, V.T. Thamilmaran & A. Welikala (Eds.) (2008) *Power-Sharing in Sri Lanka: Constitutional and Political Documents, 1926-2008* (Colombo: Centre for Policy Alternatives)
- *Ceylon: Report of the Commission on Constitutional Reform* (1969 [1945]) (The Soulbury Commission Report) (Colombo: Ceylon Government Press)
- A.H.Y. Chen, ‘*Pathways of Western Liberal Constitutional Development in Asia: A Comparative Study of Five Major Nations*’ (2010) *International Journal of Constitutional Law* 8(4): pp.849-884
- F. Cheneval & F. Schimmelfennig, ‘*The Case for Democracy in the EU*’ (2011) EUSA Conference, Boston (unpublished)
- R. Cheran, ‘*Pathways of Dissent: An Introduction to Tamil Nationalism in Sri Lanka*’ in R. Cheran (Ed.) (2009) *Pathways of Dissent: Tamil Nationalism in Sri Lanka* (New Delhi: Sage)

- S. Choudhry, 'National Minorities and Ethnic Immigrants: Liberalism's Political Sociology' (2002) *Journal of Political Philosophy* 10, 54-78
- S. Choudhry, 'Migration as a New Metaphor in Comparative Constitutional Law' in S. Choudhry (2006) *The Migration of Constitutional Ideas* (Cambridge: Cambridge University Press)
- S. Choudhry, 'Bridging Comparative Politics and Comparative Constitutional Law: Constitutional Design in Divided Societies' in S. Choudhry (Ed.) (2008) *Constitutional Design for Divided Societies: Integration or Accommodation?* (Oxford: Oxford University Press)
- J. Coakley (Ed.) (2003) *The Territorial Management of Ethnic Conflict* (2<sup>nd</sup> Ed.) (London: Frank Cass)
- J. Coakley, 'National Majorities in New States: Managing the Challenge of Diversity' in A-G. Gagnon, A. Lecours & G. Nootens (Eds.) (2011) *Contemporary Majority Nationalism* (Montreal & Kingston: McGill-Queen's University Press)
- R.G. Collingwood (1956) *The Idea of History* (Oxford: Clarendon)
- S. Collins, 'The Discourse on What is Primary (Agganna Sutta): An Annotated Translation' (1993) *Journal of Indian Philosophy* 21:4, 301-393
- S. Collins, 'The Lion's Roar on the Wheel-Turning King: A Response to Andrew Huxley's 'The Buddha and Social Contract'' (1996) *Journal of Indian Philosophy* 24:4, 421-446
- S. Collins & A. Huxley, 'The Post-Canonical Adventures of Mahasammata' (1996) *Journal of Indian Philosophy* 24:6, 623-648
- Committee for Rational Development (1984) *Sri Lanka, The Ethnic Conflict: Myths, Realities and Perspectives* (New Delhi: Navrang)
- W. Connor (1996) *Ethnonationalism: The Quest for Understanding* (Princeton, NJ: Princeton University Press)
- W. Connor, 'Nationalism and Political Illegitimacy' in D. Conversi (Ed.) (2002) *Walker Connor and the Study of Nationalism* (London: Routledge)
- R. Coomaraswamy, 'The Sri Lankan Judiciary and Fundamental Rights: A Realist Critique' in N. Tiruchelvam & R. Coomaraswamy (Eds.) (1987) *The Role of the Judiciary in Plural Societies* (London: Frances Pinter)
- R. Coomaraswamy, 'Toward an Engaged Judiciary' in N. Tiruchelvam & R. Coomaraswamy (Eds.) (1987) *The Role of the Judiciary in Plural Societies* (London: Frances Pinter)
- R. Coomaraswamy (1997) *Ideology and the Constitution: Essays on Constitutional Jurisprudence* (New Delhi: Konark)

- R. Coomaraswamy, ‘*The Politics of Institutional Design: An Overview of the Case of Sri Lanka*’ in S. Bastian & R. Luckham (Eds.) (2003) ***Can Democracy Be Designed? The Politics of Institutional Choice in Conflict-torn Societies*** (London: Zed Books)
- J.A.L. Cooray (1995) ***Constitutional and Administrative Law of Sri Lanka*** (Colombo: Sumathi)
- L.J.M. Cooray (1992) ***An Introduction to the Legal System of Sri Lanka*** (2<sup>nd</sup> Rev. Ed.) (Colombo: Lake House)
- B. Croce (1945 [1925]) ***Politics and Morals*** (Trans. S.J. Castiglione) (New York: Philosophical Library)
- R. Dahl (1976) ***Modern Political Analysis*** (New York: Prentice-Hall)
- E.V. Daniel, ‘*Afterword: Sacred Places, Violent Spaces*’ in J. Spencer (Ed.) (1990) ***Sri Lanka: History and Roots of Conflict*** (London: Routledge)
- T. Day (2002) ***Fluid Iron: State Formation in Southeast Asia*** (Honolulu: University of Hawai’i Press)
- M.V. de Almeida, ‘*Instrumental Primordialism? The Politics of Representation among a Black Cultural Group in a Town of Bahia, Brazil*’ (2000) paper for 6<sup>th</sup> European Association of Social Anthropologists Conference, Cracow, Poland, 26<sup>th</sup> – 29<sup>th</sup> July 2000
- C.R. De Silva, ‘*Sinhala-Tamil Ethnic Rivalry: The Background*’ in R.B. Goldman & A.J. Wilson (Eds.) (1984) ***From Independence to Statehood: Managing Ethnic Conflict in Five African and Asian States*** (London: Frances Pinter)
- C.R. De Silva (1987) ***Sri Lanka: A History*** (New Delhi: Vikas)
- C.R. De Silva, ‘*Sri Lanka in the Early 16<sup>th</sup> Century: Political Conditions*’ in K.M. De Silva (Ed.) (1995) ***University of Peradeniya History of Sri Lanka***, Vol.II (Colombo: Sridevi)
- D.G.B. De Silva, ‘*New Light on Vanni Chiefs, based on Historical Tradition, Palm-leaf Manuscripts and Official Records*’ (1996) ***Journal of the Royal Asiatic Society, Sri Lanka*** LXI, 153-204
- H.L. De Silva, ‘*Pluralism and the Judiciary in Sri Lanka*’ in N. Tiruchelvam & R. Coomaraswamy (Eds.) (1987) ***The Role of the Judiciary in Plural Societies*** (London: Frances Pinter)
- H.L. De Silva (2008) ***Sri Lanka a Nation in Conflict: Threats to Sovereignty, Territorial Integrity, Democratic Governance and Peace*** (Colombo: Visidunu Prakasakayo)
- K.M. De Silva (1986) ***Managing Ethnic Tensions in Multi-Ethnic Societies, Sri Lanka 1880-1985*** (Lanham, MD: University Press of America)

- K.M. de Silva (2013) *The ‘Traditional Homelands’ of the Tamils* (3<sup>rd</sup> Rev. Ed.) (Kandy: ICES)
- K.M. De Silva (2005) *A History of Sri Lanka* (Colombo: Vijith Yapa)
- K.M. De Silva, ‘Sri Lanka: National Identity and the Impact of Colonialism’ in J.C. Holt & P.B. Meegaskumbura (Eds.) (2006) *Identity and Difference: Essays on Society and Culture in Sri Lanka* (Kandy: ISLE)
- K.M. De Silva, ‘Sri Lanka in 1948’ in J.C. Holt (Ed.) (2011) *The Sri Lanka Reader: History, Culture, Politics* (Durham, NC: Duke University Press)
- R. De S. Wijeyeratne, ‘Galactic Polities and the Decentralisation of Administration in Sri Lanka: The Buddha Does Not Always Have to Return to the Centre’ (2003) *Griffiths Law Review* 12: p.215
- R. De S. Wijeyeratne, ‘Buddhism, the Asokan Persona and the Galactic Polity: Re-Thinking Sri Lanka’s Constitutional Present’ (2007) *Social Analysis* 51(1): pp.156–178
- R. De S. Wijeyeratne, ‘Republican Constitutionalism and Sinhalese Buddhist Nationalism in Sri Lanka: Towards an Ontological Account of the Sri Lankan State’ in A. Welikala (Ed.) (2012) *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Colombo: Centre for Policy Alternatives)
- R. De S. Wijeyeratne (2014) *Nation, Constitutionalism and Buddhism in Sri Lanka* (London: Routledge)
- B. Denitch (1994) *Ethnic Nationalism: The Tragic Death of Yugoslavia* (Minneapolis: University of Minnesota Press)
- K. Deutsch & W. Foltz (Eds.) (1963) *Nation-Building* (New York: Aldine-Atherton)
- K. Deutsch (1966) *Nationalism and Social Communication* (Cambridge, Mass.: M.I.T. Press)
- P.P. Devaraj, ‘Indian Tamils of Sri Lanka – Identity Stabilisation and Inter-ethnic Interaction’ in Social Scientists’ Association (1979) *Ethnicity and Social Change in Sri Lanka* (Colombo: SSA)
- N. DeVotta (2004) *Blowback: Linguistic Nationalism, Institutional Decay and Ethnic Conflict in Sri Lanka* (Stanford: Stanford University Press)
- N. DeVotta (2007) *Sinhalese Buddhist Nationalist Identity: Implications for Politics and Conflict Resolution in Sri Lanka*, Policy Studies 40 (Washington: East-West Center)
- L.S. Dewaraja (1972) *The Kandyan Kingdom of Ceylon, 1707-1760* (Colombo: Lake House)

- L.S. Dewaraja, S. Pathmanathan & D.A. Kotelawe, 'Religion and State in the Kandyan Kingdom: The 17<sup>th</sup> and 18<sup>th</sup> Centuries' in K.M. De Silva (Ed.) (1995) *University of Peradeniya History of Sri Lanka*, Vol.II (Colombo: Sridevi)
- K.N.O. Dharmadasa (1992) *Language, Religion and Ethnic Assertiveness: The Growth of Sinhalese Nationalism in Sri Lanka* (Ann Arbor: Univ. of Michigan Press)
- R.D. Dikshit (1975) *The Political Geography of Federalism: An Inquiry into the Origins and Stability* (New Delhi: Macmillan)
- N. Dirks (1987) *The Hollow Crown: An Ethnohistory of an Indian Kingdom* (New York: Cambridge University Press)
- District Development Councils Act, No.35 of 1980 (Sri Lanka)
- J.S. Dryzek & P. Dunleavy (2009) *Theories of the Democratic State* (Basingstoke: Palgrave Macmillan)
- I.D. Duchacek (1970) *Comparative Federalism: The Territorial Dimension of Politics* (New York: Holt, Reinhart & Winston)
- L. Dumont (1980) *Homo Hierarchicus: The Caste System and its Implications* (Trans. M. Sainsbury, L. Dumont & B. Gulati) (Chicago: Chicago University Press)
- L. Dumont (1994) *German Ideology: From France to Germany and Back* (Chicago: Chicago University Press)
- J.S. Duncan (1990) *The City as Text: The Politics of Landscape Interpretation in the Kandyan Kingdom* (Cambridge: Cambridge University Press)
- S. Dutt (1962) *Buddhist Monks and Monasteries of India: Their History and Their Contribution to Indian Culture* (London: Allen & Unwin)
- R. Edrisinha, M. Gomez, V.T. Thamilmaran & A. Welikala (Eds.) (2008) *Power Sharing in Sri Lanka: Constitutional and Political Documents, 1926-2008* (Colombo: Centre for Policy Alternatives)
- R. Edrisinha, 'Sri Lanka: Constitutions without Constitutionalism, A Tale of Three and a Half Constitutions' in R. Edrisinha & A. Welikala (2008) *Essays on Federalism in Sri Lanka* (Colombo: Centre for Policy Alternatives)
- R. Edrisinha & A. Welikala, 'The Interim Self Governing Authority Proposals: A Federalist Critique' in R. Edrisinha & A. Welikala (Eds.) (2008) *Essays on Federalism in Sri Lanka* (Colombo: Centre for Policy Alternatives)
- S.N. Eisenstadt & S. Rokkan (Eds.) (1973) *Building States and Nations*, Vols.I,II (London: Sage)
- J.D. Eller (1999) *From Culture to Ethnicity to Conflict: An Anthropological Perspective on International Ethnic Conflict* (Ann Arbor: Michigan University Press)
- H.D. Evers (1972) *Monks, Priests and Peasants* (Leiden: E.J. Brill)

