Multination States in Asia

Accommodation or Resistance

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some semblance of authority over the military. The past performance of a range of civilian regimes does not offer substantial hope that they will be able to set aside petty partisan differences, avoid fiscal malfeasance, and insist upon the supremacy of elected civilian authority. However, after the rampant abuse of political power under General Musharraf's military dictatorship after the coup of October 1999, it is possible that previously feckless politicians may finally evince some interest in restoring the autonomy, probity, and efficacy of Pakistan's civilian institutions. Only through the reconstruction and eventual expansion of viable representative institutions can Pakistani polity begin to address the deep ethnic and regional fissures that have threatened its viability.

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Constitutional Politics and Crisis in Sri Lanka

Sujit Choudhry

In *Multicultural Odysseys,* Will Kymlicka observes sharp differences in the way North America and western Europe, on the one hand, and eastern and central Europe and Africa and Asia, on the other, have responded to the claims of minority nations (Kymlicka 2007). Some multinational polities such as Canada, Belgium, the United Kingdom, and Spain have come to see themselves not as nation-states, but as multination states and have, accordingly, given symbolic recognition to minority nations and reconfigured themselves constitutionally to reflect their multinational character. Other states have rejected and even suppressed – often violently – the political claims of minority nations. This appears to be particularly true in Asia. Kymlicka suggests that, with the notable exception of India, Asian states have been extremely resistant to the claims of minority nations, for a variety of reasons – the legacy of colonial divide-and-rule strategies which empowered minority ethnic groups, concerns over geopolitical security, fear of petty tyrannies, and the belief that ethnic mobilization would disappear as a result of modernization and development.

Sri Lanka is one of the many examples Kymlicka cites. It is not hard to understand why. Demographically, Sri Lanka fits his model of a multinational polity. It contains a large, Sinhala-speaking majority (74 percent of the population), as well as a large, Tamil-speaking minority (13 percent) who traditionally hail from the northeast of the island, where they

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constitute a majority.[1] Both the Sinhalese majority and the Tamil minority are engaged in competing projects of nation-building. The centerpiece of Sinhalese nation building has consisted of the designation of Sinhala as the official language, especially the internal working language of government. It has also entailed the maintenance of the unitary state inherited from the British, and the refusal thus far to recast Sri Lanka along federal lines. The sources of Sinhalese linguistic nationalism are diverse, ranging from resentment to the disproportionate professional success enjoyed by Tamils under colonial rule, to the use of official language policies to expand educational and employment opportunities for an increasingly literate and demanding Sinhalese population, to the pressure arising from the growth and consolidation of the state in the post-independence period to interact with the population in indigenous languages. Tamil nationalism arose as a defensive response to Sinhalese nation-building and has consisted of a series of demands that have escalated from linguistic parity to federalism and, eventually, to secession and independence for Tamil Eelam in the northeast of the country. At first, Tamil nationalists advanced their claims through the political process and civil disobedience. The Sri Lankan state was resistant to these claims, and responded to Tamil civil disobedience with increasing levels of violence. Frustrated with their lack of success, Tamil nationalists then turned to violence. The result has been a civil war since 1983, now between the Government of Sri Lanka (GOSL) and the Liberation Tigers of Tamil Eelam (LTTE), albeit punctuated with several truces and rounds of peace negotiations.

The Sri Lankan case demonstrates the importance of the distinction between questions of constitutional *substance* and constitutional *process*. In a multinational polity, questions of constitutional substance go to the issue of whether multiple nations share a common state, and if so, on what terms – in other words, federalism, multiple official languages, power sharing at the center, symbolic recognition, and so on. Questions of constitutional process concern the procedures created by the constitution within which debates over constitutional substance occur and pursuant to which substantive changes are made. This distinction helps to illuminate both the causes of, and potential solutions for, the Sri Lankan conflict. The descent into civil war in Sri Lanka ultimately arose from a breakdown of the Sri Lankan constitutional order. One dimension of

[1] According to the 1981 census, which was the last census completed in every district across the island. As a consequence of the civil war, it has been impossible to conduct a census across the island since then.

this breakdown concerned a fundamental difference over the substance of the constitutional arrangements to frame the relationship between the Sinhalese majority and the Tamil minority. This is a familiar story that has been extensively canvassed in the literature (DeSilva 1998; De Votta 2004a; Wilson 1988).

But what has received far less attention is an equally fundamental disagreement over the constitutional procedures that should govern the debate over substance. This is potentially much more serious because constitutional procedures allow the constitutional politics of substance to occur. In the absence of agreement over process, future agreement on substance may be impossible. The reason there is a lack of agreement over the procedures that regulate constitutional change – the rules governing constitutional amendment – is that those rules are not perceived as indifferent among the competing substantive positions on the constitutional agenda. Tamil nationalists deplore that those rules pre-suppose an understanding of the Sri Lankan polity as a single nation in which the constituent actor is the Sri Lankan people as a whole. Tamils are merely a linguistic minority, and that status does not give them any special standing in the process of constitutional amendment. In opposition to this vision, Tamil nationalists have conceived of Sri Lanka as a multinational polity, where the ultimate power of constitutional change vests with its constituent nations – the Tamils and the Sinhalese. Since the choice between these two versions of the Sri Lankan polity was at the very heart of the civil war, rules governing constitutional amendment that are based on one of these conceptions of Sri Lanka has been viewed as partial and cannot serve as a neutral framework for constitutional change. Indeed, the Sri Lankan case vividly demonstrates how rules governing constitutional amendment are not neutral in their effect on constitutional reform. At several different points, these rules have provided the institutional and legal resources to thwart the accommodation of the Tamil national minority.

In exploring the Sri Lankan case, I am pursuing a broader intellectual agenda on method in the literature on multinational polities. One of the most striking features of the literature is its focus on the political sociology of competing nationalisms within the same state. Will Kymlicka (2007) and Michael Keating (2001), for example, devote most of their attention to questions of political identity. In contrast, far less attention has been devoted to institutions and to the constitutions and statutes that create and regulate those institutions. This is surprising, because the conflict between competing nationalisms within multinational polities often plays out in terms of competing sets of proposals for institutional design

that are advanced by majority and minority nations. Seemingly technical debates over constitutional design are an arena of conflict between underlying and competing conceptions of the fundamental character of the polity. So, by closely examining debates over institutions, we can unearth these competing nationalist narratives and sharpen our understanding of the political sociology of multinational polities. Indeed, constitutional arguments are an important part of Sri Lankan political discourse, so they merit close attention.

A related issue is how to pursue this institutional agenda. Neil De Votta (2004a) and A. Jeyaratnam Wilson (1988) have produced important, institutionally focused accounts of the constitutional politics of Sri Lanka. However, these institutionalist approaches to the study of minority nationalism could benefit from a closer engagement with constitutional theory. For example, De Votta offers an institutionalist explanation of the causes of the Sri Lankan conflict in which legal policy instruments occupy center stage, and argues that the constitutional restructuring of Sri Lanka is necessary for the attainment of a stable and enduring settlement to the conflict. In this respect, he builds upon the discourse of Tamil nationalists, who attribute the breakdown of Sri Lanka to the design of its constitution, which empowers its Sinhalese minority and does not protect Tamils from the consequence of being outvoted in the political process. However, his account is ambiguous over what dimension of existing constitutional structure is at fault and what aspects must be changed. For example, he attributes the Sri Lankan conflict to a situation where "the state's most important institutions egregiously favor one particular group and concurrently enable the subjugation of other groups" and states that "a lasting peace is unlikely until Sri Lanka's leaders can craft the requisite institutions that would treat all citizens dispassionately" (De Votta 2005, pp. 141, 146–56). The distinction between substance and process raises the additional question of whether the breakdown of the Sri Lankan constitutional order is attributable to the perceived unfairness of the substance of existing constitutional arrangements, the procedures for the adoption of new ones, or both.

CONSTITUTIONAL POLITICS IN SRI LANKA: SUBSTANCE

It is clear that Sri Lanka is – and has been for some time – in an extended round of constitutional politics, even as it was mired in a civil war for over a quarter century. To a large extent, these rounds of constitutional politics have been debates over substance. Political discussion over

the constitutional arrangements to govern the relationship between the Sinhalese and the Tamils extend back to the pre-independence period. Facing the prospect of universal suffrage and the political empowerment of the Sinhalese majority in 1931, Tamil politicians unsuccessfully argued against the extension of the right to vote and for communal representation in the colonial legislature, and later, for parity of representation between the Sinhalese and minority communities ("fifty-fifty") in the post-independence constitution (the Soulbury Constitution), which came into force in 1946 (Wilson 1988, chapter 1). In the post-independence period, the principal issues have been language, regional autonomy, and independence. The historical record reveals that all of these questions have been on the constitutional agenda since independence. Nonetheless, one can delineate distinct periods.

Language: Between independence in 1948 and 1956, the principal issue was language. Tamils initially demanded institutional bilingualism at the national level. The post-independence constitution was silent on the issue of language. In the immediate post-independence period, Sinhalese politicians affirmed their commitment to official bilingualism. However, in 1956, Parliament enacted the Official Language Act, which declared Sinhala to be the sole official language. The GOSL began to implement the policy in the 1960s. Sinhala became the official internal working language of government, of written communication between the government and the public, and of the all-important civil service examination, which had the effect of restricting access to state employment to Sinhala speakers. Later, the Language of the Courts Act expanded the official language policy to make Sinhala the sole working language of the courts in 1961. Perhaps the most fateful decision taken under the rubric of the Sinhala-only policy was with respect to university admissions, which at first consisted of differential admissions standards for Tamil and Sinhalese students and then of a system of district quotas, both of which had the effect of dramatically reducing Tamil participation in higher education (De Votta 2005, p. 137). The Official Language Act was superseded by section 7 of the 1972 Constitution, which constitutionally entrenched the status of Sinhala as Sri Lanka's sole official language.

