

**A Unitary State, A Federal State or Two Separate States?**

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For Neelan

“he brought clarity and set aside confusing words”

*Purananuru 239*

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## I. Introduction

This paper develops a political liberal defence of federalism as a political solution to ethnic conflict in Sri Lanka between majority Sinhalese and minority Tamils.<sup>ii</sup> I defend federalism as a stable political consensus between Tamil liberals and Sinhala liberals, not simply as an unstable political compromise between Sinhala nationalists who prefer a unitary state and Tamil nationalists who prefer to secede. The strategy of this political liberal defence is to reinterpret an ethnic conflict between Tamils and Sinhalese as a political conflict between liberals and nationalists. Politically, this paper is a left-liberal attempt to expand support for federalism in Sri Lanka by distinguishing the Sinhala liberal from the Sinhala nationalist, and the Tamil liberal from the Tamil nationalist.

It is hard to distinguish liberals from nationalists in a situation of ethnic conflict. Individuals may share political moral values, but choose different political arrangements. Similarly, individuals may differ in their political moral values, but choose similar political arrangements. In Sri Lanka, Sinhala liberals view the unitary state as a means of instituting political equality, while Sinhala nationalists view it as a means of Sinhala domination. Tamil liberals view secession as a means to strengthen Tamil culture, while Tamil nationalists view it as a means of Tamil domination. The Sinhala liberal and Tamil liberal need not be political opponents who support different political arrangements, but are potential political allies who share the same political principles. For the Sinhala liberal, acceding to federalism need not be a compromise of liberal principles with Tamil nationalism because he rejects the group bias against Tamils of a

unitary Sri Lanka. Similarly, for the Tamil liberal, federalism is not a compromise of liberal principles with Sinhala nationalism, when he rejects an illiberal Tamil state.

This paper is divided into five parts. Part II describes the political positions represented in the Sri Lankan conflict and their preferred political arrangements. Part III persuades the Sinhala liberal who endorses individual equality to accept federalism. Part IV dissuades the Tamil liberal from endorsing secession. Part V concludes by addressing two political objections to federalism in Sri Lanka.

## II. Political Arrangements and Political Positions

The three political arrangements under consideration in Sri Lanka are a unitary state, a federal state within a united Sri Lanka, and two separate states - one a Sinhala majority state and the other a Tamil majority one. The political positions are the Tamil liberal, the Tamil nationalist, the Sinhala liberal, the Sinhala nationalist and the left-liberal.<sup>iii</sup> The Tamil liberal and Tamil nationalist support the establishment of a separate Tamil state. The Sinhala liberal and Sinhala nationalist support a unitary state. The left-liberal supports federalism.<sup>iv</sup> First, let me define the political arrangements.

### *II.a. Political Arrangements*

*A Unitary State.* By unitary state, I mean the set of political arrangements where all powers - executive, legislative and judicial - are concentrated at the centre. A unitary state may involve the separation of powers horizontally, i.e., the separation of executive, legislative and judicial powers within a political unit. However, it will not permit the separation of power vertically, between a political unit and subunits. A unitary state may

permit the delegation of such powers to a subordinate unit, but it will not permit the alienation of powers. Under a unitary system of governance political powers that are granted to a subordinate unit can always be retracted at the discretion of the central state. Examples of unitary states include France and Sri Lanka.

*A Federal State.* By federalism, I mean the broad class of political arrangements within a single political unit between a unitary system, where all powers are concentrated at the centre, and secession, where there are a minimum of two independent political units. Federal arrangements can range from quasi-federal ones, like India, to federal arrangements, like the United States. A federal arrangement involves autonomous spheres of political action for the primary political unit and the subunits. Neither can encroach on the other in ordinary politics. Nevertheless, it is possible to renegotiate the division of political powers during moments of extra-ordinary political change. My own conception of federalism follows the traditional one in distinguishing two spheres of autonomous political action for the central government and the political subunits. It departs from some interpretations of the traditional conception in not requiring the consent of both the central state and all the subunits for renegotiating the division of vertical political powers.<sup>v</sup> Other than the broad contours outlined above my discussion of federalism in this chapter neither presupposes, nor advocates any particular institutional instantiation of it.

*Two Separate States.* By two separate states, I mean the establishment of a Tamil majority state in the predominantly Northern and Eastern Provinces of Sri Lanka,

adjacent to a Sinhala majority state in the rest of Sri Lanka. The relations between these two states would be indistinguishable from the relations between any two independent states that share a common boundary. They may involve trade and tariff treaties, diplomatic relations and even mutual defence pacts. But none of these formal agreements would permit or entail political intervention by one state in the internal political decision process of the other. They would be two separate politically independent entities. My argument about the political morality of separation does not presuppose the nature of the political relations between these two adjacent states.<sup>vi</sup> For example, these relations can range from peaceful, such as that between the United States and Canada, to belligerent, such as that between Israel and Syria. Next, let me describe the political positions.

### *II.b. Political Positions*

*The Sinhala Positions.* There are two Sinhala positions under consideration - the Sinhala liberal and the Sinhala nationalist. They both support a unitary political arrangement for Sri Lanka. Nevertheless, their rationales for such an arrangement differ. The Sinhala liberal supports a unitary state because he believes it ensures individual equality. The Sinhala liberal recognises that Tamils face inequality as a result of belonging to a minority linguistic group and is willing to consider measures to offset this. However, he does not believe this leads to a justification of federalism. He views federalism as a concession to Tamil nationalist demands and views such demands as aggravating the conflict.

The Sinhala liberal position has been the dominant constitutional perspective in Sri Lankan history during the postcolonial period. The three constitutions of postcolonial Sri Lanka - the Soulbury, the First Republican, and the Second Republican - are all based on this Sinhala liberal perspective. The Sinhala liberal perspective on constitutional doctrine in Sri Lanka has historically been associated with the United National Party. Nevertheless, this constitutional position tends to cut across political lines. It includes positions that range from individuals associated with the left to individuals associated with the Sri Lanka Freedom Party.<sup>vii</sup> The Sinhala liberal is a potential source of political liberal support for federalism in Sri Lanka. He does not support a unitary political arrangement, per se, but does so because he views it as the best arrangement for realising individual equality. If federalism is better at realising individual equality, then the Sinhala liberal ought to support it.

The Sinhala nationalist, however, is always opposed to federalism.<sup>viii</sup> The Sinhala nationalist supports a unitary state because he believes that it ensures the Sinhala majority can dominate Sri Lankan politics. He believes the interests of Sinhalese should take priority over the interests of non-Sinhalese and the cultural interests of Sinhalese should take priority over their socio-economic ones. However, this does not imply complete disregard for the socio-economic interests of Sinhalese or the interests of non-Sinhalese. The Sinhala nationalist position has historically been associated with the Sri Lanka Freedom Party, after it came to power in 1956 on the platform to institute Sinhala as the only official language. Subsequently this political position cut across party lines, as the United National Party also adopted it in the competition for majority Sinhala electoral support. The electoral political pattern that has now emerged in Sri Lankan



politics is that the government in power tends to adopt a Sinhala liberal approach towards resolving the ethnic conflict while the opposition tends to adopt a Sinhala nationalist one. There are small political parties, some influential Sinhala writers and militant Buddhist monks who have consistently adopted a Sinhala nationalist position.

My task is to convince the Sinhala liberal that his recognition of individual equality for Tamils will, in the light of the group bias Tamils have experienced in a unitary state, lead him to break with the Sinhala nationalist and support federalism.

*The Tamil Positions.* Next we have the two Tamil positions - the liberal and the nationalist. They both support secession, but their rationale for doing so differs. The Tamil liberal believes in individual equality. He believes the way to resolve the conflict is to grant Tamils their independent state. He believes a separate state will provide Tamils with the political, economic and cultural security to address their interests. His support for secession does not rest on rejecting political equality for Sinhalese or on valuing Tamil cultural interests above their socio-economic interests. As a liberal his support for secession entails support for the basic liberties and the rights of other minorities in a separate Tamil state.<sup>ix</sup> The Tamil liberal views federalism as a concession to Sinhala nationalism. The Tamil liberal position is associated with the moderate Tamil party the Tamil United Liberation Front.