- B.H. Farmer (1963) *Ceylon: A Divided Nation* (Oxford: Oxford University Press)
- D. Feith, 'The Tamil Struggle: A Brief Historical Survey' in N. Seevaratnam (Ed.) (1989) *The Tamil National Question and the Indo-Lanka Accord* (New Delhi: Konark)
- S. Felix, 'Timely Aid to Constitutional Debate', *The Ceylon Daily News*, 20<sup>th</sup> August 2004.
- Y.T. Fessha (2008) *Institutional Recognition and Accommodation of Ethnic Diversity: Federalism in South Africa and Ethiopia*, PhD Thesis, University of the Western Cape (unpublished)
- D.P. Fidler, 'Eastphalia Emerging? Asia, International Law and Global Governance' (2010) *Indiana Journal of Global Legal Studies* 17(1): pp.1-12
- A. Fisseha, 'Ethiopia's Experiment in Accommodating Diversity: 20 Years Balance Sheet' (2013) *Ethiopian Journal of Federalism* 1(1): pp.103-53
- G. Fox & B. Roth (Eds.) (2000) *Democratic Governance and International Law* (Cambridge: Cambridge University Press)
- E. Francis (1965) *Ethnos und Demos: Soziologie Beiträge zur Volkstheorie* (Berlin: Duncker & Humblot)
- T. Franck, 'The Emerging Right to Democratic Governance' (1992) *American Journal of International Law* 86(1): p.46
- T.M. Franck, 'Postmodern Tribalism and the Right to Secession' in C. Brölmann, R. Lefeber & M. Zieck (Eds.) (1993) *Peoples and Minorities in International Law* (Dordrecht: MartinusNijhoff)
- J. Friedman, 'Nationalism in Theory and Reality' (1996) *Critical Review* 10:2, 155-167
- I. Frydenlund (2005) *The Sangha and its Relation to the Peace Process in Sri Lanka* (Oslo: Peace Research Institute Oslo)
- A-G. Gagnon & C. Gibbs, 'The Normative Basis of Asymmetrical Federalism' in R. Agranoff (Ed.) (1999) *Accommodating Diversity: Asymmetry in Federal Systems* (Baden-Baden: Nomos)
- A-G. Gagnon & J. Tully (Eds.) (2001) *Multinational Democracies* (Cambridge: Cambridge University Press)
- A-G. Gagnon, 'The Moral Foundation of Asymmetrical Federalism: A Normative Exploration of the Case of Quebec and Canada' in A-G. Gagnon & J. Tully (Eds.) (2001) *Multinational Democracies* (Cambridge: Cambridge University Press)
- U. Gammanpila, 'The Constitutional Form of the First Republic: The Sinhala-Buddhist Perspective' in A. Welikala (Ed.) (2012) *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Colombo: Centre for Policy Alternatives)
- E. Gellner (1983) *Nations and Nationalism* (Oxford: Oxford University Press)

- Y. Ghai (Ed.) (2000) *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States* (Cambridge: Cambridge University Press)
- Y. Ghai, 'Ethnicity, Nationhood and Pluralism' in A. Welikala (Ed.) (2012) *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Colombo: Centre for Policy Alternatives)
- Y. Ghai & S. Woodman (Eds.) (2013) *Practicing Self-Government: A Comparative Study of Autonomous Regions* (Cambridge: Cambridge University Press)
- U.N. Ghoshal (1959) *A History of Indian Political Ideas* (Bombay: Oxford University Press)
- G. Gibson (2000) *A Principled Analysis of the Nisga'a Treaty*, Public Policy Sources No.27 (Vancouver: Fraser Institute)
- T. Ginsburg, 'Eastphalia as the Perfection of Westphalia' (2010) *Indiana Journal of Global Legal Studies* 17:1, 27-45
- B.G. Gokhale, 'Dhammiko Dhammaraja: A Study in Buddhist Constitutional Concepts' (1953) *Indica*, Silver Jubilee Commemoration Volume (Bombay: Indian Historical Research Institute)
- B.G. Gokhale (1966) *Asoka Maurya* (New York: Twayne Publishers)
- B.G. Gokhale, 'Early Buddhist Kingship' (1966) *Journal of Asian Studies* 26:1, 15-22
- B.G. Gokhale, 'The Early Buddhist View of the State' (1969) *Journal of Asian Studies* 89:4, 731-738
- R. Gombrich (1988) *Theravada Buddhism* (London: Routledge)
- R. Gombrich & G. Obeyesekera (1988) *Buddhism Transformed: Religious Change in Sri Lanka* (Princeton: Princeton University Press)
- K. Gopal (2000) *Nationalism in Sri Lanka: Genesis and Evolution* (New Delhi: Kalinga Publications)
- J. Griffiths, 'What is Legal Pluralism?' (1986) *Journal of Legal Pluralism and Unofficial Law* 24:2, 1-55
- O. Gross & F. Ní Aoláin (2006) *Law in Times of Crisis: Emergency Powers in Theory and Practice* (Cambridge: Cambridge University Press)
- M. Guibernau (1996) *Nationalisms: The Nation-State and Nationalism in the Twentieth Century* (Cambridge: Polity Press)
- M. Guibernau (1999) *Nations without States: Political Communities in a Global Age* (Cambridge: Polity Press)
- M. Guibernau, 'Anthony D. Smith on Nations and National Identity: A Critical Assessment' (2004) *Nations and Nationalism* 10 (1/2): pp.125-141

- M. Guibernau & J. Hutchinson (Eds.) (2004) *History and National Destiny: Ethnosymbolism and its Critics* (Oxford: Blackwell)
- M. Guibernau, 'Nationalism without States' in J. Breuilly (ed.) (2013) *The Oxford Handbook of the History of Nationalism* (Oxford Handbooks Online)
- M. Guibernau (2013a) *Belonging: Solidarity and Division in Modern Societies* (Cambridge: Polity Press)
- M. Gunasingam (1999) *Sri Lankan Tamil Nationalism: A Study of its Origins* (Sydney: MV Publications)
- N. Gunasinghe, 'Ethnic Conflict in Sri Lanka: Perceptions and Solutions' in H. Alavi & J. Harriss (Eds.) (1985) *South Asia* (New York: Monthly Review Press)
- N. Gunasinghe (1990) *Changing Socio-economic Relations in the Kandyan Countryside* (Colombo: Social Scientists Association)
- G. Gunatilleke, N. Tiruchelvam & R. Coomaraswamy, 'Violence and Development in Sri Lanka: Conceptual Issues' in G. Gunatilleke, N. Tiruchelvam & R. Coomaraswamy (Eds.) (1983) *Ethical Dilemmas of Development in Asia* (Lexington, Mass.: Lexington Books)
- R.A.L.H. Gunawardana, 'The People of Lion: The Sinhala Identity and Ideology in History and Historiography' in J. Spencer (Ed.) (1990) *Sri Lanka: History and Roots of Conflict* (London: Routledge)
- R.A.L.H. Gunawardana (2008) *Periodization in Sri Lankan History: Some Reflections with Special Emphasis on the Development of the State* (Colombo: Social Scientists Association)
- A. Guneratne, 'Review Article' (1998) *American Ethnologist* 25:3, 527-528
- T.R. Gurr & B. Harff (1994) *Ethnic Conflict in World Politics* (Boulder, CO: Westview Press)
- T.R. Gurr (2000) *Peoples Versus States: Minorities At Risk in the New Century* (Washington, DC: United States Institute of Peace)
- J. Habermas (1989) *The New Conservatism* (Cambridge, Mass: MIT Press)
- J. Habermas, 'Citizenship and National Identity' in R. Beiner (Ed.) (1995) *Theorizing Citizenship* (Albany, NY: State University of New York Press)
- J. Habermas (1996) *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Trans. W. Rehg) (Cambridge, Mass: MIT Press)
- J. Habermas (2002) *The Inclusion of the Other* (London: Polity Press)
- A. Habtu, 'Ethnic Federalism in Ethiopia: Background, Present Conditions and Future Prospects' (2003) Second EAF International Symposium on Contemporary Development Issues in Ethiopia

- T.C. Halliday & L. Karpik, ‘*Political Liberalism in the British Post-Colony: A Theme with Three Variations*’ [Introduction] in T.C. Halliday, L. Karpik & M.M. Feeley (Eds.) (2012) ***Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex*** (Cambridge: Cambridge University Press)
- F. Haniffa, ‘*Conflicted Solidarities? Muslims and the Constitution-making Process of 1970-72*’ in A. Welikala (Ed.) (2012) ***The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice*** (Colombo: Centre for Policy Alternatives)
- R. Hardgrave (1994) ***Nationalism, Ethnic Conflict and Democracy*** (Baltimore: JHU Press)
- A. Harel-Shalev (2010) ***The Challenge of Sustaining Democracy in Deeply Divided Societies: Citizenship, Rights and Ethnic Conflicts in India and Israel*** (Lanham, MD: Lexington Books)
- V. Hart, ‘*Democratic Constitution Making*’, USIP Special Report 107 (July 2003) (Washington: United States Institute of Peace)
- C. Harvey, ‘*Reconstructing the “Political Constitution” of Northern Ireland*’, UK Constitutional Law Blog, 2<sup>nd</sup> August 2012
- C. Harvey & A. Schwartz, ‘*Introduction*’ in C. Harvey & A. Schwartz (Eds.) (2012) ***Rights in Divided Societies*** (Oxford: Hart Publishing)
- C. Haviland, ‘*The Hardline Buddhists Targeting Sri Lanka’s Muslims*’, ***BBC News Asia***, 25<sup>th</sup> March 2013
- N. Haysom, ‘*Constitution-making and Nation-building in Divided Societies*’ in A. Welikala (Ed.) (2012) ***The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice*** (Colombo: Centre for Policy Alternatives)
- Baogang He, B. Galligan & T. Inoguchi (Eds.) (2007) ***Federalism in Asia*** (Cheltenham: Edward Elgar)
- M. Hechter (2000) ***Containing Nationalism*** (Oxford: Oxford University Press)
- R. Heine-Geldern, ‘*Conceptions of State and Kingship in Southeast Asia*’ (1942) ***Far Eastern Quarterly*** 2:1, 15-30
- D. Hellmann-Rajanayagam, ‘*Arumuka Navalar: Religious Reformer or National Leader of Eelam?*’ (1989) ***Indian Economic Social History Review*** 26, 235
- D. Hellmann-Rajanayagam, ‘*The Politics of the Tamil Past*’ in J. Spencer (Ed.) (1990) ***Sri Lanka: History and Roots of Conflict*** (London: Routledge)
- D. Hellmann-Rajanayagam, ‘*Tamils and the Meaning of History*’ (1994) ***Contemporary South Asia*** 3:1, 3-23
- D. Hemple, ‘*Introduction: Forging the Nation through Performance and Ritual*’ (2012) ***Studies in Ethnicity and Nationalism*** 12:1, 1-5