Over the years, there have been a series of unsuccessful attempts to reverse the Sinhala-only policy. One year after the adoption of the Official Language Act, the GOSL and leaders of the Tamil Federal Party (FP) negotiated the Bandaranaike–Chelvanayakam (B-C) Pact of 1957. The FP abandoned linguistic parity for Tamil across Sri Lanka, settling instead for Tamil becoming the language of public administration in the North and East of

the island, where Tamils predominated. Although the pact was abrogated in the face of Sinhalese opposition, it was followed by the adoption of the Tamil Language (Special Provisions) Act in 1958. On paper, the Act established many minority language rights for Tamils, including the right to Tamil-language primary and secondary education, to use Tamil in the University of Ceylon, to sit for the public-service exam in Tamil, and to communicate with government officials in Tamil. Tamil would become the internal working language of the North and the East. However, the Act required implementation through regulations, which were not adopted until 1966.[2] Furthermore, these regulations were largely unenforced. The Language of the Courts (Special Provisions) Act, which established the right to use Tamil in the courts in the North and the East, was adopted in 1973. Although Sri Lanka's 1978 Constitution (which established its current semi-presidential system of government) also declared Sinhala to be Sri Lanka's sole official language, it nonetheless constitutionalized many of the existing statutory provisions on the use of Tamil.[3] In 1987, these provisions were significantly enhanced through the Thirteenth Amendment to the 1978 Constitution.[4] The obvious goal was to make the whole of Sri Lanka home to Tamils by enabling them to interact with government institutions in Tamil throughout the island. But as President Mahinda Rajapaksa acknowledged in 2005, many of these provisions remain largely unenforced, with Tamil speakers still unable to communicate with government offices and the police in Tamil.[5] To many Tamil nationalists, this has given rise to the view that the GOSL is a colonial government dominated by Sinhala speakers, as opposed to a government for all Sri Lankans.

Federalism and independence: In 1956, Tamil politicians shifted the emphasis of their efforts to federalism, an option that had long been discussed. One reason for this shift was the adoption of Sinhala as the official language, which ended the possibility of linguistic parity for Tamil. The

[2] Sections 2–5, Tamil Language (Special Provisions) Act, 1958 and associated regulations (1966). These regulations were adopted after the conclusion of the Senanayake–Chelvanayakam Pact of 1965, which was also abrogated by the government.

[3] s. 18 (Sinhala sole official language), s. 21(1) (minority language primary and secondary education), s. 21(2) (higher education), s. 22(1) (Tamil internal working language of government in the North and East), s. 22(2) (right to communicate in Tamil), s. 23 (laws enacted in both Tamil and Sinhalese), and s. 24 (right to use Tamil in courts).

[4] The amended provisions include s. 22(1) (Sinhala and Tamil internal working languages of government GOSL throughout Sri Lanka and of provincial governments except in North and East, where Tamil shall be used), s. 24 (right to use Sinhala and Tamil in courts throughout Sri Lanka).

[5] Policy Statement of President Mahinda Rajapaksa at Ceremonial Opening of Parliament (November 25, 2005).

more practical alternative was to create a federal Sri Lanka with Tamil as an official language in any province with a Tamil majority. Another reason was the GOSL's use of violence against Tamil civilians and its failure to protect Tamils from mob violence, first in response to campaigns of civil disobedience against the Sinhala-only policy and later in response to the launching of armed attacks by the LTTE. The failure of the GOSL to extend to Tamil civilians the equal protection of the law destroyed the faith of many in the legitimacy of the Sri Lankan state, and reinforced the demand for political institutions controlled by a Tamil majority. A third reason was provided by GOSL policies that encouraged the settlement of Sinhala speakers in the East, which altered the region's demographic and linguistic balance. Thus, along with the demand for linguistic autonomy came demands for control over policing and the use of public lands for settlement.

The B-C Pact of 1957 called for the creation of directly elected regional governments, created by and exercising delegated jurisdiction over policy areas pursuant to statute. The Senanayake–Chelvanayakam Pact of 1965, entered into by the Prime Minister and the leader of the Federal Party, similarly called for the establishment of District Councils exercising delegated powers. Neither proposal was implemented in the face of Sinhalese opposition. As Rohan Edrisinha has recounted, the 1972 Constitution was a watershed in the Tamil demand for a federal Sri Lanka (2005, pp. 244–9). One of the first moves of the Constituent Assembly tasked with drafting the 1972 Constitution was adopting a resolution defining Sri Lanka as a unitary state in the Constitution. Sections 2 of both the 1972 and 1978 Constitutions declare Sri Lanka to be a unitary state. The Federal Party argued against the resolution, arguing instead in favor of adopting a federal constitution. After the resolution was adopted, Federal Party MPs walked out of the Constituent Assembly. Ultimately, the Federal Party merged with other Tamil organizations to form the Tamil United Liberation Front (TULF). In 1976, the TULF adopted the Vaddukoddai Resolution, which called for the creation of an independent Tamil Eelam. The Vaddukoddai Resolution plays a critical role in the constitutional arguments of the Tamil nationalists. Although Tamil politicians had been calling for secession as an option since the debates over official language policy in the 1950s, the idea entered the political mainstream in 1976.

To be sure, there have been various constitutional initiatives to decentralize power. The leading effort is the Thirteenth Amendment to the Sri Lankan Constitution, adopted in November 1987. The terms of the Thirteenth Amendment had been spelled out in the Indo-Sri Lanka Accord

between the GOSL and India in July 1987. In outline, the Thirteenth Amendment confers both exclusive and concurrent legislative jurisdiction on nine provincial councils. The principal criticism of the provincial council system is that it leaves a great deal of executive and legislative authority in the hands of the central government. Each province is structured in a semi-presidential manner, but with a Governor appointed by the President as opposed to being elected, as is the case for the national government. The appointed Governor nonetheless holds wide powers, such as the power to prorogue and dissolve the Council, possesses the provincial executive power, and is not bound to follow the advice of the Chief Minister of the Province. Finally, the Governor is subject to the direction and control of the President, placing the provincial executive in a subordinate relationship with the national executive, rather than in a coordinate relationship as would be the case in a true federation. On the legislative side, the Thirteenth Amendment allows the President to suspend the operation of a Provincial Council and transfer its jurisdiction to Parliament, which may in turn transfer it to the President, if the President concludes that the administration of the province cannot be carried out. Moreover, the Thirteenth Amendment allows a two-thirds majority in Parliament to legislate in exclusive areas of provincial jurisdiction over the objections of a Provincial Council. Finally, it appears unnecessary to have recourse to these provisions, because the Ninth Schedule to the Constitution reserves to Parliament the jurisdiction to enact "National Policy on all Subjects and Functions," which would seem to encompass any topic falling within exclusive provincial jurisdiction.

Indeed, the fact that the Thirteenth Amendment has not altered the unitary character of Sri Lanka was confirmed by the Supreme Court.[6] Under the 1978 Constitution, there are two procedures for constitutional amendment: (i) a two-thirds majority in Parliament, and (ii) a two-thirds Parliamentary majority and approval in a referendum. Amendments to the unitary nature of the state require a national referendum. The Thirteenth Amendment was passed under the first procedure, and the Supreme Court ruled that this was the correct procedure, stating that the Thirteenth Amendment did not alter the unitary nature of the country because of the subordinate character of provincial legislative and executive authority. Not surprisingly, the TULF opposed the Thirteenth Amendment, as did the LTTE, precisely for this reason. To compound dissatisfaction with the constitutional status quo, the system of Provincial Councils was inoperative

[6] Thirteenth Amendment to the Constitution and the Provincial Councils Bill, (1987) 2 SLR 312.

in the Northern and Eastern Provinces after 1990 (Loganathan 1998). However, the GOSL held a Provincial Council election in the Eastern Province in May 2008 after taking military control of the area, and since the defeat of the LTTE has promised to hold elections in the Northern Province after defeating the LTTE.

Put simply, Sri Lanka faces a clash between the two conflicting constitutional visions captured by the exchange between the Tamil delegation (consisting of the LTTE and other Tamil political parties) and the GOSL at the first (and unsuccessful) round of peace negotiations in Thimpu, Bhutan, in July and August, 1985. The Tamil delegation set out four principles in what has become known as the Thimpu Declaration.[7] The principles call for "recognition of the Tamils of Ceylon as a nation," "recognition of the existence of an identified homeland of the Tamils in Ceylon," "recognition of the right of self-determination of the Tamil nation," and "recognition of the right to citizenship and the fundamental rights of all Tamils in Ceylon." These principles were issued in response to a proposal released by the GOSL at the talks a few days earlier. In brief, the proposals would have devolved certain powers to over two dozen District Councils, which could then have combined into larger provinces. The President would have had the power to disallow District or Provincial legislation. The TULF had rejected these proposals because they provided an insufficient degree of regional autonomy. The Thimpu Declaration, in essence, fleshes out the theory underlying this rejection, by grounding its principles in the right of peoples (or nations) to self-determination and deriving from that right a claim to a specific territory and right to choose the political status of that territory and the population attached to it.