The Tamil nationalist supports a separate state because he grants priority to the cultural interests of Tamils over their socio-economic interests. And he grants priority to the interests of Tamils over the interests of non-Tamils. However, this does not imply a

complete disregard for the socio-economic interests of Tamils or the interests of non-Tamils.

My task is to convince the Tamil liberal that his recognition of individual equality will, in the light of the violations of probable violations of basic liberties in a separate Tamil state lead him to break with the Tamil nationalist and support federalism.

*The Left-liberal Position.* The left-liberal political position cuts across socio-economic, political party and ethnic lines.<sup>x</sup> Left-liberal support for federalism stems from a political commitment to multiethnicity, basic individual freedoms and/or social equality. The individuals within this broad position do not, themselves, agree on the relative importance of these three considerations. Some may emphasise socio-economic equality, others may emphasise individual freedoms and still others, may simply emphasise ethnic diversity. Whatever their differences, they all view the current unitary political structure as contributing to the origin and continuation of the conflict and they oppose secession. They support a federal constitution as a means of simultaneously addressing Tamil political grievances, strengthening democracy and resolving the violent conflict.<sup>xi</sup> This is the only political position in Sri Lanka that is not ethnically based. Its adherents come from all ethnic communities in Sri Lanka. This position is associated with the Communist Party, the Lanka Sama Samaja Party and many NGOs.

The moral argument for federalism proceeds in two steps. First, I show how addressing reasonable Tamil concerns in Sri Lanka leads to federalism from a unitary state. This distinguishes the Sinhala nationalist from the Sinhala liberal. The former remains with the unitary state, while the latter will lend support to a federal one. Second,

I show how addressing reasonable Tamil concerns can not lead to secession. This distinguishes the Tamil liberal from the Tamil nationalist.

### III. From a Unitary to a Federal State

This section seeks to convince the Sinhala liberal that support for federalism is required by his liberal values. While federalism may be politically desirable in a culturally plural society, to require federalism we need to identify the specific conditions under which it is the primary means to ensure political equality. Linguistic pluralism, alone, is not such a condition. Political inequality due to linguistic pluralism can be addressed by a combination of local and provincial autonomy, special representation and bilingualism. It does not require federalism. What leads to federalism in a context of linguistic pluralism is the group bias of the unitary state against the minority language group.<sup>xii</sup> Linguistic diversity, alone, can make federalism desirable, politically, but fails to make it required, morally.<sup>xiii</sup> What distinguishes the Sinhala liberal from the Sinhala nationalist is not the recognition of linguistic diversity in Sri Lanka, but the recognition of group bias against the Tamil minority within a unitary state. So the Sinhala liberal can support federalism without acquiescing to Tamil nationalism. Let me now go through the four considerations that will lead Sinhala liberals to federalism from a unitary state.

#### *III.a. Local Autonomy.*

There is a general liberal presumption in favour of local autonomy - purely local matters should be settled locally. There are many issues that are not morally closed, i.e., there exist a range of possible just solutions to a political problem. Local autonomy

provides a way of choosing one by tapping into local knowledge. Local government services include the maintenance of streets and parks, the functioning of community centres for the youth, elderly and disabled, the disposal of waste and the provision of utilities. Some local governments have power over education and law enforcement. Local governments can tax residents for the purposes of providing these services and the functioning of the government. A creative and effective organisation of local government services and support for the participation of different social groups can help turn cities and other local areas, such as villages and towns, into centres of cultural diversity and toleration.<sup>xiv</sup>

The impact of local government decisions are small in scale, minimising the cost of mistakes. While decisions can be made autonomously at the local level of the municipality, the town, or the village, the basic constitutional structure of society provides the political context in which they are made. In the presence of a basic constitutional structure that is just, the risk that mistakes will undermine political equality is small. This is true the farther away we get from constitutional questions. Moreover, when political equality is violated or the local administration is corrupt, the central government has the authority and the power to intervene. Finally, the cost of exit is relatively low for individual residents who disagree with the policy decisions made by a local government.

Strong local government is thus an important Sinhala liberal strategy for addressing reasonable Tamil concerns. Sinhala liberals point to the relation between the intensification of the ethnic conflict and the weakening of local government structures over the past two decades. Beginning with the centre-left United Front government of

1970-77, local autonomy in Sri Lanka has been steadily eroding.<sup>xv</sup> The United Front government saw the central state as the engine of economic development and political integration. They considered local autonomy an impediment to urgent social change, such as land redistribution and increased agricultural production. The United National Party government that was in power from 1977 to 1994 intensified this trend. Even when decentralisation was attempted under these two governments it paradoxically led to greater centralisation. The District Political Authority (DPA) under the United Front government and the District Development Council (DDC) under the United National Party government “brought about a greater degree of centralisation, by institutionalising the power already enjoyed by the Members of Parliament and establishing central political leadership in each district.”<sup>xvi</sup> These schemes led to central government ministers and MPs participating and invariably dominating local government programs as ex-officio members and chairmen of the these local authorities. Diluting the power of local structures increased the challenges everyone faced to effective political participation, not only those faced by Tamils.

Sinhala liberals argue local autonomy can go a considerable distance towards addressing the reasonable interests of Tamils. It provides Tamils with an important forum for participating in politics and deciding issues that directly affect them in their communities. Sinhala liberals do not reject the claim that the dismantling of local government structures may especially disadvantage Tamils. Rather they view centralisation as a general political trend that adversely affects all citizens, but whose impact on Tamils is compounded by linguistic differences. They argue local autonomy has not failed to address Tamil concerns. Rather there has been no local autonomy.

Instead of designing newer and more extensive devolution mechanisms to address the concerns of the Tamil minority on the basis that local autonomy is insufficient, Sinhala liberals argue local autonomy should be strengthened, overall. Effective local autonomy makes federalism unnecessary.

### *III.b. Provincial Autonomy.*

The liberal presumption in favour of local autonomy can be taken one step farther to provincial autonomy. This extension is quantitative rather than qualitative in nature. Sinhala liberals can support provincial autonomy on the basis that it increases efficiency. It allows a number of contiguous local governments to internalise their externalities, i.e., it provides a means by which they can co-ordinate the benefits and costs of programs that cannot be restricted to the boundaries of local governments, and benefit from economies of scale. And it forms an intermediate level of co-ordination between local governments with common areas of interest and the central government. While the principle of provincial autonomy here is akin to that of local autonomy, it differs in scale.

The criteria liberals' use for delineating provincial (or local) boundaries include efficiency and tradition. These criteria can lead to boundaries that follow linguistic divisions, rural and urban divisions, geographic divisions as well as traditional administrative units. Liberal recognition of linguistic boundaries need not be based on any special recognition of ethno-linguistic difference over other forms of difference. It is only based on limiting the cost of interaction between the local or provincial government and citizens of a unit. Provincial units that correspond to linguistic ones can lower the cost of providing education, goods and services, and maintaining cultural traditions. The

basis for drawing boundaries along linguistic lines, for example, does not differ from the basis for drawing boundaries along the lines of agricultural or fishing communities.