- A. Henderson (2007) *Hierarchies of Belonging: National Identity and Political Culture in Scotland and Quebec* (Montreal: McGill/Queen's University Press)
- E. Hobsbawm (1990) *Nations and Nationalism since 1780: Programme, Myth, Reality* (Cambridge: Cambridge University Press)
- A.M. Hocart (1970) *Kings and Councillors* (Ed. & Intr. R. Needham / orig. pub. 1936) (Chicago: Chicago University Press)
- J.C. Holt (1991) *Buddha in the Crown: Avalokiteswara in the Buddhist Traditions of Sri Lanka* (New York: Oxford University Press)
- J.C. Holt (Ed.) (2011) *The Sri Lanka Reader: History, Culture, Politics* (Durham, NC: Duke University Press)
- J. Hopkins (2002) *Devolution in Context: Regional, Federal and evolved Government in the European Union* (London: Cavendish)
- S. Huntington (1993) *The Third Wave: Democratization in the Late Twentieth Century* (Oklahoma City: University of Oklahoma Press)
- N. Hussain (2003) *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: University of Michigan Press)
- J. Hutchinson (1987) *The Dynamics of Cultural Nationalism* (London: Routledge)
- J. Hutchinson & A.D. Smith (Eds.) (1996) *Ethnicity* (Oxford: Oxford University Press)
- A. Huxley, 'The Buddha and the Social Contract' (1996) *Journal of Indian Philosophy* 24(4): pp.406-420
- G. Ichheiser, 'Misunderstandings in Human Relations: A Study in False Social Perception' (1949) *American Journal of Sociology* LV: pp.1-70
- M. Ignatieff (1993) *Blood and Belonging: Journeys into the New Nationalism* (New York: Farrar, Straus & Giroux)
- M. Ignatieff (1998) *The Warrior's Honor: Ethnic War and the Modern Conscience* (New York: Metropolitan Books)
- A.R.M. Imtiyaz & S. R.H. Hoole, 'Some Critical Notes on the Non-Tamil Identity of the Muslims of Sri Lanka, and on Tamil-Muslim Relations' (2011) *South Asia: Journal of South Asian Studies* 34:2, 208
- R. Inden (1990) *Imagining India* (London: Blackwell)
- International Crisis Group (2012) *Sri Lanka's North II: Rebuilding under the Military*, Asia Report No.220, 16<sup>th</sup> March 2012
- *In Re the Thirteenth Amendment to the Constitution and the Provincial Councils Bill* (1987) 2 Sri Lanka Reports 312

- V.C. Jackson, ‘*Comparative Constitutional Law: Methodologies*’ in M. Rosenfeld & A. Sajó (2013) *The Oxford Handbook of Comparative Constitutional Law* (Oxford: Oxford University Press)
- G.J. Jacobsohn & S. Shankar, ‘*Constitutional Borrowing in South Asia: India, Sri Lanka and Secular Constitutional Identity*’ in S. Khilnani, V. Raghavan & A.K. Thiruvengadam (Eds.) (2013) *Comparative Constitutionalism in South Asia* (New Delhi: Oxford University Press)
- A. Jalal (1995) *Democracy and Authoritarianism in South Asia: A Comparative and Historical Perspective* (Cambridge: Cambridge University Press)
- A. Jayakody, ‘*The Eighteenth Amendment and the Consolidation of Executive Power*’ in R. Edrisinha & A. Jayakody (Eds.) (2011) *The Eighteenth Amendment to the Constitution: Substance and Process* (Colombo: Centre for Policy Alternatives)
- D. Jayatilleka, ‘*From Necessary War to Sustainable Peace in Sri Lanka*’, *Groundviews*, 27<sup>th</sup> May 2010
- D. Jayatilleka (2013) *Long War, Cold Peace: Conflict and Crisis in Sri Lanka* (Colombo: Vijitha Yapa)
- N. Jayawickrama, ‘*Reflections on the Making and Content of the 1972 Constitution: An Insider’s Perspective*’ in A. Welikala (Ed.) (2012) *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Colombo: Centre for Policy Alternatives)
- P. Jeganathan, ‘*Authorizing History, Ordering Land: The Conquest of Anuradhapura*’ in P. Jeganathan & Q. Ismail (Eds.) (2009) *Unmaking the Nation: The Politics of Identity and History in Modern Sri Lanka* (2<sup>nd</sup> Ed.) (New York: South Focus Press)
- M.A. Jovanović, ‘*To Constitutionalize or Not? Secession as Materiae Constitutionis*’ in A. Pavković & P. Radan (Eds.) (2011) *The Ashgate Research Companion to Secession* (Farnham: Ashgate)
- S. Kadirgamar, ‘*The Jaffna Youth Congress*’ in S. Kadirgamar (Ed.) (2012) *Handy Perinbanayagam: A Memorial Volume* (Colombo: Kumaran Book House)
- A. Kadirgamar, ‘*The Question of Militarisation in Post-War Sri Lanka*’ (2013) *Economic and Political Weekly* XLVIII (7)
- K. Kailasapathy, ‘*The Cultural and Linguistic Consciousness of the Tamil Community*’, Punitham Tiruchelvam Memorial Lecture (1982) in A.J. Wilson (2000) *Sri Lankan Tamil Nationalism: Its Origins and Development in the 19<sup>th</sup> and 20<sup>th</sup> Centuries* (New Delhi: Penguin)

- K. Kailasapathy, ‘*Cultural and Linguistic Consciousness of the Tamil Community*’ in Social Scientists Association (1984) *Ethnicity and Social Change in Sri Lanka* (Colombo: Social Scientists’ Association)
- K.C. Kamalabayson (2009) *Devolution of Powers: The Sri Lankan Experience* (Colombo: Kamalabayson Foundation)
- B. Kapferer (1988) *Legends of People, Myths of State: Violence, Intolerance and Political Culture in Sri Lanka and Australia* (Washington DC: Smithsonian Institution Press)
- B. Kapferer (1997) *The Feast of the Sorcerer: Practices of Consciousness and Power* (Chicago: Chicago University Press)
- C. Kaufman, ‘*Possible and Impossible Solutions to Ethnic Civil Wars*’ (1996) *International Security* 20(4): pp.133-75
- E. Kaufmann & O. Zimmer, ‘*‘Dominant Ethnicity’ and the ‘Ethnic-Civic’ Dichotomy in the Work of A.D. Smith*’ (2004) *Nations and Nationalism* 10 (1/2): pp.63-78
- H. Kearney, ‘*Four Nations or One?*’ in B. Crick (Ed.) (1991) *National Identities: The Constitution of the United Kingdom* (Oxford: Blackwell)
- R. Kearney (1967) *Communalism and Language in the Politics of Ceylon* (Durham, NC: Duke University Press)
- R. Kearney, ‘*Nationalism, Modernisation and Political Mobilisation in a Plural Society*’ in M. Roberts (Ed.) (1979) *Collective Identities, Nationalisms and Protest in a Plural Society* (Colombo: Marga Institute)
- M. Keating, ‘*What’s Wrong With Asymmetrical Government?*’ in H. Elcock & M. Keating (Eds.) (1998) *Remaking the Union: Devolution and British Politics in the 1990s* (London: Frank Cass)
- M. Keating (1998a) *The New Regionalism in Western Europe* (Cheltenham: Edward Elgar)
- M. Keating (2001) *Plurinational Democracy: Stateless Nations in a Post-Sovereignty Era* (Oxford: Oxford University Press)
- M. Keating, ‘*Rival Nationalisms in a Plurinational State: Spain, Catalonia, and the Basque Country*’ in S. Choudhry (Ed.) (2008) *Constitutional Design for Divided Societies: Accommodation or Integration?* (Oxford: Oxford University Press)
- S. Kemper, ‘*J.R. Jayewardene: Righteousness and Realpolitik*’ in J. Spencer (Ed.) (1990) *Sri Lanka: History and Roots of Conflict* (London: Routledge)
- S. Kemper (1991) *The Presence of the Past: Chronicles, Politics and Culture in Sinhala Life* (Ithaca, NY: Cornell University Press)
- P. King (1982) *Federalism and Federation* (London: Croom Helm)

- L. Kiriella, ‘Kandyans urged for 3 federal states in 1928 and 1947’, *The Daily News*, 20<sup>th</sup> December 2002
- B. Kohn (1967) *The Idea of Nationalism* (2<sup>nd</sup> Ed.) (New York: Collier Macmillan)
- H. Kong, ‘Republicanism and the Division of Powers in Canada’ (forthcoming) *University of Toronto Law Journal* (2014) *University of Toronto Law Journal* 64(3): pp.359-401 [draft paper presented at Edinburgh Centre for Constitutional Law, 1<sup>st</sup> June 2012.]
- S. Krishna (1999) *Postcolonial Insecurities: India, Sri Lanka, and the Question of Nationhood* (Minneapolis: University of Minnesota Press)
- C. Kukathas (2003) *The Liberal Archipelago: A Theory of Diversity and Freedom* (Oxford: Oxford University Press)
- H. Kumarasingham, ‘A Democratic Paradox: The Communalisation of Politics, 1911-1948’ (2006) *Asian Affairs* 37:3, 342-352
- H. Kumarasingham (2013) *A Political Legacy of the British Empire: Power and the Parliamentary System in Post-Colonial India and Sri Lanka* (London: I.B. Tauris)
- H. Kumarasingham, ‘The ‘Tropical Dominions’: The Appeal of Dominions Status in the Decolonisation of India, Pakistan and Sri Lanka’ (2013a) *Transactions of the Royal Historical Society* 23: pp.223-45
- H. Kumarasingham, ‘The Jewel of the East yet has its Flaws’: The Deceptive Tranquillity surrounding Sri Lankan Independence’ (2013b) Working Paper No.72, Heidelberg Papers in South Asian and Comparative Politics (Heidelberg: University of Heidelberg)
- W. Kymlicka, ‘The Rights of Minority Cultures: A Reply to Kukathas’ (1992) *Political Theory* 20:1, 140-146
- W. Kymlicka (1995) *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press)
- W. Kymlicka (1998) *Theories of Secessionism* (New York: Routledge)
- W. Kymlicka, ‘Liberalism and Minority Rights– An Interview with Ruth Rubio Marin’ (1999) *Ratio Juris* 12, 133
- W. Kymlicka, ‘Misunderstanding Nationalism’ in R. Beiner (Ed.) (1999) *Theorizing Nationalism* (Albany, NY: State University of New York Press)
- W. Kymlicka, ‘Immigrant Integration and Minority Nationalism’ in M. Keating & J. McGarry (Eds.) (2001) *Minority Nationalism and the Changing International Order* (Oxford: Oxford University Press)
- W. Kymlicka & Baogang He (Eds.) (2006) *Multiculturalism in Asia* (Oxford: Oxford University Press)