The GOSL rejected these principles outright, at a conference session the next month. The response bears careful examination:

> [W]e must state emphatically that if the first three principles are to be taken at their face value and given their accepted legal meaning, they are wholly unacceptable to the Government. They must be rejected for the reason that they constitute a negation of the sovereignty and territorial integrity of Sri Lanka, [and] they are detrimental to a united Sri Lanka ...[8]

The GOSL clearly interprets the right of peoples to self-determination as the right to *external* self-determination, and that right encompasses

[7] Discussion of the "Thimpu Talks" of July-August 1985 is available at: http://www.tamilnation.org/conflictresolution/tamileelam/85thimpu/850713thimpu declaration.htm [accessed January 13, 2010].

[8] Discussion of the "Thimpu Talks" of July–August 1985 is available at: http://www.tamilnation.org/conflictresolution/tamileelam/85thimpu/850812phase2 sri lanka opening statement.htm [accessed January 13, 2010].

the right to an independent, sovereign state. But the Thimpu principles are notably ambiguous on whether they are to be realized *within* or *outside* Sri Lanka. Indeed, the Tamil negotiators noted that while they had demanded a separate state, "[d]ifferent countries have fashioned different systems of government to ensure these principles" and they would be open to reviewing proposals in that light.[9] The principles could in fact be satisfied through *internal* self-determination – in other words, a federal form of government with real regional autonomy, within the context of a united Sri Lanka. So the GOSL draws an implicit but crucial inference about the internal constitutional structure of a state from the fact of external sovereignty – that to enjoy true sovereignty, a state must have a unitary constitution because sovereignty is indivisible. A united Sri Lanka is necessarily unitary. For the Tamils to demand any kind of sovereign authority would be radically incompatible with the ongoing sovereignty of Sri Lanka over its territory. Furthermore, to the extent that sovereignty and statehood are grounded in the right to self-determination, the holder of that right is the people of Sri Lanka as a whole, of which the Tamils are a part. The Tamil nationalist claim that there are two nations on the island was rejected, because of the existential challenge it poses to the Sinhalese nationalist constitutional vision.

This constitutional vision is reflected in the 1978 Constitution, which provides in sections 3 and 4 that "sovereignty is in the people and is inalienable" and "[t]he sovereignty of the people shall be exercised" by the various institutions of the unitary state – the Parliament, the President, and the courts. The origins of Sinhalese nationalism, however, do not lie in a deep constitutional vision, but rather in political and economic competition over white-collar public sector employment. Why has economic competition for white-collar jobs been such an important driver of official language policy? There is a cluster of mutually reinforcing reasons. Demand for these kinds of employment opportunities increased dramatically in post-independence Sri Lanka because of increased social mobility, which in turn was a function of increasing rates of participation in education, especially secondary education. The increasing proportion of youth completing advanced studies was made possible by a deliberate public policy decision to expand the availability of public education in Sinhala. The result was a marked increase in the demand for white-collar employment. Education also fueled the migration of the newly literate, with youth flocking to urban centers in search of employment opportunities

[9] Ibid.

not available in rural areas. Once they arrived, they found that access to those opportunities was in short supply. It was this demographic – unemployed, newly educated youth, literate in the vernacular and concentrated in urban areas – that fueled demand for access to white-collar employment opportunities. The new entrants into the labor pool were predominantly Sinhalese, which created the political incentives for Sinhalese political parties to compete with each other on modifying the rules governing access to universities and government employment.

These demands first manifested themselves in debates over official language policy. The choice of an official internal working language of public administration creates unequal access to white-collar public sector employment. As economic competition for these kinds of employment opportunities emerged, it was translated into a political demand for policies to redistribute those opportunities by modifying the linguistic policy status quo. Prior to independence, the rates of participation of the Tamil minority in the colonial administration were much higher, either a deliberate product of a colonial divide-and-rule strategy or the rational response of Tamils from the North-East to the relatively poor prospects for agriculture on that part of the island. In the post-independence period, the dominance by Tamils in white-collar public sector employment continued. In the 1950s and 1960s, when Sinhalese nationalist parties took power and mobilized the Sinhalese majority around a project of linguistic nation building, Sinhala became the official internal working language of government and of the civil service examination, which had the effect of restricting access to state employment to Sinhala speakers. Tamil nationalism arose as a defensive response to these policies, which in turn fueled the development of the unitary state mindset among Sinhalese nationalists.

Notwithstanding its origins in economic and political competition, this unitary state mindset is now firmly set. President Rajapaksa of the Sri Lanka Freedom Party (SLFP) illustrated the durability of this mindset in a policy statement, "Peace with dignity in an undivided country," released in November 2005 shortly after he was elected. The goal of the peace process should be the "[c]reation of a government infrastructure that will safeguard Sri Lanka's sovereignty, territorial integrity, and the unitary nature of the state."[10] Predictably, the LTTE responded by stating that President Rajapaksa had taken "shelter in a rotten unitary

[10] Policy Statement made by President Mahinda Rajapaksa at the opening of the New Session of Parliament, November 25, 2005. Available online at: http://www.president.gov.lk/sinhala/html/speeches/2005/new_session_of_parliament.htm [accessed April 21, 2009]. He also reaffirmed this view in the most recent round of negotiations.

constitutional concept."[11] It is against this backdrop that the true significance of the apparent concessions made by the parties at the outset of the Norwegian-mediated peace negotiations becomes clear. In the Oslo Declaration (issued in December 2002), the parties agreed "to explore a political solution founded on the principle of internal self-determination in areas of historical habitation of the Tamil-speaking peoples, based on a federal structure within a united Sri Lanka."[12] The equation of external sovereignty, statehood and an internal unitary constitution was broken. To be sure, this was not the first time that Sinhalese politicians had been willing to make that move. In 1996, President Chandrika Kumaratunga presented a set of constitutional proposals that would have stated that Sri Lanka is "a united and sovereign Republic" that is "an indissoluble Union of Regions."[13] Faced with opposition from Sinhalese nationalists, Kumaratunga eventually dropped the term "Union" when she introduced the draft constitution in Parliament.

CONSTITUTIONAL POLITICS: PROCESS

Alongside this disagreement over substance has been a parallel disagreement over the constitutional *process*. The basic disagreement concerns the precise character of constituent power in Sri Lanka. On the one hand, the GOSL views the population of Sri Lanka as a whole as the relevant constitutional actor – as a single nation which expresses its consent to constitutional change through procedures spelled out in the constitution. Although the Sri Lankan demos may be linguistically, culturally, and religiously diverse, the groups defined by those differences do not enjoy national status. On the other hand, defining the people of Sri Lanka as a whole as the constituent actor denies what Tamil nationalists contend – that Sri Lanka is not a nation-state but a multinational state, and the constituent power does not reside in one, undifferentiated Sri Lankan nation but in its constituent nations. The state is not an association among citizens considered free and equal, but a union among different nations or peoples, each of which is such an association. As a consequence, the

[11] "LTTE Responds to Rajapaksa's statement", February 15, 2006. Available online at: http://www.tamilnation.org/conflictresolution/Tamileelam/norway/060215ltte.htm [accessed April 21, 2009].

[12] Statement of the Royal Norwegian Government at the conclusion of the third session of peace talks between the Government of Sri Lanka and the LTTE in Oslo, December 5, 2002. Available online at: http://www.norway.lk/peace/peace/talks/third.htm [accessed April 21, 2009].

[13] See section 1 of Sri Lanka Draft Constitution, March 1997.

Tamil negotiators participate in the process of constitutional change, not as mere agents of political interests, but as agents of a nation or people whose agreement is required for constitutional change.

This basic disagreement over the character of constituent power within Sri Lanka has played itself out in a number of particular disputes, as described below:

The relative status of the negotiating parties: Although Sri Lanka was from in a state of civil war 1983 to 2009, there have been numerous sets of peace negotiations – in Thimpu, Bhutan in 1985, in Colombo in 1989–1990, in Jaffna in 1994–1995, and the Norwegian-facilitated peace talks which began in 2002 and ended in 2006. In each of these rounds of negotiations, a preliminary question was the relative status of the negotiating parties. The hybrid nature of the discussions complicated the answer to this question. On the one hand, the discussions were ceasefire discussions between combatants, and therefore proceeded on a basis of formal equality. But they were also constitutional negotiations in embryo, and so the question of relative status required the parties to address what gave them standing to participate in the negotiations. For the GOSL, its standing was not in question – it represented the interests of the state of Sri Lanka, which asserted sovereignty over the entirety of the island. But the status of the Tamil negotiators was an ongoing source of debate. Did the Tamil negotiators simply represent a set of political interests within the Sri Lankan polity? Or did they instead represent a nation, and were the negotiations to be conducted "nation-to-nation" on a basis of equality? In the Thimpu talks, for example, the GOSL described the Tamil delegation as merely "six groups representing interests of certain Tamil groups in Sri Lanka,"[14] in contrast to the GOSL delegation, which represented "all communities in Sri Lanka," including Tamils.[15] The LTTE responded by stating that they were "not mere negotiators representing a clientele," but rather representatives of "the Tamil Nation," and that the face-to-face negotiations between the parties were the embodiment of their national and coequal status.[16] The government responded by changing its terminology, drawing a distinction between "Tamils of recent Indian origin" and other Tamils, arguing that it represented the former and by implication conceding that it did not represent the latter, but nonetheless acknowledging that the Tamil groups present represented

[14] See note 10.

[15] Ibid.

[16] Ibid.