The first and only serious experiment with provincial autonomy in Sri Lanka was the Provincial Councils Bill of 1987. Here extensive devolution of power was granted throughout the country. The seven Sinhala majority provinces followed the traditional provincial boundaries, the two Tamil linguistic provinces - the Northern and Eastern ones - were merged into a single one.<sup>xvii</sup> While the devolution of power under this scheme was the most extensive ever in Sri Lanka, it was still within a unitary state. The central legislature had the power to enact legislation applicable to the provinces either by a simple majority in parliament or for the purposes of implementing “national” policy.<sup>xviii</sup>

The Provincial Councils Bill was within the framework of a unitary state and thus consistent with the Sinhala liberal position. Sinhala liberals attribute its failure to two sources. The first is the same trend towards centralisation that led to the failure of local government. The second, related to the first, is the authoritarianism in Sri Lanka during the past three decades that led to the weakening of democratic structures.<sup>xix</sup> Sinhala liberals thus reject federalism as unnecessary because provincial autonomy is yet to be actually attempted, politically, for it to be rejected as a failure.<sup>xx</sup> Whatever the reasons for instituting federalism in Sri Lanka, it is still not required by political morality.

### *III.c. Special Representation.*

While local autonomy provides for Tamils to participate in politics and decide issues that directly affect them, it fails to ensure they are adequately represented at the centre.<sup>xxi</sup> The majoritarian system of territorial representation can place minorities at a

disadvantage in electing representatives of their choice. Small swings in votes can bring large changes in electoral results. This leads to a huge discrepancy between the number of votes received by a party and the number of seats that it wins in parliament. This discrepancy can undermine equality of representation. This may be tolerable when there are no linguistic differences because a group can persuade representatives through other means.<sup>xxii</sup> But in the presence of linguistic differences informational failures due to the cost of dealing with representatives who do not speak their language, compound minorities' lack of representation. Under these circumstances electoral systems weighted in favour of increased minority representation are not only compatible with political morality, but may even be required by it. These schemes can include linguistically defined electoral units, proportional representation, or setting aside "minority" seats in parliament.

Sinhala liberal support for these schemes can rest on the linguistic disadvantage faced by Tamil candidates and voters. Tamil candidates fail to reach Sinhala voters because they speak a different language. And the cost of reaching them has to be borne entirely by Tamils. This is also true of Tamil voters. These voters either have inadequate access to information about Sinhala candidates, whose appeals for reasons of efficiency and political expediency are targeted to Sinhala voters in a majoritarian electoral system. The point here is not that a majoritarian electoral system is unjust, per se, since all electoral systems are majoritarian. Rather it is that an electoral system can lead to injustice if it systematically disadvantages both the election of representatives preferred by social group, and the access of members of this social group to representatives who have been elected.



Tamil concerns about adequate representation has been an important element in the Tamil political struggle. Tamils argued for special representation for minorities in the parliament of the newly independent Sri Lanka.<sup>xxiii</sup> In 1978, the introduction of a district based proportional representation scheme increased Tamil political representation significantly. More importantly it gave minority political parties greater bargaining power in forming governing coalitions. Since small swings in votes no longer assured either of the two major political parties the number of seats required to govern, they courted the support of minority parties, in general, and Tamil parties, in particular.<sup>xxiv</sup> This has increased Tamil influence on the political process, particularly in the central legislature.

Whatever the institutional mechanism necessary to remedy inadequate representation, liberals can support greater representation for a linguistically distinct minority. These mechanisms can vary, but their primary goal is to ensure minorities have adequate representation in the central legislature. Not only do central legislatures as the dominant law making bodies of a political community determine the laws of the country, but they also determine the political context within which local governments structure their daily politics. Like local autonomy, greater representation at the centre for the Tamil minority addresses their concerns without requiring federalism. In fact the more centralised the state, the stronger the argument for minority representation at the centre, since a centralised state will have more power to enact laws throughout the polity.

*III.d. Bilingualism.* Local autonomy, provincial autonomy and special representation address the cost of interaction between minority citizens and local bodies, enables these

citizens to participate in politics at the local level and have adequate representation at the national level. However, they do not address all the disadvantages suffered by minority citizens who speak a different language. Bilingual policies defray the cost faced by minority citizens in interacting with the state and the market. The cost of interacting with the state can range from filling out passport applications to language requirements for government employment. The cost of interacting with the market can range from restricted job opportunities to the challenge of reading labels and signposts.

The disadvantage of Tamil speakers is primarily related to the state rather than the market. While the state functions only in Sinhala, the market functions in all three languages. More accurately, there are three markets that each has a dominant language. The international sector related to finance, import and export, and manufacturing functions in English. Linguistically, Tamils are no more disadvantaged or advantaged here than Sinhalese. And the disadvantage here is associated with class more than language. While most middle and upper-middle class Sri Lankans, whether Tamil or Sinhala, speak English, most working class or lower middle class Tamils and Sinhalese do not. The requirement of a working knowledge of English in the international sector functions as an additional barrier to social and economic advancement in Sri Lanka for monolingual speakers of Tamil or Sinhala. The use of English, here, is more than simply a legacy of British colonial rule. English is now increasingly becoming the language of a global economy. Sri Lanka with a small domestic economy can hardly buck this international trend. The best it can do to rectify this disadvantage is to encourage and support English language education so as to increase social, economic and educational opportunities for working class and poor Sinhalese and Tamils.

The local markets function in Sinhala in the predominantly Sinhala areas and in Tamil in the predominantly Tamil areas. While Tamils in predominantly Sinhala areas and Sinhalese in pre-dominantly Tamil areas can experience difficulties in interacting with local markets, these disadvantages are minimal and are easily overcome. There is a strong incentive on the part of manufacturers and merchants to provide goods and services in the language of the customers in order to increase profits.

Unfortunately, this incentive does not exist in the State sector. Bilingual state policies are necessary to address these linguistic disadvantages. There are three types of interactions that can lead to disadvantages: between Tamil speaking citizens and the central state, between Tamil speaking citizens and the local or provincial governments in predominantly Sinhala areas, and between Sinhala speaking citizens and the local or provincial government in predominantly Tamil areas.<sup>xxv</sup> These linguistic disadvantages can have an impact on a range of areas, from recruitment and promotion for jobs in the public sector and access to the courts, to filling out forms for passports and licenses, and following road signs. Political equality requires the central state and the local/provincial governments ensure that essential goods and services are provided in a language that is accessible to minority language speakers, and encourage the recruitment and promotion of those who can do so. Providing promotions and other incentives to those who speak Sinhala and Tamil, encourages bilingualism in the state sector and diminishes the disadvantages minority language speakers experience. Focus on linguistic ability, alone, rather than ethnic quotas, will lead to a more inclusive public sector, in a less restrictive manner. While individuals who are bilingual are more likely to be Tamil than Sinhala,

there is nothing to prevent Sinhalese from acquiring knowledge of Tamil in the way Tamils study Sinhala.

Sinhala liberals can support local autonomy, provincial autonomy, special political representation and bilingualism to address the disadvantage Tamils face. These measures are seen not only as compatible with, but even required to treat all individuals as equals in a polity that is linguistically plural. However, they reject the claim that linguistic pluralism requires federalism. They see federalism as unnecessary in the presence of the above mechanisms. Under conditions of linguistic pluralism, alone, the failure of these mechanisms to address Tamil concerns is not viewed by Sinhala liberals as a sign that they are insufficient, but as a sign that these mechanisms have never been given a real chance to work. To take the next step to federalism, a Sinhala liberal requires an additional condition - group bias within a unitary state.

*III.e. Group Bias.* Sinhala nationalists deny the unitary state leads to a group bias against Tamils, while Sinhala liberals recognise that such group bias can not be reasonably denied, i.e., Sinhala liberals believe that reasonable people can disagree about whether the unitary state leads to group bias against Tamils. If group bias does not exist, Tamils cannot claim they are being treated unfairly within a unitary state provided other measures – local autonomy, provincial autonomy, proportional representation and bilingualism are in place. But if group bias does exist within a unitary state, it can systematically disadvantage the Tamil minority and lead to political inequality. Accepting that Tamils should not bear the burden if group bias exists in a unitary state, Sinhala liberals endorse federalism. All that is required for the Sinhala liberal to require

federalism here is not to himself believe that such group bias exists, but to concede that those who do are not unreasonable. The Sinhala nationalist, however, rejects federalism because he is unconcerned about the disadvantages suffered by Tamils.