- W. Kymlicka, ‘*Emerging Models of Multination Federalism: Are They Relevant to Africa?*’ in D. Turton (Ed.) (2006) ***Ethnic Federalism: The Ethiopian Experience in Comparative Perspective*** (Athens, OH: Ohio University Press / Addis Ababa: Addis Ababa University Press)
- W. Kymlicka, ‘*Liberal Multiculturalism: Western Models, Global Trends, and Asia Debates*’ in W. Kymlicka & Baogang He (Eds.) (2006) ***Multiculturalism in Asia*** (Oxford: Oxford University Press)
- A. Lawrence (2011) ***Malayaha Tamils: Power Sharing and Local Democracy in Sri Lanka*** (Colombo: SSA)
- P. Lawrence, ‘*Nationalism and Historical Writing*’ in J. Breuilly (ed.) (2013) ***The Oxford Handbook of the History of Nationalism*** (Oxford Handbooks Online)
- C. S. Leff, ‘*Democratization and Disintegration in Multi-national States: The Breakup of the Communist Federations*’ (1999) ***World Politics*** 51(2): pp.205-235
- A.S. Leoussi & S. Grosby (Eds.) (2007) ***Nationalism and Ethnosymbolism: History, Culture and Ethnicity in the Formation of Nations*** (Edinburgh: Edinburgh UP)
- D. Lerner (1958) ***The Passing of Traditional Society*** (New York: Free Press)
- D. Lerner (2011) ***Making Constitutions in Deeply Divided Societies*** (Cambridge: Cambridge University Press)
- D. Lewis, ‘*The Failure of a Liberal Peace: Sri Lanka’s Counter-Insurgency in Global Perspective*’ (2010) ***Conflict, Security and Development*** 10:5, 647-671
- Liberation Tigers of Tamil Eelam (LTTE) (2003) Proposal for an Interim Self-Governing Authority (ISGA) reproduced in R. Edrisinha, M. Gomez, V.T. Thamilmaran & A. Welikala (Eds.) (2008) ***Power Sharing in Sri Lanka: Constitutional and Political Documents, 1926-2008*** (Colombo: Centre for Policy Alternatives)
- V. Lieberman (2003) ***Strange Parallels: Southeast Asia in Global Context, c.800-1830*** (New York: Cambridge University Press)
- A. Lijphart (1977) ***Democracy in Plural Societies: A Comparative Exploration*** (New Haven: Yale University Press)
- S.M. Lipset (1960) ***Political Man: The Social Bases of Politics*** (New York: Doubleday)
- W.S. Livingstone, ‘*A Note on the Nature of Federalism*’ (1952) ***Political Science Quarterly*** 67, 81-95
- A. Liyanagamage (1968) ***The Decline of Polonnaruva and the Rise of Dambadeniya*** (c.1180-1270 A.D.) (Colombo: Ceylon Government Press)
- K. Loganathan (1996) ***Lost Opportunities: Past Attempts at Resolving Ethnic Conflict*** (Colombo: CEPRA)

- J. Loughlin, ‘*The Transformation of the Democratic State in Western Europe*’ in F. Requejo & M. Caminal (Eds.) (2011) ***Political Liberalism and Plurinational Democracies*** (London: Routledge)
- M. Loughlin (2003) ***The Idea of Public Law*** (Oxford: Oxford University Press)
- M. Loughlin, ‘*Constitutional Theory: A 25<sup>th</sup> Anniversary Essay*’ (2005) ***Oxford Journal of Legal Studies*** 25(2): pp.183-202
- M. Loughlin (2010) ***Foundations of Public Law*** (Oxford: Oxford University Press)
- M. Loughlin (2013) ***The British Constitution: A Very Short Introduction*** (Oxford: Oxford University Press)
- I.S. Lustik, D. Miodownik & R.J. Eidelson, ‘*Secessionism in Multicultural States: Does Sharing Power Prevent or Encourage It?*’ (2004) ***American Political Science Review*** 98(2): pp.209-229
- N. MacCormick, ‘*Liberalism, Nationalism, and the Post-Sovereign State*’ (1996) ***Political Studies*** 44: pp.553-567
- N. MacCormick (1999) ***Questioning Sovereignty: Law, State and Nation in the European Commonwealth*** (Oxford: Oxford University Press)
- Madihe Pannaseeha (1979) ***Eelam – The Truth*** (Colombo: Swastika Press)
- S. Mahmud Ali (1993) ***The Fearful State: Power, People and Internal War in South Asia*** (London: Zed Books)
- K. Malalgoda, ‘*Millennialism in Relation to Buddhism*’ (1970) ***Comparative Studies in Society and History*** 12, 434-441
- K. Malalgoda, ‘*Concept and Confrontations: A Case Study of Agama*’ in M. Roberts (Ed.) (1997) ***Sri Lanka: Collective Identities Revisited***, Vol.I (Colombo: Marga Institute)
- N. Malathy (2012) ***A Fleeting Moment in My Country: The Last Years of the LTTE De-Facto State*** (Atlanta, GA: Clear Day Books)
- Z. Mampilly (2011) ***Rebel Rulers: Insurgent Governance and Civilian Life during War*** (Ithaca, NY: Cornell University Press)
- Z. Mampilly, ‘*The Nexus of Militarization and Corruption in Sri Lanka*’ in C.S. Cheng & D. Zaum (Eds.) (2012) ***Corruption and Post-Conflict Peacebuilding: Selling the Peace?*** (Abingdon: Routledge): Ch.11
- M. Mann, ‘*The Dark Side of Democracy: The Modern Tradition of Ethnic and Political Cleansing*’ (1999) ***New Left Review*** 235, 18-45
- C. Manogaran (1987) ***Ethnic Conflict and Reconciliation in Sri Lanka*** (Honolulu: University of Hawaii Press)
- K. Mantena (2011) ***Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism*** (Princeton: Princeton University Press)

- L. Marasinghe (2007) *The Evolution of Constitutional Governance in Sri Lanka* (Colombo: Vijitha Yapa Publications)
- S. Marcelline & J. Uyangoda, 'Post-Civil War Sri Lanka: Dilemmas of State Reform' in J. Uyangoda (Ed.) (2013) *State Reform in Sri Lanka: Issues, Directions and Perspectives* (Colombo: Social Scientists Association)
- S. Marks (2000) *The Riddle of All Constitutions: International Law, Democracy and the Critique of Ideology* (Oxford: Oxford University Press)
- C. McCrudden, 'Northern Ireland and the British Constitution' in J. Jowell & D. Oliver (Eds.) (1994) *The Changing Constitution* (3<sup>rd</sup> Ed.) (Oxford: Oxford University Press)
- J. McGarry, B. O'Leary & R. Simeon, 'Integration or Accommodation? The Enduring Debate in Conflict Regulation' in S. Choudhry (2008) *Constitutional Design for Divided Societies: Integration or Accommodation?* (Oxford: Oxford University Press)
- D.B. McGilvray & M. Raheem, 'Muslims Perspectives on the Sri Lankan Conflict' (2007) *Policy Studies* 41 (Washington: East-West Centre)
- D.B. McGilvray (2008) *Crucible of Conflict: Tamil and Muslim Society in the East Coast of Sri Lanka* (Durham, NC: Duke University Press)
- U.S. Mehta (1999) *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago: Chicago University Press)
- F. Meinecke (1970) *Cosmopolitanism and the National State* (Princeton: Princeton University Press)
- G.C. Mendis (Ed.) (1956) *The Colebrooke-Cameron Papers: Documents on British Colonial Policy in Ceylon, 1796-1833*, Vols.I,II (Oxford: Oxford University Press)
- J.B. Meyers, 'Rethinking 'Constitutional Design' and the Integration/Accommodation Dichotomy' (2010) *Modern Law Review* 73:4, 656-678
- J.S. Mill (1861) *Considerations on Representative Government*, Ch.XVI in J. Gray (Ed.) (1991) *John Stuart Mill: On Liberty and Other Essays* (Oxford: Oxford University Press)
- D. Miller (1995) *On Nationality* (New York: Oxford University Press)
- D. Miller (2000) *Citizenship and National Identity* (Cambridge: Polity Press)
- Ministry of State (1983) *Sri Lanka – Who Wants a Separate State?* (Colombo: Department of Information)
- G. Moonesinghe (Ed.) (2010) *Nation Building: Priorities for Sustainability and Inclusivity* (Colombo: Shramaya)
- M. Moore (Ed.) (1998) *National Self-Determination and Secession* (Oxford: Oxford University Press)

- L. Moreno, ‘Asymmetry in Spain: Federalism in the Making?’ in R. Agranoff (Ed.) (1999) *Accommodating Diversity: Asymmetry in Federal Systems* (Baden-Baden: Nomos)
- R. Muggah (2008) *Relocation Failures in Sri Lanka: A Short History of Internal Displacement* (London: Zed Books)
- A. Mullins & C. Saunders, ‘Different Strokes for Different Folks? Some Thoughts on Symmetry and Difference in Federal Systems’ in B. De Villiers (Ed.) (1994) *Evaluating Federal Systems* (London: Juta)
- A. Murphy, ‘The Sovereign State System as a Political-Territorial Ideal: Historical and Contemporary Considerations’ in T. Biersteker & S. Weber (Eds.) (1996) *State Sovereignty as a Social Construct* (Cambridge: Cambridge University Press)
- W. Muthiah & S. Wanasinghe (Eds.) (2005) *Two Languages One Nation – One Language Two Nations: The Lanka Samasamaja Party on the State Language* (Colombo: Young Socialist)
- T. Nadaraja (1972) *The Legal System of Ceylon in its Historical Setting* (Leiden: E.J. Brill)
- E.M.V. Naganathan & V. Navaratnam (Eds.), ‘Presidential Address of Mr S.J.V. Chelvanayagam, K.C., Member of Parliament, Ceylon, delivered at The Inaugural and First Business Meeting of The Ilankai Tamil Arasu Kadchi (The Federal Freedom Party of the Tamil-speaking People of Ceylon) on 18<sup>th</sup> December 1949 at the G.C.S.U. Hall, Colombo’ (1949) ITAK Booklet Series No.1.
- D. Nesiiah (2012) *Tamil Language Rights in Sri Lanka* (Colombo: Centre for Policy Alternatives)
- E. Newman & R. Rich (Eds.) (2004) *The UN Role in Promoting Democracy: Between Ideals and Reality* (Tokyo: UN University Press)
- K. Nicolaidis, ‘Germany as Europe: How the Constitutional Court Unwittingly Embraced EU Democracy’ (2011) *International Journal of Constitutional Law* 9:3, 786-792
- E. Nissan, ‘History in the Making: Anuradhapura and the Sinhala Buddhist Nation’ (1989) *Social Analysis* 25: pp.64-77.
- E. Nissan & R.L. Stirrat, ‘The Generation of Communal Identities’ in J. Spencer (Ed.) (1990) *Sri Lanka: History and Roots of Conflict* (London: Routledge)
- W. Norman (2006) *Negotiating Nationalism: Nation-Building, Federalism and Secession in the Multinational State* (Oxford: Oxford University Press)
- E. Nordlinger (1972) *Conflict Regulation in Divided Societies* (Cambridge, Mass: Harvard University Press)