"the Tamil people" and hence possessed the capacity "to reach a negotiated settlement."[17] This was a grudging concession of parity of status. This issue arose again in 2002, when the LTTE demanded at the outset of the Norwegian-facilitated negotiations that the GOSL remove the LTTE's designation as a terrorist organization. This move had little or no practical impact on the LTTE's operations. As Anton Balasingham writes in his memoirs, it was important to the LTTE because it was an acknowledgment of its status as the representative of the Tamil nation, which could only negotiate with the GOSL "on a status of parity" if its representatives were not deemed to be criminals by the GOSL (2004, pp. 372–3). GOSL Foreign Minister Mangala Samaraweera responded in June 2006 "there can never be 'parity of status' between a legitimate, democratically elected Government and a group practicing terror that has yet to renounce violence or show any willingness to enter the democratic process." As I suggest in the conclusion, although the LTTE may have been defeated on the battlefield, the issue of process and the relative status of the negotiating parties has not gone away.[18]

The (il)legitimacy of existing constitutional arrangements: The GOSL and Tamil nationalists have offered competing constitutional historiographies of the legitimacy of existing constitutional arrangements. In part, this has been a debate over substance. Tamil nationalists argue that the existing constitutional order lacks legitimacy because it is majoritarian and has offered no protection to Tamils from a mixture of linguistic discrimination and repressive power of the state. But this debate has also been joined on the issue of process. The GOSL proceeds on the assumption of the legitimacy of existing constitutional arrangements because they have been enacted in accordance with the correct legal procedures. Thus, the 1978 Constitution was adopted pursuant to the rules for constitutional amendment in the 1972 Constitution; the latter in turn derived its legitimacy from the fact that it was adopted by a Constitutent Assembly, and deliberately not in accordance with the amending procedure in the Soulbury Constitution, severing the link with the imperial origins of Sri Lanka's post-independence constitutional order. It is a constitution that the Sri Lankan people (singular) gave themselves, through an exercise of constituent power. The preamble to the 1972 Constitution captures this claim:

[17] Ibid.

[18] Address by Hon. Mangala Samaraweera to the Standing Committee on Foreign Affairs of the Storting (Norwegian Parliament), June 14, 2006. Available online at: http://www.peaceinsrilanka.org/peace2005/Insidepage/Pressrelease/GOSLreleases/GOSLmediaRel140606.asp [accessed April 21, 2009].

> We the people of Sri Lanka being resolved in the exercise of our freedom and independence as a nation to give ourselves a constitution ... which will become the fundamental law of Sri Lanka deriving its power and authority solely from the people ...

Tamil nationalists challenge this account by arguing that Sri Lanka is a multinational polity, and each of its constituent nations possesses the inherent power to grant or deny consent to the constitution. For Tamil nationalists, the existing constitutional order lacks legitimacy because it did not receive the consent of the Tamil nation. Thus, in the Vaddukoddai Resolution, the TULF recounted that Tamil representatives boycotted the proceedings of the constituent assembly that drafted the 1972 Constitution. And the LTTE subsequently stated that the "Tamils did not participate in the making of the 1972 and 1978 constitutions," and by implication were not bound by it. The main Tamil political party, the Federal Party, took the same position (Wilson 1988, p. 88). Indeed, the Tamil Congress argued that Tamil voters rejected the Soulbury Constitution in the general election of 1947, because it won an overwhelming majority of seats in Tamil areas and had campaigned on a platform that opposed the Soulbury Constitution (Wilson 1988, p. 73).

The procedures necessary to adopt a final constitution: The issue that has generated the most debate is the procedures necessary to adopt any constitutional amendments – including a new constitution – as part of a settlement of the Sri Lankan conflict. The rules governing constitutional amendment in Sri Lanka have changed over time, as has their ability to protect minority interests. The Soulbury Constitution vested the power of amendment with Parliament, requiring a two-thirds vote of all members. At the time of independence, it was predicted that approximately 43 of the 101 members of Parliament would come from minority communities, thereby giving them a collective veto over constitutional amendments supported by the Sinhalese majority (Wilson 1988, p. 19). However, new citizenship laws adopted immediately after independence withdrew citizenship from Indian Tamils, and gave Sinhalese MPs a two-thirds majority. As a consequence, the two-thirds rule offered much less protection to the Tamil minority. The two-thirds rule was carried forward into the 1972 and 1978 constitutions. But the 1978 Constitution made two important changes that have converted the two-thirds rule from a mechanism that fails to protect minorities into an obstacle to a constitutional settlement to the Sri Lankan conflict. First was the introduction of a system of proportional representation, which has fractured the Sinhalese electorate and made it

nearly impossible for any one party to command a two-thirds majority in Parliament (Shastri 2005, p. 55). As a consequence, it has become difficult for a party forming the government to deliver on the terms of a constitutional package negotiated with the Tamils. A personal account of the 1989–1990 negotiations by Bradman Weerakoon, an advisor to President Premadasa, reveals that he was unable to meet the LTTE's demand for the repeal of the Sixth Amendment because he could not secure a two-thirds majority in Parliament (1998, pp. 127, 151). The issue is not whether Sinhalese nationalist parties control one-third of parliamentary votes. It is rather that under proportional representation, it is exceedingly unlikely that any one party would control two-thirds of the seats. Moreover, the two leading parties – the United National Party (UNP) and (now) the People's Alliance – have not been reluctant to politicize the peace process for electoral advantage, which thus far has prevented the two from coming together on a consensus position (Uyangoda 2005a, pp. 953–60). Second, as explained earlier, amendments to the constitutional provision stating that Sri Lanka is a unitary state, in addition, require approval in a referendum. Thus, any federal settlement of the conflict would go to an island-wide vote. In that volatile context, with a focus on a single issue, Sinhalese nationalist parties may be able to mobilize public opinion to block approval of the requisite constitutional amendments.

The real difficulties of working the existing procedures of constitutional amendment have produced a range of reactions. Sinhalese nationalists, including many politicians, have demanded that any constitutional changes take the form of amendments to Sri Lanka's unitary constitution, pursuant to its established amendment procedures. In his memoirs, GOSL negotiator John Gooneratne – who negotiated with the LTTE under both UNP Prime Minister Ranil Wickremasinghe and SLFP President Rajapaksa during the Norwegian-facilitated talks – suggests that this was an assumption that both parties shared (Gooneratne 2007, pp. 108–19). Indeed, shortly after President Rajapaksa was elected, he publicly stated that "[c]onstitutional reforms will be proposed and approved according to proper legal procedures in order to include the objectives reached through a broad consensus" – an indirect reference to the need for approval by Parliament and a referendum.[19] A particularly extreme variation of this position has been taken by H. L. de Silva – now

[19] "Sri Lanka President's First Policy Statement Calls for Revision of Ceasefire and Transparent Peace Process," November 25, 2005. Available online at: http://www.peaceinsrilanka.org/peace2005/Insidepage/PressRelease/GOSLreleases/GOSLmediaRel251105.asp [accessed April 21, 2009].

a constitutional advisor to President Rajapaksa – relying on the notion of a single Sri Lankan nation. He argues that, in addition to the procedural barriers to the adoption of a federal constitution, the 1978 Constitution imposes substantive barriers on constitutional amendments that make it impossible to adopt federalism, because the people cannot divest themselves of their sovereignty, which is inalienable and indivisible.[20] An intermediate option advanced by President Kumaratunga in her 2000 Sri Lanka Constitution Bill was to adopt a mixed member proportional system that would increase the chances of a future government being able to muster a two-thirds majority for constitutional amendments. However, the Bill did not attract sufficient support in Parliament to be passed, and so was never put to a vote.

However, there have been more radical proposals to evade the procedures for constitutional amendment entirely – that is, to step outside the constitution and to engage in a revolutionary constitutional change. These have come from both the Sinhalese and Tamil sides and, accordingly, proceeded from different premises. Sinhalese pragmatists proceed from the assumption of a single Sri Lankan nation, and argue that the procedures for constitutional amendment are too rigid a mechanism for the nation to exercise its inherent, constituent power to amend the constitution. President Kumaratunga advocated this strategy when it became clear that the 2000 Constitution Bill would not secure a two-thirds majority in Parliament (Shastri 2002, p. 177). Indeed, in her speech introducing the Bill, she complained that "[e]ven when we had won 80 percent of the electorates in the Parliamentary elections, we have only a single vote majority in Parliament ... [b]ecause of this peculiar constitution."[21] Kumaratunga's strategy was to take the issue to the people directly in a referendum, which although formally consultative, would allow her to take the result as a mandate to summon a constituent assembly which would adopt a new constitution through a simple majority (De Votta 2003, p. 115).[22] The LTTE, by contrast, proceeded from the assumption that Sri Lanka is a multinational polity. The problem with the existing amending formula is twofold – that it sets too high a threshold, but also

[20] See de Silva, H. L. (2003, March 9). Are Ill-Conceived Understandings Reached at Negotiating Table? *Sri Lanka Sunday Island*. Colombo.

[21] Speech of President Chandrika Kumaratunga on new Constitution Bill in Sri Lanka Parliament, 7 August 2000. Available online at: http://www.tamilnation.org/conflictresolution/tamileelam/cbkproposals/oochandrika.htm [accessed April 21, 2009].

[22] Kumaratunga abandoned this plan in exchange for the support of the Sinhalese nationalist JVP in Parliament, which enabled her party, the SLFP, to remain in power.

that it presupposes the existence of one nation in Sri Lanka whose consent is required, as opposed to two. So running constitutional amendments through a Parliament that will always have a Sinhalese majority is illegitimate because it reflects and reinforces the majoritarian and unitary character of the Sri Lankan constitutional order. The solution is a bilateral mechanism for constitutional amendment. Notably absent from the LTTE's case for stepping outside the constitution was any popular participation or democratic accountability for such an approach to constitutional reform, either in areas under its control or under the control of the GOSL. It appears that the consent of the GOSL executive and the LTTE would have been enough.