Left liberals argue there are many measures enacted by the central government in Sri Lanka that have disadvantaged Tamils. The following acts of parliament are usually proffered as examples: In 1956, the newly elected Sinhala populist coalition passed the Official Language Act, popularly known as the “Sinhala Only Act.” This act made Sinhala the sole official language of Sri Lanka, leading to a range of disadvantages for Tamil speakers. In Sri Lanka’s first republican constitution enacted in 1972, Buddhism, the religion of the Sinhala majority was granted official status. Giving state recognition to one particular religion was a symbolic downgrading of others. Since all Buddhists in Sri Lanka are Sinhala, this had a disproportionate impact on Tamils who are predominantly Hindu. In the 1970s an ethnically based quota system for admission to universities was set-up that drastically reduced the percentage of Tamil entrants. In 1978, the government enacted the Prevention of Terrorism Act. This act was introduced to deal with the rising Tamil youth insurgency in the North. And finally, in 1983, parliament passed the VI<sup>th</sup> Amendment, following the anti-Tamil riots. This amendment made advocacy of a separate Tamil state unconstitutional and led to the resignation of all Members of Parliament representing Tamils.

Sinhala liberals respond that none of these policies were motivated by bias towards Tamils as a group. They argue that in these cases difficult choices had to be made by legislators under complex circumstances. While they concede that each one of these policies may have adversely affected Tamils, they argue this is true of most

political measures, i.e., there is always some group that will be adversely affected by a political measure. Focusing on the adverse effects of a policy at a particular moment on a particular group as a reason for not enacting it, will preclude the enactment of most policies. Consider the Official Languages Act of 1956. English was the official language in practice prior to 1956. This adversely affected a considerable proportion of the Sri Lankan population - Sinhalese, as well as Tamils - who did not speak it. Dropping a colonial language and shifting to a national one was both politically and practically desirable. Politically, it was a means of shedding an important remnant of colonial rule and helping the transition to a more complete sense of independence. Practically, Sinhala as the national language spoken by an overwhelming majority - 70% of the population - was the only economically efficient choice. Sinhala liberals concede that Tamil speakers did suffer a disadvantage viz a viz Sinhala speakers when Sinhala was made the official language. But they argue this was no different from the disadvantage Tamils experienced with the English language.

Similarly, although most Sinhala liberals are discomfited by the special recognition granted Buddhism in the Sri Lankan constitution, they argue this symbolic measure has not practically affected the freedom of conscience and worship of non-Buddhists. They see the practical consequences of these measures as more critical than their abstract constitutional role. Sinhala liberals also point to other liberal political orders, such as the United Kingdom, where the Anglican Church has a special symbolic role as the state religion, and the Head of State - the Queen of England - is also the Head of the Church. They argue that while such symbolic recognition of a particular religion

over others is not morally desirable in a liberal society, it is not incompatible with the protection of the basic religious liberties.

Additionally, Sinhala liberals argue measures such as the ethnically based quota system that favoured Sinhalese over Tamils in admission to universities and the Prevention of Terrorism Act were radical policy measures taken to address difficult situations. In the former case, they point to large asymmetry between Tamil entrants and Sinhala entrants to university as a reflection of the better schools in Tamil areas - a legacy of missionary education. The quota system helped remedy this asymmetry. In the case of the PTA - they argue that tough measures were necessary to deal with a violent separatist insurgency that threatened the political stability of the country. Finally, Sinhala liberals argue that advocacy of a separate state as unconstitutional is compatible with political equality. They point to countries like India with robust democratic systems where such advocacy has been deemed unconstitutional.<sup>xxvi</sup>

The left liberal responds by rejecting the Sinhala liberal characterisation of these policies as justifiable. For the left liberal, the “Sinhala Only” act did not simply overcome the legacy of a colonial language, but also relegated Tamils to a second class status, symbolically and politically. They argue that even if Tamils were at a disadvantage viz a viz English language, it was one they shared with fellow Sinhalese, i.e., they were equally unequal. With Sinhala as the only official language Tamils were placed at an instant disadvantage viz a viz Sinhalese. Similarly, the granting of a special status to Buddhism as the religion of the majority is illiberal. It weakens the commitment of the state to be neutral between different religions and conceptions of the good. And

left liberals object that it can have practical consequences when it affects how judges interpret the constitutions in other areas.<sup>xxvii</sup>

The left liberal argues the quota system that limited Tamil university entrants was unfair. It only looked at one sphere of socio-economic advancement - education and the professions - while ignoring the dominance of Sinhalese in a number of other spheres - politics, the military and business. Whatever the disproportionate number of Tamil students to gain entry to the universities in Sri Lanka, Sinhala students had other avenues of social progress not open to their Tamil counterparts. In addition, left liberals claim the Prevention of Terrorism Act enacted to repress the Tamil rebellion was particularly egregious in its violation of basic liberties. They point to the fact that the Sri Lankan state did not resort to special anti-terrorist legislation to deal with the Sinhala youth insurgency it faced in 1971, but used existing emergency regulations. Finally, the decision to make advocacy of secession unconstitutional is questionable at best. Even in the case of India, such a ban on the politics of separation was only made in conjunction with a number of policies that addresses minority linguistic claims. The most important of these policies was the creation of language based states with federal autonomy.<sup>xxviii</sup> Banning the advocacy of secession in India was not a stand alone measure that led to the deprivation of minority representation in India's parliament. For the left liberal these are all indications that the unitary state's group bias against Tamils is at work.

When faced with the left liberal response that these measures have adversely affected Tamils, the Sinhala liberal concedes there may be reasonable differences over these policies, while denying the presence of group bias institutionally. For Sinhala liberals these measures are, at worst, decisions made in a complicated context where



there are reasonable differences. Since the differences are reasonable and a decision needs to be made, the group that does not secure its preferred policy cannot claim unjust treatment. In this way left-liberals and Sinhala liberals argue back and forth about whether or not these instances of legislation and policymaking are indicative of the group bias of a unitary system to the disadvantage of Tamils.

Demonstrating the group bias of a unitary system, does not require the left liberal to challenge the Sinhala liberal contention that each of these differences may be reasonable. While each decision on its own may reflect a reasonable difference, what indicates group bias is that whenever there is a reasonable difference between Sinhalese and Tamils over a public policy, it is always resolved to the disadvantage of the latter. The political decision-making process thus works to select the preferred policy of the majority Sinhalese all the time. The claim of group bias is that the institutional circumstances, i.e., a unitary state under which Sinhalese pursue their interests can lead to a disadvantage for Tamils over time. And this disadvantage exists even when most Sinhalese do not themselves express, or even possess, hostility or dislike towards Tamils from a personal or a political perspective. Most Sinhalese may neither dislike Tamils personally nor believe they should be treated unequally as citizens, but can still pursue their interests in a way that adversely affects Tamil interests in routine politics. And it is this that the left liberal views as group bias. So, for the left liberal the very fact that reasonable differences are always resolved in favour of the Sinhala majority is itself a reflection of group bias within a unitary state and not an explanation of how there is none.

A persevering Sinhala liberal has two more responses to the left-liberal advocacy

of federalism. First, while conceding the bias of a unitary state against Tamils, he argues that implementing local autonomy, provincial autonomy, special representation and bilingualism can rectify this bias. He argues that a federal state is justified only when implementing these measures fails to ensure political equality for Tamils. Since these measure have not been implemented, it is too early to say if federalism is required. But this Sinhala liberal response concedes the very claim that it challenges. Namely that the unitary state is indeed biased against Tamils because political efforts to implement these measures have failed for four decades.