- W. Norman, ‘*From Quid Pro Quo to Modus Vivendi: Can Legalizing Secession Strengthen the Plurinational Federation?*’ in F. Requejo & M. Caminal (Eds.) (2011) ***Political Liberalism and Plurinational Democracies*** (London: Routledge)
- G. Obeyesekera, ‘*The Great Tradition and the Little in the Perspective Sinhalese Buddhism*’ (1963) ***Journal of Asian Studies*** 22, 139-155
- G. Obeyesekera (1967) ***Land Tenure in Village Ceylon*** (Cambridge: Cambridge University Press)
- G. Obeyesekera (1987) ***The Cult of the Goddess Pattini*** (New Delhi: Motilal Banarsidas)
- G. Obeyesekera, ‘*The Buddhist Pantheon in Ceylon and its Extensions*’ in M. Nash (Ed.) ***Anthropological Studies in Theravada Buddhism*** (New Haven: Yale University Press)
- P. Oliver and S. Tierney, Book Review/Response, ‘*Constitutional Referendums: The Theory and Practice of Republican Deliberation*’, ***International Journal of Constitutional Law Blog***, 25<sup>th</sup> February 2014
- B. O’Leary & J. McGarry (1994) ***Nationalism, Ethnic Conflict and Democracy*** (Baltimore: JHU Press)
- N. Ornstein & K. Coursen, ‘*As the World Turns Democratic: Federalism finds Favor*’ (1992) ***The American Enterprise*** (Jan/Feb): pp.20-4
- M. Ottaway (1994) ***Democratization and Ethnic Nationalism: African and Eastern European Experiences*** (Washington, DC: Overseas Development Council)
- S. Pathmanathan, ‘*Feudal Polity in Medieval Ceylon: An Examination of the Chieftaincies of the Vanni*’ (1972) ***Ceylon Journal of Historical and Social Studies*** 2: pp.118-130
- S. Pathmanathan (1978) ***The Kingdom of Jaffna*** (Colombo: Arul M. Rajendra)
- J.C.N. Paul, ‘*Ethnicity and the New Constitutional Orders of Ethiopia and Eritrea*’ in Y. Ghai (Ed.) (2000) ***Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States*** (Cambridge: Cambridge University Press)
- G.H. Peiris, ‘*An Appraisal of the Concept of a Traditional Homeland in Sri Lanka*’ (1991) ***Ethnic Studies Report*** IX:1
- Y. Peled, ‘*Ethnic Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State*’ (1992) ***American Political Science Review*** 86:2, 432-443
- Y. Peled & D. Navot, ‘*Ethnic Democracy Revisited*’ (2005) ***Israel Studies Forum*** 20:1, 3-27
- I. Peleg, ‘*Transforming Ethnic Orders to Pluralist Regimes: Theoretical, Comparative and Historical Analysis*’ in A. Guelke (Ed.) (2004) ***Democracy and Ethnic Conflict*** (New York: Palgrave Macmillan)

- I. Peleg (2007) *Democratizing the Hegemonic State: Political Transformation in the Age of Identity* (Cambridge: Cambridge University Press)
- S. Perera (Ed.) (1996) *Newton Gunasinghe: Selected Essays* (Colombo: Social Scientists Association)
- J. Pfaff-Czarnecka & D. Rajasingham-Senanayake, 'Introduction' in J. Pfaff-Czarnecka, D. Rajasingham-Senanayake, A. Nandy & E.T. Gomez (1999) *Ethnic Futures: The State and Identity Politics in Asia* (New Delhi: Sage)
- W. Pfaff (1994) *The Wrath of Nations* (Touchstone)
- J. Pitts (2005) *A Turn to Empire: The Rise of Liberal Imperialism in Britain and France* (Princeton: Princeton University Press)
- J. Plamenatz, 'Two Types of Nationalism' in E. Kamenka (Ed.) (1973) *Nationalism* (Canberra: Australian National University Press)
- P. Radan, 'Secession in Constitutional Law' in A. Pavković & P. Radan (Eds.) (2011) *The Ashgate Research Companion to Secession* (Farnham: Ashgate)
- H. Rae (2002) *State Identities and the Homogenisation of Peoples* (Cambridge: Cambridge University Press)
- D. Rajasingham-Senanayake, 'Democracy and the Problem of Representation: The Making of Bi-polar Ethnic Identity in Post/Colonial Sri Lanka' in J. Pfaff-Czarnecka, D. Rajasingham-Senanayake, A. Nandy & E.T. Gomez (1999) *Ethnic Futures: The State and Identity Politics in Asia* (New Delhi: Sage)
- S. Ramaswamy, 'The Nation, the Region, and the Adventures of a Tamil Hero' (1994) *Contributions to Indian Sociology* 24, 295
- S. Ramaswamy (1997) *Passions of the Tongue: Language Devotion in Tamil India, 1891-1970* (Berkeley: University of California Press)
- S. Ramaswamy, 'Language of the People in the World of the Gods: Ideologies of Tamil before the Nation' (1998) *Journal of Asian Studies* 57:1, 66
- S. Ramaswamy, 'History at Land's End: Lemuria in Tamil Spatial Fables' (2000) *Journal of Asian Studies* 59:3, 575
- H. Rambukwella, 'Reconciling What? History, Realism and the Problem of an Inclusive Sri Lankan Identity' (2012) ICES Research Paper No.3 (Colombo: ICES)
- D. Rampton & A. Welikala, 'The Politics of the South' in J. Goodhand & B. Klem (Eds.) (2005) *Sri Lanka Strategic Conflict Assessment, 2000 – 2005*, Vol. III (Colombo: The Asia Foundation)
- D. Rampton (2010) *Deeper Hegemony: The Populist Politics of Sinhala Nationalist Discontent and the Janatha Vimukthi Peramuna in Sri Lanka*, PhD Thesis, School of Oriental and African Studies, University of London (unpublished)

- D. Rampton & A. Welikala, ‘*Would the Real Dutugemunu Please Stand Up? The Politics of Sinhala Nationalist Authenticity and Populist Discontent*’ in J. Goodhand, J. Spencer & B. Korf (Eds.) (2011) ***Conflict and Peacebuilding in Sri Lanka: Caught in the Peace Trap?*** (London: Routledge)
- S. Ratnapala, ‘*Cultural Diversity and Liberal Society: A Case for Reprivatizing Culture*’ (2005) ***The Independent Review*** X:2, 249-271
- S. Ratnapala, ‘*FoedusPacificum: A Response to Ethnic Regionalism within Nation States*’ in G. Appleby, N. Aroney & T. John (Eds.) (2012) ***The Future of Australian Federalism*** (Cambridge: Cambridge University Press)
- C.J. Ratwatte, ‘*Federalism and the Kandyans*’ (n.d.) ***Rootsweb***
- J. Rawls (1971) ***A Theory of Justice*** (Cambridge, Mass: Belknap Press)
- *Reference re Secession of Quebec* (1998) 2 SCR 217
- A. Reid (Ed.) (1997) ***The Last Stand of Asian Autonomies: Responses to Modernity in the Diverse States of Southeast Asia and Korea, 1750-1900*** (Basingstoke: Macmillan)
- E. Renan, ‘*What is a Nation?*’ in H. Bhabha (Ed.) (1990) ***Nation and Narration*** (London: Routledge)
- F. Requejo, ‘*Introduction*’ in F. Requejo (Ed.) (2001) ***Democracy and National Pluralism*** (London: Routledge)
- F. Requejo, ‘*Political Liberalism in Multinational States: The Legitimacy of Plural and Asymmetrical Federalism*’ in A-G. Gagnon & J. Tully (Eds.) (2001) ***Multinational Democracies*** (Cambridge: Cambridge University Press)
- F. Requejo & M. Caminal (Eds.) (2011) ***Political Liberalism and Plurinational Democracies*** (London: Routledge)
- F. Requejo, ‘*Shadows of the Enlightenment: Refining Pluralism in Liberal Democracies*’ in F. Requejo & M. Caminal (Eds.) (2011) ***Political Liberalism and Plurinational Democracies*** (London: Routledge)
- F. Requejo & M. Caminal, ‘*Liberal Democracies, National Pluralism and Federalism*’ in F. Requejo & M. Caminal (Eds.) (2011) ***Political Liberalism and Plurinational Democracies*** (London: Routledge)
- F. Reynolds, ‘*The Two Wheels of the Dhamma*’ in G. Obeyesekere, F. Reynolds & B.L. Smith (Eds.) (1972) ***The Two Wheels of the Dhamma: Essays on the Theravada Tradition in India and Ceylon*** (Chambersburg, Pa.: American Academy of Religion)
- F. Reynolds (Ed.) (2002) ***The Architecture of Democracy: Constitutional Design, Conflict Management and Democracy*** (Oxford: Oxford University Press)
- P. Robb (2007) ***Empire, Identity and India: Liberalism, Modernity and the Nation*** (Oxford: Oxford University Press)

- M. Roberts, 'Introduction: Elites, Nationalisms and the Nationalist Movement in Ceylon' in M. Roberts (Ed.) (1977) ***Documents of the Ceylon National Congress and Nationalist Politics in Ceylon, 1929-1950***, Vol.1 (Colombo: Dept. of National Archives)
- M. Roberts, 'Ethnic Conflict in Sri Lanka and Sinhalese Perspectives: Barriers to Accommodation' (1978) ***Modern Asian Studies*** 12:3, 353-376
- M. Roberts, 'Caste Feudalism in Sri Lanka? A Critique through the Asokan Persona and European Contrasts' (1984) ***Contributions to Indian Sociology*** 18, 189-220
- M. Roberts (1994) ***Exploring Confrontation: Sri Lanka: Politics, Culture and History*** (Chur: Harwood Academic Publishers)
- M. Roberts (Ed.) (1997) ***Sri Lanka: Collective Identities Revisited***, Vols.I,II (Colombo: Marga Institute)
- M. Roberts, 'Sri Lanka: Intellectual Currents and Conditions in the Study of Nationalism' in M. Roberts (Ed.) (1997) ***Sri Lanka: Collective Identities Revisited***, Vol.I (Colombo: Marga Institute)
- M. Roberts, 'Nationalisms Today and Yesterday' in G.H. Peiris & S.W.R. De A. Samarasinghe (Eds.) (1999) ***History and Politics: Millennial Perspectives*** (Colombo: LST)
- M. Roberts (2002) ***Primordialist Strands in Contemporary Sinhala Nationalism in Sri Lanka: Urumaya as Ur***, No.20 of Marga Monograph Series, ***A History of Ethnic Conflict in Sri Lanka: Recollection, Reinterpretation and Reconciliation*** (Colombo: Marga Institute)
- M. Roberts (2004a) ***Sinhala Consciousness in the Kandyan Period: 1590s to 1815*** (Colombo: Vijitha Yapa)
- M. Roberts, 'Narrating Tamil Nationalism: Subjectivities and Issues' (2004b) ***South Asia: Journal of South Asian Studies*** 17(1): pp.87-108
- M. Roberts, 'History as Dynamite' (2000) in M. Roberts (2010) ***Fire and Storm: Essays in Sri Lankan Politics*** (Colombo: Vijitha Yapa)
- M. Roberts, 'Sinhaleanness and its Reproduction, 1232-1818' in A. Welikala (Ed.) (2012) ***The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice*** (Colombo: Centre for Policy Alternatives)
- P.G. Roeder, 'Soviet Federalism and Ethnic Mobilization' (1991) ***World Politics*** 43(2): pp.196-232
- J.D. Rogers, 'Historical Images in the British Period' in J. Spencer (Ed.) (1990) ***Sri Lanka: History and Roots of Conflict*** (London: Routledge)