Before the military defeat of the LTTE in 2009, these issues were central to the debate over the creation of an interim Self-Governing Authority (ISGA) in LTTE-controlled areas in the North-East. This was an LTTE objective since at least 1995.[23] Prime Minister Wickremesinghe campaigned in the 2001 parliamentary elections on a platform that included the creation of an interim administrative structure in the North-East. The topic was one of the first items on the agenda at the first round of the Norwegian-mediated negotiations in 2002. After the formal, face-to-face talks were suspended by the LTTE in April 2003, negotiations on the structure and powers of an interim authority continued for much of 2003, with the exchange of increasingly detailed proposals.[24] Ultimately, these negotiations ended in failure, although as discussed below, they were revived after the 2004 tsunami.

The background to the LTTE ISGA proposal is that until 2009, for nearly twenty years, the LTTE exercised de facto authority over large tracts of the North and until 2005, the East. As Kristian Stokke recently argued, the extent of the LTTE's de facto authority was considerable, and the pattern of its control complex (Stokke 2006, p. 1021), although the extent of this control was disputed (Sarvananthan 2007; Stokke 2007). In some LTTE-controlled areas, local civil administration, while formally part of the GOSL, actually reported to the LTTE. Moreover, even in areas under formal control of the GOSL, the LTTE asserted considerable control over local administration. Finally, the LTTE operated a parallel state which managed a number of core policy areas, including policing, criminal

[23] Address by Hon. Mangala Samaraweera to the Standing Committee on Foreign Affairs of the Storting, June 14, 2006. Available online at: http://www.peaceinsrilanka.org/peace2005/Insidepage/PressRelease/GOSLreleases/GOSLmediaRel140606.asp [accessed April 21, 2009].

[24] For the full text of these proposals, see Gooneratne (2007, pp. 191–246).

and civil courts, and, to a lesser extent, resettlement and housing, health, education, nutrition, microcredit, vocational training, and taxation. By contrast, while the GOSL still asserted de jure authority over the entire island, it was for the most part only present as "a coercive military entity that engaged in war and occupation" (Uyangoda 2005a, pp. 963–4). If the basic test of sovereign authority is a monopoly of force, the GOSL did not meet that test for over two decades (Smith 2007, p. 69). Over time, this gap between constitutional theory and the facts on the ground became increasingly glaring. But despite its de facto control, the LTTE lacked legitimacy. Thus, although a stated goal behind the establishment of the ISGA was to utilize the ceasefire to launch the reconstruction of the North-East (Balasingham 2004, p. 380), the more important goal was to obtain the GOSL's explicit consent to these arrangements, which would legitimize the LTTE as a governmental entity. Another stated goal was for the ISGA arrangements to serve as a floor for the degree of regional autonomy under a federal constitution. And although the LTTE denied that this was its goal, in the event of the failure of the peace negotiations, the ISGA could serve as the stepping-stone to a unilateral declaration of independence, secession, and recognition by other states, since the LTTE would be exercising effective governmental authority over a defined territory and population.

The GOSL opposed the formal establishment of a full-fledged "interim" regional government in LTTE-controlled areas precisely because of its longer-term implications. However, this debate quickly became a debate over constitutional process. The LTTE's de facto authority meant that a fundamental change in the institutions of public power had occurred in Sri Lanka without recourse to formal constitutional amendment. The concern was that for the GOSL to sign off on the ISGA would have been to legitimize extralegal conduct and participate in the subversion of the Sri Lankan constitutional order, by circumventing the formal processes of constitutional change.[25] The Balasingham memoirs from the Norwegian-facilitated peace talks confirm that the constitutional obstacles to the establishment of the ISGA were front and center in the government's response to the LTTE's proposals. Unfortunately, he provides no details regarding the content of these arguments, other than to say that the GOSL negotiator, constitutional scholar G. L. Peiris, stated that "the present entrenched constitution could not provide space for the institutionalization of such

[25] See de Silva, H. L. 2003. Are Ill-Conceived Understandings Reached at Negotiating Table. *Sri Lanka Sunday Island*. Colombo, March 9.

an administrative structure" (Balasingham 2004, p. 383). However, it is not hard to piece together this argument. Under the 1978 Constitution, all legislative power is vested in Parliament, whose legislative authority, subject to the constitution, is plenary.[26] Taken on its own, however, this provision does not explicitly prohibit Parliament from *delegating* its legislative powers to a subordinate body, which is a widespread practice in many developed democracies. But the Constitution goes on to explicitly provide that "Parliament shall not alienate its legislative power, and shall not set up any authority with any legislative power" – which would clearly prohibit the enactment of a statute vesting an interim authority with formal legislative powers.[27] For the ISGA proposal to have been implemented, a constitutional amendment would appear to have been required. According to a member of the GOSL negotiating team, the LTTE rejected these constitutional objections and "took the position that [*sic*] they were not constrained by these limitations, as they were an extra-constitutional structure, and so did not accept the writ of the Sri Lanka Constitution." (Balasingham 2004, p. 384; Gooneratne 2007, p. 25).

The subsequent exchange of detailed proposals through Norwegian mediators in 2003 proceeded from these radically different constitutional premises. The first move was made by the LTTE, which requested the GOSL to generate a proposal for "a new innovative structure for the North-East with adequate authority and legal status for the rapid implementation of humanitarian and development activities." The response of the GOSL was something much less ambitious.[28] Its proposals called for the creation of a "Reconstruction and Development Council," which was principally a body to coordinate the efforts of the GOSL and LTTE, with no clear decision-rules, which was far from an interim administration for the North-East. The LTTE rejected these proposals.[29] Prime Minister Wickremesinghe responded a few days later with a second set of proposals for the creation of an "Apex Body," which would be "a policy advisory and review board" and would have LTTE membership, but which nonetheless reaffirmed that the "[a]dministration of the North-East is the responsibility both of the [defunct] North-East Provincial

[26] Sri Lanka Constitution 1978, s. 3 (legislative power exclusively vested in Parliament), s. 75 (plenary power of Parliament).

[27] Sri Lanka Constitution, s. 76(1).

[28] The GOSL's proposals were communicated to the LTTE on May 17, 2003. A partial text of this first set of proposals can be found in Gooneratne (2007, pp. 198–204).

[29] Letter from Balasingham to Helgesen, May 21, 2003. See Balasingham (2004, pp. 445–9).

Council and the Central Government."[30] Balasingham raised the constitutional issues squarely in the LTTE's frustrated response, accusing the GOSL of taking "refuge under ... an entrenched constitution that allows no space for manoeuvre."[31] The Apex Body would have "no administrative powers" and would "only [be] an advisory council."[32] By "[s]ituating the development structure within the parameters of the constitution," the GOSL had "effectively placed the proposed institution under the authority of the central government," as opposed to acknowledging "the stark reality that the LTTE [ran] a de facto administration of its own in vast tracts of territories under its control in the North-East."[33] He asked rhetorically "[h]ow long can our people wait and tolerate their hardships if your government seeks refuge under legal and constitutional obstacles?"[34] Wickremesinghe responded by asserting the primacy of the constitution, stating that any proposal must "not be in conflict with the laws of Sri Lanka."[35] Balasingham's response could not be more direct, calling upon the GOSL to "find a radical and creative method to overcome the legal and constitutional impediments."[36]

Just how radical the LTTE expected the GOSL to be was revealed by its own ISGA proposals, which it released some months later.[37] Before setting out the substance of the proposed arrangements, the LTTE took pains to justify proceeding outside the processes of the Sri Lankan Constitution. Thus, it asserted that "the Tamils did not participate in the making of the 1972 and 1978 constitutions, which institutionalized discrimination and

[30] Letter from Prime Minister Ranil Wikremesinghe to Jan Petersen, Foreign Minister of Norway, May 27, 2003. The proposal was entitled "Agreement between the Government of Sri Lanka (GOSL) and the Liberation Tigers of Tamil Eelam (LTTE) regarding administrative and financing arrangements to expedite efficient implementation of programmes and projects relating to relief, rehabilitation and development in the North-East". Available online at: http://www.peaceinsrilanka.org/Downloads/Pmdocs/31May03%20-%20PM%20ltr%20Annex1%20GOSL-LTTE%2026May03.doc [accessed April 21, 2009].

[31] Letter from Anton Balasingham to Prime Minister Ranil Wickremasinghe, May 30, 2003. See Balasingham (2004, pp. 449–53).

[32] Ibid.

[33] Ibid.

[34] Ibid.

[35] Letter from Prime Minister Ranil Wickremasinghe to Anton Balasingham, June 1, 2003. See Balasingham (2004, pp. 453–56).

[36] Letter from Anton Balasingham to Prime Minister Ranil Wickremasinghe, June 4, 2003. See Balasingham (2004, pp. 456–58).