Second, while conceding discrimination, the Sinhala liberal argues that such discrimination can be redressed by international instruments that protect human rights and minority rights.<sup>xxix</sup> These instruments, some of which have been ratified by Sri Lanka, can be utilised to prevent the Sri Lankan state from discriminating against the Tamil minority as individuals or as an ethno-linguistic group. By pursuing their grievances in international tribunals, Tamils can ensure that they are treated as equals and their culture is protected. Sinhala liberals argue that the presence of these mechanisms makes federalism unnecessary. There are two responses to this objection to federalism. First it is preferable to explore all measures within Sri Lanka for addressing discrimination against Tamils before resorting to international adjudication. While federalism is admittedly a radical measure that requires constitutional change, it is still one that will be taken by Sri Lankans. Second, it is difficult, at best, or impossible, at worst for victims to seek redress from international covenants that protect human rights and minority rights. Most victims will not have the resources to pursue their cases in distant international tribunals. Even when they do, it will be a long and drawn out process

before it is adjudicated. And once a case is adjudicated, implementing the court's decision will be impossible without the cooperation of the state that violated human rights to begin with. Except in the case of large scale violations of human rights such as ethnic cleansing and genocide the international community is unlikely to intervene.<sup>xxx</sup> Thus recourse to international instruments to protect Tamils from discrimination in Sri Lanka is not an effective replacement for reforming the constitution along federal lines.

Now the Sinhala liberal who recognises Tamils as equal citizens must, at the very least, also concede that there are reasonable differences about whether a unitary state systematically disadvantages them. If there were no disadvantage then a unitary state with local and provincial autonomy, bilingualism and special representation would be sufficient to ensure political equality for Tamils. But if there were disadvantage within a unitary state, this would not be enough. Tamils would have to bear the burden of a mistaken judgement about the group bias of a unitary state, leading to political inequality. This is a gamble the Sinhala liberal would not expect Tamils to take. The Sinhala liberal now cannot reasonably reject reform of the unitary state on the basis that it is simply a concession to Tamil nationalism. What separates this Sinhala liberal from the Sinhala nationalist is the willingness to reform the unitary state on moral grounds. The Sinhala nationalist rejects this.<sup>xxxii</sup> When there are reasonable differences over group bias towards Tamils in a unitary state, federalism becomes morally required to ensure Tamils are treated as political equals.

#### IV. From a Separate to a Federal State

The previous section addressed the political morality of the choice between a unitary state and a federal one. Political equality required that we choose the federal state over the unitary one in Sri Lanka. But does political equality require that we choose a federal state over a separate one? I examine whether liberalism can justify secession based on “national self-determination.” I distinguish Tamil liberal support for secession from Tamil nationalist support for it. And I argue the Tamil liberal ought to support federalism, rather than secession, as a morally preferable institutionalisation of political equality for Tamils.

First I outline the simple liberal argument for secession based on national self-determination and then the complex liberal one. The simple liberal argument is based on extending the libertarian idea of individual consent to the nation.<sup>xxxii</sup> The complex liberal argument is based on the claim that a national culture contributes to the well-being of an individual and secession can strengthen it.<sup>xxxiii</sup> There are six objections to the complex liberal argument for secession. First, a national culture can not be clearly defined. Second, access to national culture can detract from individual well-being. Third, secession restricts access to their national culture for regional minorities. Fourth, secession restricts access to other national cultures. Fifth, secession fails to strengthen a national culture. And finally, even if a separate state may strengthen a national culture that contributes to the well-being of individuals, liberals agree that secession is morally impermissible if the seceding state fails to uphold basic civil and political rights. A separate Tamil state in Sri Lanka is likely to be under the domination of the ultranationalist Tamil Tigers. Given their history of suppressing dissent, such a state will not be democratic. It will recognise Tamils, only as Tamils. They will have no political

freedoms there. And the Tigers will systematically violate the rights of other minorities. The moral argument from liberalism for a separate Tamil state thus breaks down. The Tamil liberal faced with the prospect of an illiberal separate state chooses federalism, while the Tamil nationalist goes along with separation.

*The Simple Liberal Argument For Secession.*

The simple liberal argument views consent as the basis for the legitimacy of a political order. A state has political authority over an individual only if she consents to it. When an individual withdraws consent from a state, it ceases to have political authority over her. Extended to a collection of individuals this argument is used to justify secession. A group of individuals no less than a single individual has a right to withdraw consent from and exit a polity. When they exit a political community they can either join another or form their own. A group of individuals that wishes to establish its own political community has a right to do so. If the group shares a common culture, simple liberals justify secession on the basis of national self-determination.<sup>xxxiv</sup> While nationalists use the simple liberal argument to justify the secession of national groups, the simple liberal argument is not confined to national claims alone. Under this argument any group may secede. This group can be a city, women, workers, capitalists, or communists. The only limitations imposed on secession by simple liberals are the practicalities of creating two viable states out of the single original one and the financial costs of secession. If two viable states can be created and the group seeking secession bears the cost imposed on those who remain when it secedes, then preventing secession is unjust.<sup>xxxv</sup>

A group, however different from the rest of the political community, does not withdraw consent from a political order and secede for no reason. A group secedes because it has political differences with the present state or those who control it. Groups demand secession when they believe these differences can not be resolved either to their advantage or in a just manner within the present state structure. For example, the Tamil demand for secession was politically first raised by an influential Tamil party almost three decades after Sri Lanka's independence from Britain.<sup>xxxvi</sup> Initially, Tamils did not support even the weaker claim of federal autonomy. They supported parties that sought greater co-operation with the central state. It was only after the escalation of political differences and what Tamils viewed as the failure of successive governments to resolve them in a just manner that Tamils supported a political party seeking separation. The point is not that this justifies separation, but that even where there is a clear ethno-linguistic difference between groups the demand for separation does not arise from the difference, alone. It arises from unresolved political conflict.

Once we acknowledge the demand for separation invariably stems from political conflict, the simple liberal argument begins to unravel. A group seeks to secede because the state fails to resolve the group's political claims in a just manner. The group that remains does not see secession as simply a consequence of the failure to resolve political claims, but as an unjust way of resolving them. They resist secession for the same reasons there were political differences to begin with. At best, those who remain see the threat of secession as an attempt to hold up the state in order to wring unjust concessions. At worst, they see it as an unjust resolution of the conflict. Either way, resolving the morality of secession requires resolving the morality of the political conflict, itself.

Secession is justified only if the moral claims of the secessionists are. It is not justified simply because a group chooses to secede. Evaluating the political moral merits of secession requires evaluating whether the single state is compatible with a political order that treats all citizens as equals, including those who are members of the seceding group. What matters is the justice of the state not the consent of the secessionists. Thus political differences within a single state lead to political differences over separation. And to resolve the justice of the latter, we need to resolve the justice of the former. The simple liberal argument fails to consider this.

The simple liberal can counter that this critique of secession confuses two distinct questions. The first is political differences between the secessionists and those who remain about how best to resolve a conflict within a single state. The second is political differences about how best to resolve the justice of separation. The two groups can disagree about the justice of resolving their differences within a single state (say whether it can be resolved through bilingualism or federalism) but agree about the justice of separation - the viability of the states and the cost of secession. While such an agreement may be logically possible - in that the secessionists and those who remain may theoretically agree to the just division of property, territory, population and the structure of institutions that can constitute two just and viable states - it seems politically implausible. If the secessionists and those who remain can not agree about the just terms of a single state, it seems implausible that they can agree about the just terms of separation. Now the simple liberal responds that the point is not that the two parties to the conflict disagree about the just terms of separation, but that such terms exist. And

that precisely because such terms exist, the resistance of those who remain to secession is unjust, if the secessionists are willing to abide by those terms.

At this point however the simple liberal, whose argument is premised on consent, concedes too much. If the justice of the secession is based on the conditions of separation and not only on consent, then it is not clear why consent is necessary at all. And further, if just conditions can be found within a single state, it is equally unjust for the secessionists to seek secession. Once just terms of separation (or unification) are worked out, it is not clear what work, if any, consent does. Even in the simplest case, where two groups mutually consent to separate, it is the morality of the terms of separation that justifies it, not the consent, per se. Consent is relevant only when both arrangements - secession as well as a single state - are equally just. If there are reasonable differences over which one ought to be chosen, the secessionists' desire to form their own state can justify secession. Those who remain can not reasonably reject secession as unjust.<sup>xxxvii</sup> However, if those who remain win out in the political struggle, the secessionists cannot reasonably reject a single state as unjust. Ultimately, the simple liberal argument obscures rather than clarifies the political moral criteria for secession.