- J.D. Rogers, ‘*Post-Orientalism and the Interpretation of Pre-Modern and Modern Political Identities: The Case of Sri Lanka*’ (1994) *Journal of Asian Studies* 53: pp.10-23
- S. Rokkan & D. Urwin, ‘*Introduction: Centres and Peripheries in Western Europe*’ in S. Rokkan & D. Urwin (Eds.) (1982) *The Politics of Territorial Identity: Studies in European Regionalism* (London: Sage)
- M. Rosenfeld (1998) *Just Interpretations: Law between Ethics and Politics* (Berkeley: University of California Press)
- M. Rosenfeld (2011) *Law, Justice, Democracy and the Clash of Cultures: A Pluralist Account* (Cambridge: Cambridge University Press)
- M. Rosenfeld (2010) *The Identity of the Constitutional Subject: Selfhood, Citizenship, Culture, and Community* (Abingdon: Routledge)
- R. Rotberg, ‘*African Nationalism: Concept or Confusion?*’ (1967) *Journal of Modern African Studies* IV: pp.33-46
- L.I. Rudolph & S.H. Rudolph (1967) *The Modernity of Tradition: Political Development in India* (Chicago: University of Chicago Press)
- J. Russell (1982) *Communal Politics under the Donoughmore Constitution, 1931-1947* (Colombo: Tisara Prakasakayo)
- J. Russell, ‘*The Dance of the Turkey Cock – The Jaffna Boycott of 1931*’ in J.C. Holt (Ed.) (2011) *The Sri Lanka Reader: History, Culture, Politics* (Durham, NC: Duke University Press)
- R. Sampanthan, ‘*The Ilankai Tamil Arasu Katchi (Federal Party) and the Post-Independence Politics of Ethnic Pluralism: Tamil Nationalism Before and After the Republic*’ in A. Welikala (Ed.) (2012) *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Colombo: Centre for Policy Alternatives)
- P. Saravanamuttu, ‘*Sri Lanka: The Intractability of Ethnic Conflict*’ in J. Darby & R. MacGinty (Eds.) (2000) *The Management of Peace Processes* (London: Macmillan)
- P. Saravanamuttu, ‘*Governance and Plural Societies: Sri Lanka*’ in P.R. Chari (Ed.) (2001) *Security and Governance in South Asia* (Colombo: Regional Centre for Security Studies)
- P. Saravanamuttu, ‘*The Eighteenth Amendment: Political Culture and Consequences*’ in R. Edrisinha & A. Jayakody (Eds.) (2011) *The Eighteenth Amendment to the Constitution: Substance and Process* (Colombo: Centre for Policy Alternatives)
- A. Sartori, ‘*The British Empire and its Liberal Mission*’ (2006) *Journal of Modern History* 78, 623-643

- C. Saunders, 'Towards a Global Constitutional Gene Pool' (2009) *National Taiwan University Law Review* 4(3): 1-38
- P. Schalk, 'Sustaining the Pre-Colonial Past: Saiva Defiance against Christian Rule in the 19<sup>th</sup> Century Jaffna' in M. Bergunder, H. Frese & U. Schroder (Eds.) (2010) *Ritual, Caste and Religion in Colonial South India* (Halle: Franckesche Stiftungen zu Halle)
- H. Scharfe (1989) *The State in Indian Tradition* (Leiden: E.J. Brill)
- R.A. Schermerhorn (1970) *Comparative Ethnic Relations: A Framework for Theory and Research* (New York: Random House)
- E. Scheiffele, 'Questioning One's 'Own' from the Perspective of the Foreign' in G. Parkes (Ed.) (1991) *Nietzsche and Asian Thought* (Chicago: University of Chicago Press)
- D. Schnapper (1998) *Community of Citizens: On the Modern Idea of Nationality* (London: Transactions)
- B. Schonthal (2012) *Ruling Religion: Buddhism, Law and Politics in Sri Lanka*, PhD Thesis, University of Chicago (unpublished)
- B. Schonthal, 'Buddhism and the Constitution: The Historiography and Postcolonial Politics of Section 6' in A. Welikala (Ed.) (2012) *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Colombo: Centre for Policy Alternatives)
- D. Scott, 'Religion in Colonial Civil Society: Buddhism and Modernity in 19<sup>th</sup> Century Lanka' (1994) *The Thatched Patio* 7: pp.1-16
- K. Scott (2011) *Federalism: A Normative Theory and its Practical Relevance* (New York: Continuum Books)
- N. Seevaratnam (Ed.) (1989) *The Tamil National Question and the Indo-Lanka Accord* (New Delhi: Konark)
- K. Senaratne, 'Jathika Chinthanaya and the Executive Presidency' (forthcoming)
- H.L. Seneviratne (1978a) *Rituals of the Kandyan State* (Cambridge: Cambridge University Press)
- H.L. Seneviratne, 'Religion and Legitimacy of Power in the Kandyan Kingdom' in B.L. Smith (Ed.) (1978b) *Religion and Legitimation of Power in Sri Lanka* (Chambersburg: Penn.: Anima Books)
- H.L. Seneviratne, 'Identity and the Conflation of the Past and Present' in H.L. Seneviratne (Ed.) (1997) *Identity, Consciousness and the Past* (New Delhi: Oxford University Press)
- H.L. Seneviratne (1999) *The Work of Kings: The New Buddhism in Sri Lanka* (Chicago: Chicago University Press)

- S. Shankar, 'The Substance of the Constitution: Engaging with Foreign Judgments in India, Sri Lanka and South Africa' (2010) *Drexel Law Review* 2, 373-425
- A. Sivanandan & H. Waters, 'The Mathew Doctrine' (1984) *Race & Class* XXVI:1, 129-138
- S. Sivasundaram, 'Buddhist Kingship, British Archaeology and Historical Narratives in Sri Lanka, c.1750-1850' (2007) *Past and Present* 197(1): pp.111-42
- S. Sivasundaram (2013) *Islanded: Britain, Sri Lanka and the Bounds of an Indian Ocean Colony* (Chicago: Chicago University Press)
- A.D. Smith (1983) *State and Nation in the Third World* (London: Wheatsheaf)
- A.D. Smith (1986) *The Ethnic Origins of Nations* (Oxford: Blackwell)
- A.D. Smith (1995) *Nations and Nationalism in a Global Era* (Cambridge: Polity Press)
- A.D. Smith (1998) *Nationalism and Modernism: A Critical Survey of Recent Theories of Nations and Nationalism* (London: Routledge)
- A.D. Smith, 'Nations in Decline? The Erosion and Persistence of Modern National Identities' in M. Young, E. Zuelow & A. Sturm (Eds.) (2007) *Nationalism in a Global Era: The Persistence of Nations* (London: Routledge)
- B.L. Smith & H.B. Reynolds (Eds.) (1987) *The City as Sacred Centre: Essays on Six Asian Contexts* (Leiden: E.J. Brill)
- S. Smooha & T. Hanf, 'The Diverse Modes of Conflict Regulation in Deeply Divided Societies' (1992) *International Journal of Comparative Sociology* 33:1-2, 26-47
- S. Smooha, 'The Regime of the State of Israel: Civil Democracy, Non-Democracy or Ethnic Democracy?' (2000) *Israeli Sociology* 2(2): pp.565-630
- S. Smooha, 'Types of Democracy and Modes of Conflict Management in Ethnically Divided Societies' (2002) *Nations and Nationalism* 8(4): pp.423-431
- J. Snyder (2000) *From Voting to Violence: Democratization and Nationalist Conflict* (New York: W.W. Norton)
- Social Scientists Association (1984) *Ethnicity and Social Change* (Colombo: SSA)
- Y. Soysal (1994) *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: Chicago University Press)
- J. Spencer (Ed.) (1990) *Sri Lanka: History and Roots of Conflict* (London: Routledge)
- J. Spencer, 'Introduction: The Power of the Past' in J. Spencer (Ed.) (1990) *Sri Lanka: History and Roots of Conflict* (London: Routledge)
- J. Spencer (1990a) *A Sinhala Village in a Time of Trouble* (New Delhi: Oxford University Press)

- J. Spencer, 'Reflections on an Illiberal Peace' in J. Goodhand, J. Spencer & B. Korf (Eds.) (2011) *Conflict and Peacebuilding in Sri Lanka: Caught in the Peace Trap?* (London: Routledge)
- R. Stavenhagen (1996) *Ethnic Conflicts and the Nation-State* (London: Palgrave Macmillan)
- B. Stein (1983) *Peasant, State and Society in Medieval South India* (New Delhi: Oxford University Press)
- A. Stepan, 'Federalism and Democracy: Beyond the U.S. Model' (1999) *Journal of Democracy* 10:4, 19-34
- A. Stepan, 'Modern Multinational Democracies: Transcending a Gellnerian Oxymoron' in A. Stepan (2001) *Arguing Comparative Politics* (Oxford: Oxford University Press)
- A. Stepan, J.J. Linz & Y. Yadav (2011) *Crafting State-Nations: India and other Multinational Democracies* (Baltimore: John Hopkins University Press)
- N. Stojanović, 'Mononational and Multinational States: A Valid Dichotomy?', paper for conference on Legal Reasoning and European Law: The Perspective of Neil MacCormick, European University Institute, 21<sup>st</sup> May 2010
- A. Strathern, 'Review of Sinhala Consciousness in the Kandyan Period 1590s to 1815 by Michael Roberts' (2005) *Modern Asian Studies* 39:4, 1007-1020
- A. Strathern, 'Sri Lanka in the Long Early Modern Period: Its Place in a Comparative Theory of Second Millennium Eurasian History' (2009) *Modern Asian Studies* 43:4, 815-869
- A. Strathern, 'Why Are Buddhist Monks Attacking Muslims?', *BBC News Magazine*, 2<sup>nd</sup> May 2013
- J.S. Strong (1983) *The Legend of King Asoka* (Princeton: Princeton University Press)
- R. T. Suberu (1994) *Nationalism, Ethnic Conflict and Democracy* (Baltimore: John Hopkins University Press)
- S. Subrahmanyam (2001) *Penumbra Visions: Making Politics in Early Modern South India* (Ann Arbor: Michigan UP)
- M. Suksi (2011) *Territorial Autonomy: A Comparative Study in Constitutional Law of Powers, Procedures and Institutions* (Heidelberg: Springer)
- C.R. Sunstein (2001) *Designing Democracy: What Constitutions Do* (Oxford: Oxford University Press)
- C.R. Sunstein, 'Should Constitutions Protect the Right to Secede? A Reply to Weinstock' (2001) *Journal of Political Philosophy* 9:3, 350-355