[37] The Proposal by the Liberation Tigers of Tamil Eelam on behalf of the Tamil People for an Agreement to Establish an Interim Self-Governing Authority for the Northeast of the Island of Sri Lanka, October 31, 2003. See Gooneratne (2007, pp. 234–46).

denied them an effective role in the decision-making process," thereby indicating that the procedures created by that constitution lacked legitimacy.[38] As an alternative, it referred to "the practice in international relations over the last decade of solving conflicts between Peoples through agreement between the parties to the conflict on terms of equality," including agreements "for establishing interim governing arrangements in war-torn countries *having the force of law based solely on pacts or agreements between the parties* recognized by the international community."[39] Thus, the LTTE proposed discarding the existing process for constitutional amendment with a bilateral process that accorded the LTTE and the GOSL parity of status and required the consent of both parties. The proposals themselves would have created a regional government in the North-East with powers approaching that of an independent state. They called for an absolute majority of members to be from the LTTE, for the ISGA to "have plenary power for the governance of the North-East" including "all powers and functions ... exercised by the GOSL in and for the North-East ... control over the marine and offshore sources of the adjacent seas and the power to regulate access thereto" and "control over the natural resources in the North-East region."[40] Confirming that both the substance of the proposals and the procedure for adopting them were extra-constitutional, the ISGA proposals called for disputes over its interpretation or implementation not to be settled by the Sri Lankan courts, but by an arbitration panel appointed by both parties.

The radical nature of the LTTE's proposals was immediately apparent. One commentator referred to them as "an exercise of revolutionary constitutionalism," and linked the unique process that had been proposed to "the fractured state of the Sinhala polity where no party is capable of obtaining a [*sic*] two third majority necessary for meaningful constitutional change."[41] Another described the creation of the ISGA as "a fascist move" that "by-passes Parliament and the constitution" and would lead to the creation of "two sovereign states."[42] The GOSL's reaction to the proposals quickly fell pray to broader political forces. Since

[38] Ibid.

[39] Ibid. (italics added).

[40] Ibid.

[41] D. B. S. Jeyaraj 2003. "D.B.S. Jeyaraj on Draft LTTE proposals", *Sri Lanka Sunday Leader*, October 26; D. B. S. Jeyaraj, 2003. "Details of LTTE Draft Proposals", *Sri Lanka Sunday Leader*, October 26.

[42] G. Weerakoon, 2003. "Reinventing the Sri Lankan State or creation of two states?," *Sri Lanka Island*, October 28.

the parliamentary elections of 2001, Sri Lanka had been governed by a Prime Minister (Wickremesinghe) and a President (Kumaratunga) from two different parties, the UNP and SLFP, respectively, in French-style "cohabitation." The President had been excluded by the Prime Minister from the Norwegian-facilitated peace negotiations, and took advantage of the controversy surrounding the LTTE's proposals to undermine the Prime Minister. The SLFP released a lengthy critique of the ISGA proposals, arguing that they were unconstitutional because they contravened the provisions of the constitution that vested exclusive legislative, executive, and judicial authority in the institutions of the unitary state.[43] On the same day, the President suspended Parliament and seized control of the defence ministry – thereby rendering it impossible for the Prime Minister to negotiate with the LTTE (DeVotta 2004, p. 49). She dissolved Parliament in February 2004. In the April 2004 elections, the SLFP came to power in a coalition with the Sinhalese nationalist People's Liberation Front (JVP) (DeVotta 2004, p. 98). The new SLFP government reiterated its rejection of the ISGA proposals, although it kept open the door to negotiations.[44] While the LTTE continued to demand negotiations for the creation of an ISGA, the GOSL responded that it wanted to proceed directly to negotiations on a final settlement.[45]

But an important shift occurred as a consequence of the tsunami of 2004. The tsunami produced devastation across the island, including in

[43] Lakshman Kadirgamar, Statement by the Sri Lanka Freedom Party on the LTTE's proposals for an interim self-governing authority (ISGA), November 4, 2003. Available online at: http://www.satp.org/satporgtp/countries/shrilanka/document/papers/freedompty_northeast.htm [accessed April 21, 2009]. For a response to some of these arguments, see M. Sornarajah, "ISGA and the Law", July 3, 2005. Available online at: http://www.tamilnation.org/conflictresolution/Tamileelam/norway/050703sornarajah.htm [accessed April 21, 2009].

[44] Lakshman Kadirgamar became Foreign Minister in the SLFP government, and reiterated its opposition to the ISGA proposals. See, e.g., "ISGA blueprint for a future separate state – Kadirgamar," Tamilnet, May 13, 2005. Available online at: http://www.tamilnet.com/art.html?catid=13&artid=11974 [accessed April 21, 2009].

[45] Press Release, Government of Sri Lanka, June 12, 2004. Available online at: http://www.peaceinsrilanka.org/peace2005/Insidepage/stories/PressRel130604.asp [accessed April 21, 2009]; Press Release, Government of Sri Lanka, September 21, 2004. Available online at: http://www.peaceinsrilanka.org/peace2005/Insidepage/stories/PresidentSpeech220904.asp [accessed April 21, 2009]; Press Release, Government of Sri Lanka, December 1, 2004. Available online at: http://www.peaceinsrilanka.org/peace2005/Insidepage/stories/GOSLPressRelo11204.asp [accessed April 21, 2009]; Press Release, Government of Sri Lanka, March 3, 2005. Available online at: http://www.peaceinsrilanka.org/peace2005/Insidepage/PressRelease/GOSLreleases/GOSLmediaRelease040305.asp [accessed April 21, 2009].

areas controlled by the LTTE. There was a desperate need for both short-term relief to house and feed the homeless, and for longer-term reconstruction efforts. The tsunami gave the GOSL and the LTTE strong incentives to cooperate. Foreign governments had promised massive financial assistance to assist in reconstruction. However, because the LTTE had been banned as a terrorist organization in many donor countries, it could not receive aid (Uyangoda 2005). For the GOSL, cooperation with the LTTE gave it indirect access to areas that it did not control and a significant role in determining priorities for expenditure and the direction of rehabilitation efforts. In addition, it preempted the possibility that donor agencies might deal directly with the LTTE and could even increase the total amount of aid, since donors would be confident that it would reach the North-East.[46]

The agreement between the GOSL and the LTTE creating the Post-Tsunami Management Structure (P-TOMS) established a complex set of institutions for overseeing rehabilitation and reconstruction efforts. The most important were a set of regional committees in the North-East whose members were appointed by the GOSL, the LTTE, and the Muslim community, with half of the members of each committee (including the chair) appointed by the LTTE.[47] These committees would have power over "project approval and management" and "management" of a regional fund. Needless to say, the vesting of governmental authority in joint institutions apparently operating without legislative basis and outside the formal institutions of the Sri Lankan state sparked outrage from Sinhalese nationalists, who argued that the P-TOMS was an ISGA in disguise. And so, not surprisingly, the debate over the P-TOMS quickly "brought to the centre of attention issues that go far beyond a mere administrative response to the tsunami" (Uyangoda 2005b, pp. 350–1). The debate over the P-TOMS quickly became a constitutional debate. In anticipation of these objections, the GOSL took pains to distinguish the P-TOMS from the proposed ISGA, explaining that it had a joint administrative structure, whereas the ISGA would have been a governing authority.[48] However, the GOSL was initially silent on the potential unconstitutionality of the

[46] Statement tabled by GOSL in Sri Lanka House of Representatives, June 24, 2005. Available online at: http://www.tamilnation.org/conflictresolution/tamileelam/norway/050624jmsrilanka.htm [accessed April 21, 2009].

[47] Memorandum of Understanding for the Establishment of a Post-Tsunami Operational Management Structure (P-TOMS), June 27, 2005. Available online at: http://www.satp.org/satporgtp/countries/shrilanka/document/papers/P-TOMS.htm [accessed April 21, 2009].

[48] Statement tabled by GOSL in Sri Lanka House of Representatives, *supra* note 47.

P-TOMS. It argued a few days later that "[a]ll existing laws and financial regulations" would "strictly apply to the Regional Fund," that the fund would "operate under the authority of the Treasury," which would "allocate and disburse the relevant funds."[49] However, given that the P-TOMS made no reference to the laws or constitution of Sri Lanka, it appears that pragmatics overwhelmed constitutional concerns. The strength of these pragmatic considerations is underlined by the fact that the P-TOMS was negotiated and signed by the SLFP, which had expressed constitutional concerns with the ISGA while they were in opposition.

Sinhalese nationalists turned to the courts to reassert the centrality of Parliament and constitutional orthodoxy. Thirty-nine MPs from the JVP, who were members of the governing coalition, brought a constitutional challenge to the P-TOMS within days of it being signed. Indeed, the petitioners included cabinet ministers. The motion was for interim relief to suspend the operation of the P-TOMS. The Supreme Court held that key provisions of the P-TOMS governing the powers of regional committees raised significant constitutional concerns.[50] The basis of the court's ruling was a constitutional provision that requires all monies received by Sri Lanka to be paid into the Consolidated Fund of Sri Lanka, with disbursements governed by the constitution and relevant statutes.[51] The regional fund created by the P-TOMS appeared to circumvent these constitutional arrangements, which gave Parliament the central role in supervising public expenditure through statutes and the passage of budgets. In essence, the court had held that the president had attempted to usurp the authority of Parliament and transfer some of its powers to a new institution operating entirely outside of the structures of the unitary state. The unstated implication of the judgment was that a constitutional amendment would be required to effect such a change. The Court temporarily suspended the operation of the P-TOMS. Faced with the near certainty of P-TOMS being struck down as unconstitutional, the GOSL walked away from the agreement.

Since the peace process between the GOSL and LTTE is now over, one could argue the Supreme Court's intervention has no long-term significance. However, that would be a mistake. The involvement of the

[49] "Government Dispels Apprehensions", Press Release, Government of Sri Lanka, June 29, 2005. Available online at: http://www.peaceinsrilanka.org/peace2005/Insidepage/PressRelease/GOSLreleases/GOSLmediaRel290605.asp [accessed April 21, 2009].