In Sri Lanka, some Tamils mistakenly justify secession on the basis of the simple liberal argument. Morally, they argue the Tamil desire for a separate state is sufficient to justify it. Empirically, they point to the election of 1977, when the Tamil United Liberation Front (TULF) won a majority of the parliamentary seats in the Tamil areas on a secessionist platform, as an expression of this desire. There are many factors that mitigate the continued use of this election to evaluate contemporary Tamil opinion. First, it is not clear whether in 1977 Tamils actually wanted to secede or simply supported



separation to strengthen the bargaining power of Tamil representatives in negotiations with the Sri Lankan government. Second, Tamils have since voted for political representatives who have won seats on the basis of supporting a political solution within a united Sri Lanka, not on the basis of separation. Third, there have been several critical political developments in the two decades since the 1977 election, raising doubts about its validity as a sign of current Tamil support for secession. Still, the failure of the simple liberal argument indicates that even if a majority of Tamils do desire a separate state, this alone is an insufficient basis to justify secession. At most, it is an indication of Tamil disaffection with the Sri Lankan polity. It is not an indication that this disaffection is justified or, even if it is justified, that it warrants secession. Justifying secession, in general, or in Sri Lanka, in particular, must be made on a different basis. This brings us to the complex liberal argument for secession.

*The Complex Liberal Argument for Secession.* I evaluate the complex liberal argument for secession from national self-determination by comparing the following two situations.<sup>xxxviii</sup> In the first, an individual lives in a liberal multi-national state. Her membership of a national culture furthers her well-being. It provides her with a range of choices as well as a social basis from which to make them. She has access to her culture through bilingual political policies and federal constitutional structures. She also enjoys the full array of basic liberties. In the second, an individual lives in a liberal nation-state with her co-nationals. Her own national culture is further strengthened. She still enjoys the full array of basic liberties. Now the complex liberal argument is that the second situation promotes an individual's well-being more than the first. Under these

circumstances secession is prima facie justified unless the new state violates the rights of its minorities or fails to uphold international obligations. According to this argument a Tamil liberal faced with the choice of a united Sri Lanka with bilingual policies and a federal structure or a separate Tamil state should, ceteris paribus, opt for the latter. There are six left-liberal objections to this complex liberal argument for secession.

*IV.a. A national culture can not be clearly defined.*

The first left-liberal objection is that a national culture is fluid, not fixed. A national culture is a conscious political construct not a natural cultural one. Nationalist politics create national cultures, not vice versa.<sup>xxxix</sup> A national culture is defined less by the continuity of historical and cultural practices and more by the contingent outcomes of political struggles. Any definition of a national culture is either a snapshot of a changing national cultural landscape, an impasse over competing interpretations of a national culture or worse, an attempt by one group to impose its interpretation over others. Thus secession leads to the entrenchment of a contingent definition of national culture; one that is often of the dominant subgroup within a national cultural community. This has critical implications for secession. If it is not clear precisely what the national culture is, it is not clear if secession strengthens or weakens it. This lack of clarity in the definition of a culture also extends to demarcating membership of a group. Since secession requires defining precisely who the citizens of the new polity are, the uncertainty over who is a member of a national culture makes secession less desirable.

For the left-liberal all of these objections apply to the Tamil claim of secession in Sri Lanka. Tamil national culture is not fixed, but fluid. There is no single interpretation

of what it means to be Tamil that is common to all Tamils. And even if there were, such an interpretation would only be transient. What it means to be a Tamil today is distinct from what it meant to be a Tamil a hundred, fifty or even ten years ago. Even the very concept of a common Tamil national culture only emerged in the late 19th and 20th centuries from a series of political struggles. Furthermore, there are simply no set of common objective cultural characteristics that all Tamils share. Initially, Tamil culture was considered an attribute primarily of upper-caste Hindu males. Lower castes were excluded from membership in the Tamil cultural community. Their exclusion was justified religiously on the basis they were ritually impure, as well as politically and economically, on the basis they were slaves or indentured workers.

Overtime this narrow definition expanded. In the first three decades after independence a Tamil came to be defined more inclusively in Sri Lanka. A Tamil was simply considered a Tamil speaker. Tamil national culture was then defined linguistically rather than ethnically or geographically. It included many “Tamil” sub-cultures: the Muslims, the Hill-Country Tamils, the Northeast Tamils and the Southern Tamils. Since the seventies the definition of a Tamil has once again become more and more exclusive. First it excluded the Hill-country Tamils and Muslims, and then the Southern Tamils.<sup>x1</sup> Today this definition is the consequence, not simply the cause, of a separatist Tamil politics. In short, Tamil national culture is no different from any other. It is fluid, historically discontinuous, and the contingent outcome of political struggles over shifting interpretations. It is not natural.

While conceding the left liberal objection that Tamil national culture is invented, i.e., the contingent outcome of political struggles over power, the Tamil liberal contests

the conclusion that it can not be defined clearly just because it is. Unlike the Tamil nationalist, the Tamil liberal has no stake in defending the Tamil nation as natural, historically continuous and politically pristine. The left-liberal's anti-naturalistic critique of national culture, in general, and Tamil culture, in particular, applies to the Tamil nationalist not the Tamil liberal. The Tamil liberal defends Tamil national culture not because it is historically natural but because it is socially useful. Having access to Tamil culture enables a Tamil to do things that he would not otherwise be able to do. Certainly, having access to any other culture will also enable him to do many of these things. But the point is that he has no access to any other. This is not to deny that he has potential access to, say, Sinhala national culture. But the cost of turning a potential of access into the reality of access is uncertain.

The Tamil liberal refuses to shoulder the burden of the social cost of this uncertainty. But the Tamil liberal's refusal is not based on the inherent superiority or historical authenticity of his culture over that of any other. Nor is it, like religion, based on the moral value of an individual's relationship with his culture. It is only based on social value of a national culture; a social value that leads the Tamil liberal to incur a high cost in psychological and material terms when he transfers from a culture he is familiar with to one with which he is not. He grants that the Tamil community is indeed contingent. But to him all communities are.<sup>xii</sup> So the Tamil liberal welcomes rather than rejects the anti-naturalistic critique of Tamil national culture. He enlists this critique in his struggle against the Tamil nationalist who makes more grandiose claims about Tamil national culture. He sees the grand claims of the Tamil nationalist, for whom a national culture is an end, in itself, as undermining the liberal claims about national culture as a

social means for individuals to achieve their ends, whatever they turn out to be.

Ultimately, the Tamil liberal wishes to strengthen Tamil national culture through secession because it helps him better cope with the world.

While the Tamil liberal concedes or even welcomes the left-liberal's anti-naturalistic critique, he resists the left-liberal's conclusion that the mere fact of a national culture's constructedness makes it impossible to define. The Tamil liberal argues that whatever changes the Tamil national cultural community may undergo, there always is a particular definition of what it is. Just because Tamil national culture today differs from what it was fifty or even ten years ago, does not mean that we can not define what it is today or what it was in the past. Defining a national culture is a challenging task; it is one that is not easy nor always desirable. Still, it is, in theory, no more or less challenging than defining the community of women or that of workers. Pushing the left-liberal argument about the radical constructedness of communities' one step farther, the Tamil liberal argues that all communities are constructed. And if all communities are constructed then the same concerns about definition that apply to a national culture also apply to women and workers. The Tamil liberal charges that the same left liberals who reject secession on the basis that a national culture can not be defined, endorse workers' and women's rights on the assumption that it can be.