- S.J. Tambiah (1976) *World Conqueror and World Renouncer: A Study of Buddhism and Polity in Thailand against a Historical Background* (Cambridge: Cambridge University Press)
- S.J. Tambiah, 'The Buddhist Conception of Kingship and its Historical Manifestations: A Reply to Spiro' (1978) *Journal of Asian Studies* 48, 803-804
- S.J. Tambiah (1985) *Culture, Thought, and Social Action: An Anthropological Perspective* (Cambridge, Mass.: Harvard University Press)
- S.J. Tambiah (1986) *Sri Lanka: Ethnic Fratricide and the Dismantling of Democracy* (Chicago: Chicago University Press)
- S.J. Tambiah (1992) *Buddhism Betrayed? Religion, Politics, and Violence in Sri Lanka* (Chicago: Chicago University Press)
- S.J. Tambiah (1996) *Leveling Crowds: Ethnonationalist Conflicts and Collective Violence in South Asia* (Berkeley: University of California Press)
- S.J. Tambiah, 'Urban Riots and Cricket in South Asia: A Postscript to 'Levelling Crowds'' (2005) *Modern Asian Studies* 39:4, 897-927
- Tamil United Liberation Front (1988) *Towards Devolution of Power in Sri Lanka: Main Documents, August 1983 to October 1987* (Madras: TULF)
- Y. Tamir (1993) *Liberal Nationalism* (Princeton: Princeton University Press)
- C.D. Tarlton, 'Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation' (1965) *Journal of Politics* 27, 861-874
- S. Tarrow (2011) *Power in Movement: Social Movements and Contentious Politics* (3<sup>rd</sup> Rev. Ed) (Cambridge: CUP)
- C. Taylor, 'Shared and Divergent Values' in R.L. Watts & D. Brown (Eds.) (1991) *Options for a New Canada* (Toronto: University of Toronto Press)
- C. Taylor, 'The Politics of Recognition' in A. Gutman (Ed.) (1992) *Multiculturalism and the Politics of Recognition* (Princeton: Princeton University Press)
- S. Tennekoon, 'Newspaper Nationalism: Sinhala Identity as Historical Discourse' in J. Spencer (Ed.) (1990) *Sri Lanka: History and Roots of Conflict* (London: Routledge)
- R. Thapar (1961) *Asoka and the Decline of the Mauryas* (London: Oxford University Press)
- The Constitution of Spain (1978): Article 2
- The Constitution of Sri Lanka (1972): Sections 3, 4
- The Constitution of Sri Lanka (1978): Articles 2, 3, 4, 9, 18, 30 (1), 31, 33, 35, 43, 44, 45, 46, 47, 54, 75, 76, 85, 86, 154G (10)
- The Federal Party's Memorandum and the Model Constitution for a Federal State (1970) in R. Edrisinha, M. Gomez, V.T. Thamilmaran & A. Welikala (Eds.) (2008) *Power*

*Sharing in Sri Lanka: Constitutional and Political Documents, 1926-2008* (Colombo: Centre for Policy Alternatives)

- The Northern Ireland Act 1998: Section 1 and Schedule 1
- *The Republic of Sri Lanka v. Appapillai Amirthalingam*, Trial at Bar No. 1 of 1976, the Order of the High Court reproduced in R. Edrisinha, M. Gomez, V.T. Thamilmaran & A. Welikala (Eds.) (2008) *Power Sharing in Sri Lanka: Constitutional and Political Documents, 1926-2008* (Colombo: Centre for Policy Alternatives)
- S. Tierney, 'The Search for a New Normativity: Thomas Franck, Post-modern Neo-tribalism and the Law of Self-Determination' (2002) *European Journal of International Law* 13, 941-960
- S. Tierney (2006) *Constitutional Law and National Pluralism* (Oxford: Oxford University Press)
- S. Tierney, 'We the Peoples': Constituent Power and Constitutionalism in Plurinational States' in M. Loughlin & N. Walker (Eds.) (2007) *The Paradox of Constitutionalism* (Oxford: Oxford University Press)
- S. Tierney, 'Beyond the Ontological Question: Liberal Nationalism and the Task of Constitution-Building' (2008) *European Law Journal* 14:1, 128-137
- S. Tierney, 'Reframing Sovereignty? Sub-State National Societies and Contemporary Challenges to the Nation-State' in F. Requejo & M. Caminal (Eds.) (2011) *Political Liberalism and Plurinational Democracies* (London: Routledge)
- S. Tierney, 'Rights versus Democracy? The Bill of Rights on Plurinational States' in C. Harvey & A. Schwartz (Eds.) (2012) *Rights in Divided Societies* (Oxford: Hart Publishing)
- S. Tierney (2012) *Constitutional Referendums: The Theory and Practice of Republican Deliberation* (Oxford: Oxford University Press)
- S. Tierney, 'Sub-State Nations and the Constitutional State: Embedding Normative Principles within a Plurinational Constitution' in A. Welikala (Ed.) (2012) *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Colombo: Centre for Policy Alternatives)
- C. Tilly, 'Reflections on the History of European State-Making' in C. Tilly (Ed.) (1975) *The Formation of National States in Western Europe* (Princeton: Princeton University Press)
- C. Tilly, 'Ethnic Conflict in the Soviet Union' (1991) *Theory and Society* 20, 569-580
- C. Tilly, 'The State of Nationalism' (1996) *Critical Review* 10, 299-306
- C. Tilly (1998) *Durable Inequality* (Berkeley: University of California Press)
- C. Tilly (2004) *Social Movements, 1768-2004* (Boulder, CO: Paradigm Publishers)

- N. Tiruchelvam, 'Legal Education and Development: The Role of the Law Teacher in Sri Lanka' (1977) *Marga Quarterly Journal* 4:2, 89
- N. Tiruchelvam, 'Introduction' in N. Tiruchelvam & R. Coomaraswamy (Eds.) (1987) *The Role of the Judiciary in Plural Societies* (London: Frances Pinter)
- N. Tiruchelvam, 'The Politics of Federalism and Diversity in Sri Lanka' in Y. Ghai (Ed.) (2000) *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States* (Cambridge: Cambridge University Press)
- G. Tsebelis, 'Elite Interaction and Constitution Building in Consociational Societies' (1990) *Journal of Theoretical Politics* 2(1): pp.5-29
- G. Tucci (1971) *The Theory and Practice of the Mandala* (London: Rider & Co.)
- M.V. Tushnet, 'The Possibilities of Comparative Constitutional Law' (1999) *Yale Law Journal* 108: p.1225
- D. Udagama, 'The Sri Lankan Legal Complex and the Liberal Project: Only Thus Far and No More' in T.C. Halliday, L. Karpik & M.M. Feeley (Eds.) (2012) *Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex* (Cambridge: Cambridge University Press)
- D. Udagama, 'The Democratic State and Religious Pluralism: Comparative Constitutionalism and Constitutional Experiences of Sri Lanka' in S. Khilnani, V. Raghavan & A.K. Thiruvengadam (Eds.) (2013) *Comparative Constitutionalism in South Asia* (New Delhi: Oxford University Press)
- J. Uyangoda, 'A State of Desire? Some Reflections on the Unreformability of Sri Lanka's Post-colonial State' in M. Meyer & S. Hettige (Eds.) (1999) *Sri Lanka at Cross Roads* (Colombo: University of Colombo)
- J. Uyangoda, 'Ethnic Conflict, the Tsunami Disaster and the State in Sri Lanka' (2005) *Inter-Asia Cultural Studies* 6:3, 341-352
- J. Uyangoda, 'The United Front Regime of 1970 and the Post-Colonial State of Sri Lanka' in T. Jayatilaka (Ed.) (2010) *Sirimavo: Honouring the World's First Woman Prime Minister* (Colombo: The Bandaranaike Museum Committee)
- J. Uyangoda, 'Government-LTTE Peace Negotiations of 2002-2005 and the Clash of State Formation Projects' in J. Goodhand, J. Spencer & B. Korf (Eds.) (2011) *Conflict and Peacebuilding in Sri Lanka: Caught in the Peace Trap?* (London: Routledge)
- J. Uyangoda, 'Travails of State Reform in the Context of Protracted Civil War in Sri Lanka' in K. Stokke & J. Uyangoda (Eds.) (2011) *Liberal Peace in Question: Politics of State and Market Reform in Sri Lanka* (London: Anthem Press)
- J. Uyangoda, 'Introduction' in J. Uyangoda (Ed.) (2013) *State Reform in Sri Lanka: Issues, Directions and Perspectives* (Colombo: Social Scientists Association)

- P. Van den Berghe, '*Ethnies and Nations: Genealogy Indeed*' in A. Ichijo & G. Uzelac (Eds.) (2006) ***When is the Nation? Towards an Understanding of Theories of Nationalism*** (London: Routledge)
- W. Van Schendel (2005) ***The Bengal Borderland: Beyond State and Nation in South Asia*** (London: Anthem Press)
- M. Viroli (1995) ***For the Love of Country: An Essay on Patriotism and Nationalism*** (Oxford: Oxford University Press)
- N. Walker, '*Beyond the Unitary Conception of the United Kingdom Constitution*' (2000) ***Public Law*** 384
- N. Walker, '*Scottish Self-Government and the Unitary Constitution*' in L. Farmer & S. Veitch (Eds.) (2000a) ***The State of Scots Law*** (Edinburgh: T & T Clark)
- N. Walker, '*Flexibility within a Metaconstitutional Frame: Theoretical Reflections on Flexibility and the Future of Europe*' in G. de Burca & J. Scott (Eds.) (2000b) ***Constitutional Change in the EU: From Uniformity to Flexibility?*** (Oxford: Hart)
- N. Walker, '*Late Sovereignty in the European Union*' (2001) European Forum Discussion Paper (Florence: EUI)
- N. Walker, '*Late Sovereignty in the European Union*' in N. Walker (Ed.) (2003) ***Sovereignty in Transition*** (Oxford: Hart)
- N. Walker (2010) ***Final Appellate Jurisdiction in the Scottish Legal System*** (Edinburgh: The Scottish Government) N. Walker, '*Rosenfeld's Plural Constitutionalism*' (2010) ***International Journal of Constitutional Law*** 8(3): pp.677-684
- N. Walker, '*Beyond the Unitary Conception of the United Kingdom Constitution*' in A. Welikala (Ed.) (2012) ***The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice*** (Colombo: Centre for Policy Alternatives)
- M. Walzer, '*The New Tribalism: Notes on a Difficult Problem*' in R. Beiner (Ed.) (1999) ***Theorizing Nationalism*** (Albany: State University of New York Press)
- R.L. Watts (1966) ***New Federations: Experiments in the Commonwealth*** (Oxford: Clarendon Press)
- M. Weber (1967) ***The Religion of India: The Sociology of Hinduism and Buddhism*** (Trans. H.H. Gerth & D. Martindale) (Glencoe, Ill.: The Free Press)
- D. Weinstock, '*Constitutionalizing the Right to Secede*' (2001) ***Journal of Political Philosophy*** 9:2, 182-203
- A. Welikala (2008) ***A State of Permanent Crisis: Constitutional Government, Fundamental Rights and States of Emergency in Sri Lanka*** (Colombo: Centre for Policy Alternatives)