[50] P-TOMs Judgment, Supreme Court of Sri Lanka, July 15, 2005. Available online at: http://www.tamilnation.org/conflictresolution/tamileelam/seminar_06_Zurich/factsheets/factsheet8.pdf [accessed April 21, 2009].

[51] Constitution of Sri Lanka 1978, s. 149(1).

Supreme Court in the constitutional politics of the peace process promises to complicate any future efforts at a political settlement.[52] On the one hand, it has reinforced skepticism on the part of Tamil nationalists of reaching settlement from within the constitutional order, and the need to step outside of it. An editorial in one Jaffna daily stated in response to the Court's ruling on the P-TOMS that

> [t]here is no point in condemning the high court. All it can do is to operate within the law on which it is set up and give rulings and explanation based on them. That is all.... To search for a solution under the present constitution is like searching in the river for what is lost in the sea. To find what is lost in the sea one must look for it in the sea.[53]

The LTTE leader, Prabhakaran, offered a similar assessment in his annual "Hero's Day" address, suggesting that the P-TOMS judgment meant that the ISGA was a constitutional nonstarter under "the entrenched majoritarian constitution and in the political system built on that constitutional structure."[54]

[52] Another issue that has recently been the subject of a successful constitutional challenge is the merger of the Northern and Eastern provinces, a basic LTTE demand. The LTTE asserts that the North-East constitutes the traditional Tamil homeland, and that a united Northeastern province should serve as the unit for regional autonomy in a future Sri Lanka. Sinhalese nationalists have long opposed the merger, because of concerns regarding the large Sinhalese minority in the Eastern province, and because together, the merged Northern and Eastern provinces constitute nearly one-third of Sri Lanka's territory. As part of an Indian supervised peace process in 1987, the President ordered the merger of the North and East provinces in 1988. Although the Constitution authorized legislation to govern such a merger, a statute set out as a condition for the merger that there be a cessation of hostilities and a surrender of arms. Constitution of Sri Lanka 1978, s. 154A(3); Provincial Councils Act No. 42 of 1987, s. 37(1)(b). This condition clearly could not be met, so the President attempted to amend this condition without recourse to Parliament, through the use of his emergencies powers. The Court held that the President had acted unconstitutionally, since the constitution had vested Parliament with the exclusive authority to enact legislation governing the merger of provinces. Jayantha Wijesekera, Mohamed Buhari, Wasantha Piyatissa vs Attorney General, SC (FR) Application Nos 243–245/06, Supreme Court of Sri Lanka, October 16, 2006. The effect of this decision has been to reassert the centrality of Parliament, to create the need for recourse to constitutional amendment and to vest such a power in the President.

[53] "Lessons from the High Court Decision (Editorial)," *Uthayan Daily*, July 15, 2005. For a similar reaction to the ruling on the merger of the Northern and Eastern provinces, see "Sri Lanka: De-merging the Tamil homeland (Editorial)," *Uthayan Daily*, October 18, 2006; Satheesan Kumaran, "Demeger: lessons for the future," *Tamil Guardian*, November 1, 2006.

[54] Velupillai Prabhakaran, "'Heroes Day' speech," November 27, 2005. Available online at: http://www.satp.org/satporgtp/countries/shrilanka/document/papers/LTTE_chief_Heroes_Day_peech.htm [accessed April 21, 2009].

On the other hand, it emboldened the JVP to reassert the primacy of the unitary constitution and to render unconstitutional attempts to circumvent Parliament in a pragmatic effort to evade the constitutional constraints and reach a negotiated settlement. Subsequent to its victory in the P-TOMS case, the JVP brought a constitutional challenge to the Ceasefire Agreement (CFA) entered into by the LTTE and the GOSL in March 2002.[55] Sinhalese nationalists long argued that the CFA was unconstitutional because the GOSL has a constitutional obligation to reassert its authority over and protect the integrity of the entire territory of Sri Lanka, and therefore cannot through agreement, inaction, abandonment, and acquiescence accept the de facto authority of an armed force acting in breach of the law – the LTTE – over parts of the country (de Silva C. 2007). Indeed, the LTTE fueled this argument, expressly stating that the CFA "was entered into outside the scope of the Constitution"[56] and "transcended the parameters of Sri Lanka's majoritarian constitution" by recognizing "Tamil Eelam's de facto existence."[57] The Court of Appeal dismissed the case on procedural grounds in March 2007. The JVP decided to not take the case to the Supreme Court, perhaps because of a tacit understanding with the Rajapaksa government that the latter would abrogate the CFA, which it did in January 2008.[58]

But had the Court found the CFA to be unconstitutional, it would have held by implication that even interim measures that themselves do not constitute a final settlement of the Sri Lankan conflict require constitutional amendment. Given the practical reality that a ceasefire is, by its very nature, a bilateral arrangement between combatants on a basis of parity of status, this would have rendered nearly any plausible ceasefire to be unconstitutional. The unconstitutionality of the CFA would have closed the legal space for a cessation of hostilities and could very well have been the death knell for any attempt to restructure Sri Lanka through a negotiated settlement. But the broader significance is that it

[55] Agreement on a Ceasefire between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam (March 18, 2002). See Gooneratne (2007, pp. 123–34).

[56] LTTE Communiqué, Oslo, Norway, June 9, 2006. Available online at: http://www.tamilnet.com/art.html?catid=13&artid\=18454 [accessed April 21, 2009].

[57] Statement by LTTE on 5th Anniversary of Ceasefire Agreement, February 22, 2007. Available online at: http://www.tamilnation.org/conflictresolution/tamileelam/norway/070222ltte.htm [accessed April 21, 2009].

[58] I owe this information and analysis to Asanga Welikala.

would have only confirmed the Tamil nationalist view that the procedures for constitutional change under the Sri Lankan constitution are a barrier to the peace process.

CONCLUSION

In late 2005, Sri Lanka slid back into civil war. The reasons for this are complex. In 2001–2002, both the GOSL and the LTTE had good reasons to agree to a ceasefire (Ganguly, Höglund, & Svensson 2003; Saravanamuttu 2003; Shastri 2002). For the GOSL, there was general weariness of the war. The UNP – which won the parliamentary elections in 2001 – had campaigned on the promise of launching direct negotiations with the LTTE and appeared to acknowledge the extent of the LTTE's de facto control of the North-East. In addition, the GOSL had suffered humiliating military defeats at the hands of the LTTE – the loss of Elephant Pass, an unsuccessful attempt to retake Elephant Pass, and a surprise attack on the Colombo airport. The costs of war were beginning to mount. September 11 gave renewed impetus to the GOSL's international campaign to have the LTTE declared a terrorist organization, which in practical terms made it much more difficult for the group to finance its war against the GOSL. In addition, in the post–September 11 environment, the GOSL was able to secure military supplies and training from the United Kingdom, the United States, and India, which made an LTTE military victory over the GOSL an impossibility. More generally, the ideology of the "war on terror" undermined the legitimacy of the LTTE's recourse to force, since it left no space for armed struggle by national liberation movements. Both sides concluded they had fought, not merely to a tactical, but also to a strategic stalemate, and armed force would not resolve the conflict. Desertions from the GOSL and the recruitment of child soldiers by the LTTE, underlined the difficulty both sides had in sustaining their military campaigns.

The peace began to unravel in 2004, when an LTTE commander in the East, Colonel Karuna, broke ranks and indicated his willingness to negotiate a separate peace with the GOSL, leading to armed clashes within the LTTE (de Silva C. 2007; ICG 2008; Smith 2007). Low-level conflict broke into open war in April 2006, with the attempted assassination of the GOSL army's chief of staff, Sarath Fonseka. The infighting between factions of the LTTE eventually allowed the GOSL to retake the East by July 2007. The GOSL then turned its attention to the North for the remainder of 2007 and 2008. Although it met stiff resistance from the LTTE, the GOSL made considerable progress on the battlefield, seized

the initiative and put the LTTE on the defensive. In May 2009, the GOSL declared victory over the LTTE and paraded the body of Prabhakaran on television, after a final battle in the Vanni, in which many civilians were trapped in the field of battle, producing a humanitarian catastrophe.

As Chris Smith (2007) has argued, the strategies of the LTTE and the GOSL were unclear. Prior to its defeat, the LTTE still demanded a federal Sri Lanka. Yet in the 2005 presidential election, it pressured Tamils to *not* vote for Wickremesinghe, who led the GOSL into the Norwegian-facilitated peace process (de Silva C. 2006). It thereby guaranteed victory for Rajapaksa, who supported the view that central provisions of the CFA were unconstitutional and that any settlement to the civil war must occur within the parameters of a unitary state.[59] This was a dramatic departure from the Oslo declaration, which had committed both sides to exploring a federal solution. Supporting the election of Rajapaksa reduced the prospects of a negotiated peace. This apparently contradictory strategy of the LTTE highlights that it was unable to accept the consequences of a negotiated solution to the conflict. A peace package would entail not only federalism, but also the return to competitive party politics, democratic accountability, respect for human rights, and the rule of law in the North-East after an absence of many decades. The LTTE was an authoritarian organization, which had over two decades eliminated other armed Tamil groups and moderate Tamil politicians, and whose control over the North-East was buttressed by extortion and physical violence. In spite of its close alliance with the Tamil National Alliance (TNA), which contested national elections in 2001 and 2006, the LTTE continued to favor military means and showed no signs of making the transition to a political party because this would necessarily have involved a reduction in its authority.