There are two left-liberal objections to this Tamil liberal response. The first is that a left-liberal does not oppose all institutions that address the national cultural concerns of a Tamil liberal, such as federalism and bilingualism, she only opposes secession. The second is that the left-liberal objects to secession, in general, not only in the case of Tamils. The left-liberal does not endorse secession if the rights of only some workers

and women can be strengthened by it. For the Tamil liberal, however, these responses concede precisely what he claims - the value of the social content of a national culture as well as the possibility of defining its membership. After all, he queries, if it is possible to define a Tamil national culture in order to grant federalism and bilingualism, why is not possible to define one that facilitates secession. Similarly, he argues that the question of secession as a means of addressing women's or workers rights simply does not arise for social reasons, not moral ones. Women or workers as social entities are not mutually connected through a common culture in a way that makes secession a viable option.<sup>xliii</sup> The point is not that workers or women do not share a common culture - they may. Still, whatever they share culturally or the interests they pursue materially simply can not be strengthened through a separate sovereign state.<sup>xliii</sup>

Ultimately what makes a separate state a more viable political institution for a national cultural community and not for workers or women, may simply be the contemporary state system of sovereignty based on territory. Even if national cultures rarely inhabit a common territory, and most territories have many cultural communities, it is always possible to primarily, if not exclusively, locate many members of a national cultural community within some part of a territory. The possibility of locating a national cultural community within a territory may vary according to the characteristics of a national culture. Whatever the disagreements about the characteristics of a particular national cultural community that makes them less or more viable candidates for secession, there is no disagreement that these characteristics are not found among workers or women. Tamil liberals may, along with left-liberals, lament the limitations of the contemporary state system based on sovereignty over territory.<sup>xliv</sup> However, in the

absence of an alternative, they see no reason why their claims of secession should be rejected merely on the grounds that it is not viable for groups, like women or workers, who do not inhabit a particular territory.<sup>xlv</sup> Tamil liberals do not argue that the claim of national self-determination always justifies secession, nor do they argue that it is the only claim that justifies secession. They only argue that it justifies secession when it leads to the strengthening a national culture.

In Sri Lanka, then, Tamil liberals argue that a separate Tamil liberal state can be established in the predominantly Tamil Northeast. They argue that such a state will strengthen Tamil culture better than a united Sri Lanka with federal autonomy and bilingual policies for Tamils. And if this liberal state leads to the strengthening of Tamil culture while protecting the basic liberties and rights of other minorities, left-liberals can not reasonably reject it. At this point, Tamil liberals view any continued left-liberal resistance to secession as a conservative defence of the prevailing Sri Lankan state, rather than a left-liberal concern for the interests of individuals. This leads to the next left-liberal objection.

#### *IV.b. A national culture can detract from individual well-being.*

The second left-liberal objection is that all aspects of a national culture do not contribute to an individual's well-being. A Tamil woman clearly requires access to the Tamil language to pursue her goals and interests if she only speaks Tamil. She may also benefit from Tamil literature and certain Tamil cultural traditions. Being familiar with other Tamils and their ways, she may prefer public and private environments where Tamil culture is dominant. But this is not always the case. Women in Tamil culture can

suffer discrimination at a number of levels in Tamil society. While this discrimination exists in a range of social practices, it is particularly apparent in customary Tamil marriage and property relations. This is partly due to its codification in the system of personal law in Sri Lanka, which has never been challenged by male-dominated Tamil political parties.<sup>xlvi</sup> A Tamil woman is expected to provide her partner with a dowry in land and cash. Worse, after marriage, a woman can not alienate immovable property without the consent of her spouse. Given the widespread practice of arranged marriages these traditions and laws have led to unequal property rights for Tamil women. It is hard to see how greater access to this aspect of Tamil culture can be beneficial to Tamil women.<sup>xlvii</sup>

Similarly, Tamil society in Sri Lanka has traditionally imposed severe social disadvantages on members of oppressed castes. These disadvantages have included segregation in public facilities, taboos on inter-caste marriage, limitations on the ownership of land, among others. While many of the more blatant forms of discrimination have been eradicated, there is still significant social prejudice and stigma attached to membership in oppressed castes. It is hard to convince members of oppressed castes in Tamil society that simply strengthening Tamil culture will contribute to their well-being. Support for the struggles of oppressed castes in Tamil society emerged from sources outside Tamil culture - the Communist Party and the Colombo government. Thus supporters of caste hierarchy in Tamil society were also some of the first supporters of Tamil nationalism.<sup>xlviii</sup>

Now a Tamil liberal has two responses to this left-liberal objection to secession. The first is that just because some aspects of a national culture are bad does not imply



that all aspects are. Many aspects of Tamil national culture are beneficial to an individual and it is necessary to distinguish between those that are and those that are not. But this Tamil liberal response grants too much to the left-liberal objection. After all, the initial justification for secession was that national culture, in general, is beneficial to individuals, not just that some aspects of it are. At this point the prima facie presumption in favour of secession the Tamil liberal seeks is undermined. Secession becomes justified only if it strengthens those aspects of Tamil national culture that are beneficial to individuals and it is not justified if it strengthens those aspects of Tamil national culture that are detrimental to an individual's well being. So whether or not secession is justified depends on what impact secession will have on liberalising Tamil culture. Left-liberals argue that a federal Sri Lanka with bilingual policies is more likely to both strengthen liberal aspects of Tamil culture and ensure political equality for all Tamils than a separate state. Tamil liberals may still disagree. Continued Tamil liberal support for secession then depends on the empirical conjecture that not only is Tamil culture strengthened, but liberal reform in Tamil society is also hastened by secession.

*IV.c. Secession restricts access to their national culture for regional minorities.*

The third left-liberal objection is that even if secession increases access to their national culture for some individuals it restricts access for others. Tamils living in predominantly Sinhala areas will have less access to their national culture after secession.

Separation forces Tamils in Sinhala majority regions to choose between exit and assimilation. Federalism precludes the need to make such a stark choice. It also lowers the cost of either option by lessening the stakes. In a federal Sri Lanka, a Tamil living in

a predominantly Sinhala region who wishes to enjoy the benefits of her national culture may move to a predominantly Tamil region. If the benefits she derives from living amongst her co-ethnics is less than her initial expectations, she can always return. In returning she need not give up all access to her national culture. This is equally true of Sinhalese living in Tamil majority regions. Separation also restricts the access of Sinhalese living in Tamil majority regions to their national culture. Separation forces them to choose between exit and assimilation, while federalism helps them to avoid making such a stark choice. Thus even if separation increases access to their national cultures for some Tamils (and Sinhalese) it reduces access for others.<sup>xlix</sup> A Tamil liberal may concede that separation reduces the access to their national culture for Tamils living outside the predominantly Tamil regions of the Northeast, but may still insist that it strengthens Tamil national culture, overall.<sup>1</sup> But even if it does, the left-liberal objects that it can restrict access to other cultures.

#### *IV.d. Secession restricts access to other national cultures.*

Experiencing other cultures and learning from them increases an individual's well-being. Secession restricts this. Sinhalese in a Sinhala state and Tamils in a Tamil state will have fewer opportunities to interact and learn from each other's cultures. This interaction benefits individuals by creating an environment that is diverse and provides them with a greater menu of choices. Given two political arrangements compatible with political equality, liberals have a general presumption in favour of the less restrictive one. If a single state, as well as, two separate ones are both compatible with political equality, left-liberals favour the single state because it is less restrictive. Citizens have a greater

menu of choices, ranging from where to live and work, to what kind of literature and art to enjoy. Similarly, the diversity argument suggests that a political arrangement consisting of two neighbouring liberal states is less desirable than a single federation.