- A. Welikala, ‘*Devolution within the Unitary State: A Constitutional Assessment of the Thirteenth Amendment with reference to the Experience in the Eastern Province*’ in Centre for Policy Alternatives (2010) ***Devolution in the Eastern Province: Implementation of the Thirteenth Amendment and Public Perceptions, 2008-2010*** (Colombo: Centre for Policy Alternatives)
- A. Welikala, ‘*The Eighteenth Amendment and the Abolition of the Presidential Term Limit: A Brief History of the Gradual Diminution of Temporal Limitations on Executive Power since 1978*’ in R. Edrisinha & A. Jayakody (Eds.) (2011) ***The Eighteenth Amendment to the Constitution: Substance and Process*** (Colombo: Centre for Policy Alternatives)
- A. Welikala (Ed.) (2012) ***The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice*** (Colombo: Centre for Policy Alternatives)
- A. Welikala, ‘*The Failure of Jennings’ Constitutional Experiment in Ceylon: How ‘Procedural Entrenchment’ led to Constitutional Revolution*’ in A. Welikala (Ed.) (2012) ***The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice*** (Colombo: Centre for Policy Alternatives)
- A. Welikala, ‘*Realist Modernism in an Age of Kulturkampf*’, ***Groundviews***, 8<sup>th</sup> June 2014
- A. Welikala, ‘*The Sri Lankan Conception of the Unitary State: Theory, Practice and Historiography*’ in A. Amarasingham & D. Bass (Eds.) (forthcoming, 2014) ***Post-War Sri Lanka: Problems and Prospects*** (London: Hurst & Co.)
- A. Welikala, ‘*‘Specialist in Omniscience’? Nationalism, Constitutionalism and Sir Ivor Jennings’ Engagement with Ceylon*’ in H. Kumarasingham (Ed.) (forthcoming, 2015) ***Constitution Making in Asia: Decolonisation and State-Building in the Aftermath of the British Empire*** (London: Routledge Advances in South Asian Studies Series)
- M. Weller & S. Wolff (Eds.) (2005) ***Autonomy, Self-Governance and Conflict Resolution: Innovative Approaches to Institutional Design in Divided Societies*** (London: Routledge)
- M. Weller & B. Metzger (2008) ***Settling Self-Determination Disputes through Complex Power-Sharing*** (Netherlands: MartinusNijhoff)
- M. Weller & K. Nobbs (Eds.) (2010) ***Asymmetric Autonomy and the Settlement of Ethnic Conflicts*** (Philadelphia: University of Penn. Press)
- K.C. Wheare (1960) ***The Constitutional Structure of the Commonwealth*** (Oxford: Clarendon)
- N. Wickramasinghe (1995) ***Ethnic Politics in Colonial Sri Lanka, 1927-1947*** (New Delhi: Vikas)

- N. Wickramasinghe (2006) *Sri Lanka in the Modern Age: A History of Contested Identities* (Colombo: Vijitha Yapa)
- N. Wickramasinghe, 'Sri Lanka's Conflict: Culture and Lineages of the Past' (2006) *Journal of International Affairs* 60(1): pp.107-124
- N. Wickramasinghe, 'After the War: A New Patriotism in Sri Lanka?' (2009) *Journal of Asian Studies* 68(4): pp.1045-1054
- N. Wickramasinghe, 'Producing the Present: History as Heritage in Post-War Patriotic Sri Lanka' (2012) ICES Research Paper No.2 (Colombo: ICES)
- M. Wight (1946) *The Development of the Legislative Council, 1606-1945* (London: Faber & Faber)
- C.V. Wigneswaran, 'Brother Bernard and the National Question', Keynote Speech by the Chief Minister of the Northern Province at the Bernard Soysa Centenary Commemoration, Colombo, 31<sup>st</sup> March 2014
- K.H.J Wijayadasa (2005) *The Betrayal of the Sinhala Nation* (Colombo: Dayawansa Jayakody)
- A.J. Wilson (1988) *The Break-Up of Sri Lanka: The Sinhalese-Tamil Conflict* (London: Hurst)
- A.J. Wilson (2000) *Sri Lankan Tamil Nationalism: Its Origins and Development in the 19<sup>th</sup> and 20<sup>th</sup> Centuries* (New Delhi: Penguin)
- B. Yack, 'The Myth of the Civic Nation' in R. Beiner (Ed.) (1999) *Theorizing Nationalism* (Albany, NY: State University of New York Press)
- O. Yiftachel, '“Ethnocracy” and its Discontents: Minorities, Protests and the Israeli Polity' (2000) *Critical Inquiry* 26(4): pp.725-756
- O. Yiftachel (2006) *Ethnocracy: Law and Identity Politics in Israel/Palestine* (Philadelphia, PA: University of Pennsylvania Press)
- F. Zakaria (2007) *The Future of Freedom: Illiberal Democracy at Home and Abroad* (Rev. Ed.) (New York: W.W. Norton)
- I.W. Zartman, 'The Timing of Peace Initiatives: Hurting Stalemates and Ripe Moments' (2001) *Global Review of Ethnopolitics* 1(1): pp.8-1
- D. Ziblatt (2008) *Structuring the State: The Formation of Italy and Germany and the Puzzle of Federalism* (Princeton: Princeton University Press)

## ACKNOWLEDGEMENTS

One incurs many debts in the production of a PhD thesis and my case has been no different, except perhaps in the extraordinary luck that I have enjoyed in the support and encouragement I have received. It is a particularly pleasant duty to offer thanks on reaching the end of the road, although I do agree with William Lucy, my first teacher of jurisprudence that ‘one is also duty-bound to avoid a kind of maudlin effusion that makes the process unseemly.’ Without emulating a lachrymose Oscar acceptance speech, therefore, I should like to thank the following people with all my heart.

I could not wish for two better supervisors than Stephen Tierney and Navraj Singh-Ghaleigh. From first to last, they oversaw not only my academic progress – sometimes with admirable restraint in the face of congenital delays and idiosyncratic forays into the unknown and the irrelevant – but also my professional development. In the latter respect, it has been both an honour and a pleasure to join them in teaching public law at Edinburgh Law School. Despite an incredible workload and the demands of a young family, Stephen’s ready attention to my needs, and his concise, precise and penetrating comments are a model of supervisory guidance, from which I have benefitted not only in the thesis but also as I undertake supervision of students myself. Stephen has always gone far beyond the normal obligations of a supervisor in furthering my interests and career development. Navraj and I have discussed more cricket than plurinational constitutionalism in the last five years, but his views on both have always been much appreciated.

I have also benefitted hugely from the friendly, supportive, encouraging, and inspirational atmosphere created by my colleagues in the public law teaching group, and my friends in the Constitutional Law Discussion Group. Thanks therefore to Chris Himsworth, Christine Bell, Elisenda Casañas-Adam, Daithí Mac Síthigh, Cormac Mac Amhlaigh, Neil Walker, Tom Daly, Tom Flynn, and Silvia Suteu. Cormac was very kind to allow me the use of his well-appointed office when he was away on sabbatical in 2013-14. The last year of the thesis is marked by indelible memories of the fabulous views of Old Town from that office: from the Firth of Forth to the crown spire of St. Giles Cathedral via Calton Hill, the clock tower of the Balmoral Hotel, and the gothic rocket of the Scott Monument.

Others at the Law School ensured that the postgraduate experience was a smooth one. Aimee Little and Amanda MacKenzie were excellent postgraduate administrators who cheerfully bore various demands on them. Graeme Laurie, Claudio Michelin and James Harrison have been extremely supportive postgraduate directors, and I thank James especially for ironing out my final extension with the minimum of fuss. And it would be difficult to imagine a School Secretary who is more efficient and courteous than James Gilmour.

I have received not only detailed and constructive feedback, but also empathy and encouragement from several people whom I have the unmitigated pleasure of calling friends. They know the rollercoaster of hope and despair that is a doctoral project and I have benefitted greatly from being able to discuss issues and evolving arguments with them. They are all excellent scholars who have each made exceptional contributions to the academic understanding of Sri Lanka. I sincerely thank Michael Roberts, Ben Schonthal, Harshan Kumarasingham, and Roshan de Silva Wijeyeratne.

My mother taught me to read by the time I was three and ensured I went to S. Thomas', both of which have a direct relevance to where I have got to today. Although I doubt if he considers academic public law ever worth one's while, my father has unflinchingly funded an expensive education, including five years of doctoral work. It was only when I started working and paying taxes in the UK that I truly realised how comfortably he had provided for me. My brother Eranga did everything he could from Colombo to ensure that things went smoothly for me in Edinburgh. All my other family have been supportive throughout and I thank Ruwangi, Nirani, Hiran, Thushila and Colin. If ever there has been a regret about being away from Sri Lanka in the past few years, it is being away from my delightful nephew Arie who was born while I was in Edinburgh. I hope that the ideas that I have grappled with in this thesis will have relevance and application at least for his generation of Sri Lankans.

To Ambika Satkunanathan I owe a debt of gratitude that will never be repaid. From the first conceptualisation of the research proposal, to numerous calls for tracking down Sri Lankan materials, to reading the first drafts of every chapter of the thesis, her love, loyalty and support was always beyond anything I could reasonably expect. I benefitted hugely from her intelligence, her knowledge of conditions on the ground, and her sense of judgement in dealing with the emotionally fraught politics of ethnic

nationalism in Sri Lanka. Most of all, I am indebted to her unwavering confidence in my abilities during frequent moments of doubt.

I would be seriously remiss were I not to acknowledge the real contribution made by friends outside the academy to keeping me on an even keel throughout the process. For congenial and stress-busting evenings, days, and weekends, I thank Allan Marson and Mark and Maggie Le May. In Colombo, my oldest and closest friends, Nilushike Costa, Tilan Wickramasinghe and Rohan Ponniah ensured that my annual Christmas vacations were never less than utterly memorable. Horace surely had chaps like these in mind when he wrote *Nunc Est Bidentum*. The final work on this thesis was done over the summer of 2014. The ‘home stretch’ got off to a rollicking start, and I thank Erin Fielding Delaney and Tom Daly for the good times. Shehara Athukorala helped with the bibliography, and as usual, the final formatting changes would have been impossible without the help of my old friend and collaborator Sanjana Hattotuwa.

In my working life, I have been extremely fortunate to work with, and get to know as friends, a number of very distinguished scholars and practitioners of comparative constitutional law, including Yash Ghai, Cheryl Saunders, Bob Rae, George Anderson, and Sujit Choudhry. Throughout the work on the thesis, I have been constantly reminded about how much I have learnt from them. Likewise, Patrick Birkinshaw’s guidance and support during my LL.M, which was the platform for doctoral work. There are, however, three people that I must single out for my special gratitude for what I have gained from their wisdom, decency, guidance, example, and above all, their kindness and infinite patience in mentoring a prodigal protégé. Without their singular influence in my life, I dread to think what might have been. I learnt more constitutional law from Rohan Edrisinha than I ever did as an undergraduate. Nicholas ‘Fink’ Haysom taught me how to think like a constitutional lawyer and I have never forgotten his maxim of legal writing: ‘strong words, softly spoken.’ I have no words to adequately reflect what I owe to Paikiasothy Saravanamuttu as a friend and mentor. Suffice it to say that he is the reason why I wanted a PhD.