The GOSL's position shifted as well. After President Rajapaksa was elected, he claimed that the CFA was unconstitutional and should be amended accordingly. But at the first round of peace negotiations after he took office, in Geneva in February 2006, the GOSL walked away from these positions and stood by the CFA for 2006 and 2007, even though the country had in fact returned to war. However, on January 2, 2008, the GOSL formally abrogated the CFA.[60] In the place of a negotiated settlement with the LTTE was a new strategy to destroy the LTTE as a

[59] Agreement between SLFP Presidential Nominee, Mahinda Rajapaksa and JVP, September 8, 2005. Available online at: http://www.tamilnation.org/conflictresolution/tamileelam/norway/050908mahinda.htm [accessed April 21, 2009].

[60] "Government to withdraw from CFA". Available online at: http://www.peaceinsrilanka.org/peace2005/Insidepage/PressRelease/GOSLreleases/GOSLmediaRel030108.asp [accessed April 21, 2009].

military force and achieve a political solution through the political process, centered on Sri Lanka's parliament and the political parties represented therein. However, it was far from clear that the GOSL could completely defeat the LTTE militarily. Moreover, since the LTTE originated as a guerrilla movement, it was predicted that the LTTE would "bomb themselves back onto the agenda"[61] by simply reverting to these tactics in the jungles of the North with strikes on military targets, and by terrorizing civilians through bombings in the Sinhalese-majority areas of the south. Nonetheless, contrary to expectations, the LTTE was defeated, and has not turned to such type of warfare.

Thus, in these circumstances, given that both sides chose to return to armed confrontation, and that the GOSL prevailed, it would seem that the law is of marginal importance. This would appear to be a case where competing nationalisms within a multinational polity can be understood without reference to legal materials. But the Sri Lankan civil war is ultimately a constitutional conflict. Law is fundamental to understanding the causes of the conflict and the possibilities for its resolution. Tamil grievances have been framed in terms of the defects of Sri Lanka's post-independence constitutions, and their demands – to the extent that they call for regional autonomy within a united Sri Lanka – have translated into calls for the restructuring of the Sri Lankan constitutional order. Likewise, constitutional arguments have figured centrally in Sinhalese nationalist discourse. The prominence of legal argumentation in the Sri Lankan conflict demonstrates how fundamental the law has been to the parties' understanding of the conflict. And so, even after the civil war had recommenced, when the parties met in Geneva in October 2006, constitutional issues were raised by the LTTE once more. Recounting the saga of the ISGA proposals and the unconstitutionality of the P-TOMS, the LTTE boldly stated that "a solution to the ethnic conflict cannot be found within the current Sri Lankan constitution."[62]

Examining the Sri Lankan crisis through various legal materials and texts sharpens our understanding of this case. It vividly illustrates the value of taking the law seriously in the study of multinational polities. Moreover, examining the legal materials with the assistance of analytical categories furnished by constitutional theory illustrates that the descent

[61] "Sri Lanka's war: Closing in on the Tiger's Lair", *The Economist*, 4 September 4, 2008.

[62] LTTE Opening Statement, Geneva Peace negotiations, October 28, 2006. Available online at: http://www.tamilnation.org/conflictresolution/Tamileelam/norway/061028solheim.htm#LTTE_Opening_Statement [accessed April 21, 2009].

into civil war in Sri Lanka ultimately arose from not one, but two different kinds of breakdown of the Sri Lankan constitutional order. One arose from a fundamental difference over the substance of the constitutional arrangements to frame the relationship between the Sinhalese majority and the Tamil minority – electoral representation, official language policy, federalism, and so on. But there has been an equally fundamental disagreement over the constitutional procedures that should govern that debate over constitutional substance. Constitutional procedures allow the constitutional politics of substance to occur. Without a shared understanding of the process of reform, the constitutional politics of substance may be impossible.

An enormous amount of attention continues to be given to questions of substance – what the shape of a future Sri Lanka should be. But issues of process require much more careful attention than they have received thus far. The critical issue is the process whereby a new constitution would be adopted. Until the LTTE's military defeat, the principal issue was the collision between the internal logic of the unitary constitution and the de facto control by the LTTE of portions of the North. As illustrated by the Supreme Court's judgment striking down the P-TOMS, and the prospect of a successful challenge to the CFA, the constitutional order stood in the way of a negotiated settlement between the LTTE and the GOSL on the basis of a relationship of parity. Indeed, there was a danger that insisting on constitutional orthodoxy could have pushed the LTTE to issue a unilateral declaration of independence.

The end of the war with the LTTE, and the insistence of the GOSL that any political solution to the conflict will be achieved through existing constitutional process, would not appear to raise the same existential concerns. On the one hand, the electoral success of the JVP and the Jathika Hela Urumaya (JHU) make it less likely than ever that the demanding procedures set out in the Sri Lankan Constitution – a two-thirds majority in Parliament, and a simple majority in a national referendum – could ever be satisfied. But on the other hand, the downside risk of a failure of constitutional process would appear to be minimal, since the constitutional status quo would prevail. However, the political situation is in fact much more volatile because the constitutional status quo is deeply unstable. The military victory over the LTTE has not resolved the Sri Lankan constitutional conflict. The LTTE arose after the failure of Tamil political parties to achieve constitutional change through the political process to respond to long-standing Tamil grievances regarding official language status, discrimination in government employment, university

admissions, and the failure of the state to protect Tamils from private violence. The defeat of the LTTE has left unaddressed the concerns that initially gave rise to Tamil nationalism and the turn to violence. Recent polling data reveals that Tamils continue to hold these concerns (Irwin 2008). Moreover, the same data shows that Sinhalese do not perceive these issues to be nearly as significant as Tamils, which highlights the degree of political imagination that will be required for the Sinhalese majority to address these concerns. If the political process does not yield a new set of constitutional arrangements that fairly address the legitimate concerns of Tamils, a violent movement would arise again, triggering a further cycle of violence and repression. The fact that the GOSL, after its victory over the LTTE, has called for an increase in the size of the military, to maintain a large and permanent presence in the north and east, may suggest that the GOSL itself is aware of this possibility.

Indeed, the available evidence suggests that Tamils in the north – now free to participate in national elections – are disengaged from the national political process. In the municipal elections held in Jaffna and Vavuniya in August 2009 – now possible because of the defeat of the LTTE – turnout was extremely low, the government-allied candidate secured insufficient preferences to get elected, and Tamils appear to have supported the LTTE-allied TNA. Moreover, it is not at clear whether Tamils will vote in the 2010 presidential election. Although in theory they possess the balance of power, they do not appear to have a real choice, as both candidates are Sinhala nationalists. The opposition alliance's candidate is General Fonseka – a Sinhalese nationalist who led the GOSL to military victory, has been accused of committing war crimes against Tamil civilians, and has stated that Sri Lanka belongs to the Sinhalese. While President Rajapaksa, by contrast, has called for a "political solution" to the national question, he has reaffirmed that this must occur within the structure of a unitary state and has categorically rejected federalism. The true test will be the parliamentary elections that must be held in 2010, and in which Tamil parties will contest.

To put the point another way, Sri Lankan constitutional order has set in motion a long-term process of self-destruction that has at best been delayed by a military victory over the LTTE. It may be necessary to proceed outside the constitutional order to save the prospect of constitutionalism in Sri Lanka. A useful starting point is V. K. Nanayakkara's recent proposal to step outside the 1978 Constitution by convening a constituent assembly that would draft a constitution to be approved in a national referendum (Nanayakkara 2006). The challenge is to ensure

that the membership and voting rules of such a body reflect a conception of Sri Lanka as a multinational, not a mono-national, polity. Two overarching principles should guide the structure of such a body. First, a stable political settlement requires representation from all those with affected interests. A major shortcoming of the various rounds of GOSL–LTTE peace negotiations is that they were bilateral ceasefire negotiations between combatants that did not include all interested parties. These representatives would include other parties that principally represent the South, who have acted as spoilers in Parliament because they were not invested in the process and have turned peace negotiations into questions of partisan political cleavage. But it would also include other Tamil parties in the North-East, who were not at the table.

Second, the voting rules for a constituent assembly should simultaneously reflect the multinational character of Sri Lanka and encourage crosscutting alliances across national boundaries. An important tool for Sri Lanka is the notion of "sufficient consensus" (Haysom and Choudhry, forthcoming). This concept originated in the South African constitutional negotiations in the early 1990s. These negotiations involved two principal parties, the African National Congress (ANC) and the National Party (NP), whose joint agreement was necessary for any negotiated settlement. The ANC and the NP decided early on to invite a large number of smaller political parties in order to secure broad buy-in to the final agreement. However, instead of extending the requirement for the ANC's and the NP's agreement into a decision-rule of unanimity (which would encourage holdouts), the parties agreed to a super-majority rule that was never defined numerically – that is, sufficient consensus. The parties to the Northern Ireland peace negotiations in the mid-1990s adapted the notion of sufficient consensus to multiparty negotiations in a multinational polity. In Northern Ireland, sufficient consensus came to mean majority support within each national bloc – that is, a double-majority rule. This ensured that each national community consented to the final peace agreement. But each national bloc was recognized as consisting of a plurality of voices, and unanimity within each national bloc was not required. Moreover, it encouraged agreement between representatives of different national communities. The notion of sufficient consensus holds promise for Sri Lanka. The parity of status that was long sought by the LTTE would be present, not between the LTTE and the GOSL, but between the Tamils and the Sinhalese.