Imagine two states, France and Holland, each with its own culture. These states then unite federally to form Frolland. Assume that in uniting they are able to maintain the same levels of socio-economic welfare and individual rights, and there is no decrease in cultural diversity. Now Frolland is more diverse than either France or Holland was. Left-liberals will prefer Frolland to the two separate states of France and Holland.<sup>li</sup> But it would be wrong to do so on the basis that the citizens of either Holland or France lead less worthwhile lives than those of Frolland. Rather, left liberals can do so simply on the basis that the choices of citizens of Holland or France are more limited than those of the citizens of Frolland.<sup>lii</sup>

A persevering Tamil liberal secessionist responds that enjoying the diverse cultural products of an increasing global economy no longer requires living within common borders. Trade, television and transnational organisations ensure that individuals can simultaneously strengthen their national cultures and enjoy the cultural products of other national cultures. But the left-liberal objects, if secession does not restrict access to other cultural products or limit their impact on a national culture it is not clear whether secession makes any difference, at all, to the strength of a culture.

#### *IV.e. Secession fails to strengthen a national culture.*

The fifth left-liberal objection is that secession as a strategy to strengthen Tamil culture is ultimately futile. The left-liberal objects it is not clear that Tamil national

culture will be any stronger in a separate Tamil state than it can potentially be in a liberal multi-national Sri Lanka where Tamils enjoy basic liberties. The left-liberal argues that given the cost of secession - in terms of institutional reconstruction, the flow of citizens, and the uncertainty about exactly how these two new states will perform economically - it is uncertain if Tamil national culture will be strengthened at all in a new Tamil state. Moreover, if Tamil national culture can not be strengthened in a united Sri Lanka, where Tamils enjoy federal autonomy and bilingual rights, it is hard to conceive how a separate state would make much difference. Even in the case where a national culture may be under threat of extinction (and this is clearly not the case for Tamil culture in Sri Lanka), it seems unlikely that separation will strengthen a national culture.

In most cases, the national cultures of minorities are vulnerable because they lack a robust economic basis. Secession will diminish any economic obligation a central state may have to ensure that a national minority who are also citizens of the state enjoy economic equality. Ultimately, the left-liberal objects, whether a national minority wishes to avoid the risk of cultural extinction or simply wishes to strengthen itself culturally, it is not clear that secession is preferable to a multinational state where a national culture enjoys federal autonomy and bilingual rights. In Sri Lanka, it is not clear whether Tamil national culture will be any stronger in a separate state than it will be in a united one. Given the uncertainty of the consequences of even a benign secession, left-liberals argue a united Sri Lanka, where Tamils enjoy federal autonomy and individual rights, and are treated as equals, is preferable to one that becomes two separate states.

But Tamil liberals argue it is unlikely they will be treated as equals even in a federal Sri Lanka. They invoke the left-liberal claim made to convince the Sinhala

liberal that the Sri Lankan state has demonstrated prejudice towards the Tamil people. They argue that given the fact of this prejudice federalism is an unstable arrangement. All of the left-liberal arguments that were used to convince the Sinhala liberal about the political moral desirability of federalism over a unitary state, the Tamil liberal now invokes to convince the left-liberal about the moral desirability of secession over federalism. This leads to the final left-liberal objection.

*IV.f. Secession will lead to an illiberal state.*

What distinguishes the Tamil liberal from the Tamil nationalist is his support for the liberal freedoms. The Tamil liberal may believe there are reasonable differences, empirically, over whether a separate Tamil state will deny the basic liberties of its citizens. However, as a liberal who believes in the priority of the basic liberties, he would not want to take the chance that it may. The Tamil liberal balks at the prospect of a state where the basic liberties are systematically denied and violated. He prefers a united Sri Lanka where Tamils may enjoy federal autonomy, bilingual rights and greater basic freedoms, to a separate state where Tamils are compelled to trade in their basic freedoms for a more robust national culture.

Recall that the complex liberal justification for secession as a means of strengthening a national culture was based on the dual provisions that any new state must uphold basic liberties and the rights of minorities and must fulfil its international obligations. The left-liberal argues that given the violent history of Tamil separatism in Sri Lanka and the systematic brutality of its main political proponents - the Tamil Tigers - it is unlikely that any Tamil state will uphold basic liberties and rights of minorities.

The Tigers have murdered all rival Tamil political leaders - from the leader of left wing Tamil guerrilla organisations to leaders of moderate Tamil parliamentary parties. They have executed Tamil intellectuals and dissidents for challenging their political authority and they have suppressed all internal dissent within their organisation. Apart from suppressing the rights of other Tamils, the Tigers have systematically violated the rights of regional minorities living in predominantly Tamil areas. They expelled more than one-hundred thousand Muslims from the Northeast and have carried out large-scale massacres of Muslim and Sinhala civilians. The Tigers have failed to uphold the basic liberties and recognise the rights of other minorities.<sup>liii</sup> The left liberal thus argues that secession will lead to an illiberal Tamil state dominated by the Tigers.

The Tamil liberal, while agreeing with the characterisation of the Tiger armed struggle as illiberal, resists the conclusion that this will inevitably lead to an illiberal state. He argues many illiberal armed struggles resulted in democratic regimes that respected basic freedoms.<sup>liv</sup> The African National Congress in South Africa, the Palestinian Liberation Organisation in Palestine, *the Frente Sandinista para la Revolucion Nicaragua* in Nicaragua, are some examples. Clearly all of these organisations respected internal dissent more, carried out fewer killings, and were far more broad based in their approach to political struggle when compared with the Tigers. In addition the status quo in both of these cases was manifestly undemocratic.<sup>lv</sup> Nevertheless, it is hard to characterise their struggles as respecting individuals' basic liberties. They did engage in indiscriminate violence, suppress dissent and assassinate enemies. Thus, for the Tamil liberal, the nature of the armed struggle engaged in by the

Tigers while indicative of future Tiger behaviour does not predetermine it. While he concedes that a separate Tamil state may be illiberal, he refuses to conclude that it will.

To dissuade the Tamil liberal from secession, the left liberal need not convince him that a separate Tamil state will be illiberal. The left liberal only needs to convince him that it may be. The Tamil liberal, unlike the Tamil nationalist, will not gamble away his basic liberties by opting for a Tamil state that maybe illiberal. Faced with the prospect of a Tamil state where Tamils may only be Tamils but not free and equal citizens, the Tamil liberal will desist from supporting secession. The Tamil liberal defends his national culture as having social, not moral content. He does not see “Tamilness” as an end in, itself. As a liberal he refuses to trade the basic liberties for any other good, whether economic, social or cultural. This refusal stems from a recognition of the incommensurability of comprehensive moral doctrines and the violence that is done to individuals in a state that fails to recognise this. The Tamil liberal recognises that Tamils have enjoyed basic liberties within a Sri Lankan state to a greater extent than they have done within a Tiger controlled pseudo state. Tamils have continued to vote freely and elect representatives who raise their concerns in parliament and they have continued to express their views critical of the government as well as the war in a relatively free press.<sup>lvi</sup>

The Tamil nationalist, however, is willing to entertain the possibility of endorsing a separate Tamil state that does not respect the basic liberties. While he considers the loss of basic liberties or parts there of, a loss, he is willing to trade them in for the good of a stronger national culture. The Tamil nationalist seeks to find the appropriate balance between the good of a national culture, other socio-economic interests, and the basic

liberties. But the Tamil liberal denies there is such a balance. The Tamil liberal gives priority to the basic liberties and is unwilling to trade them for any other good. He wants to avoid putting himself in the situation of gambling or negotiating, say, less freedom of expression for more cultural or, for that matter, economic goods.<sup>lvii</sup> Faced with the prospect of an illiberal Tamil state, the Tamil liberal opts for federalism.

## VI. Conclusion

Concluding, I respond to two political objections to federalism. First, whatever its moral desirability, federalism will not end the war. And political support for federalism, as opposed to moral support, ultimately depends on its ability to do so. Second, federalism is either unnecessary or futile.<sup>lviii</sup> It is unnecessary if the Sinhala people and Sri Lankan state are willing to treat all fellow Tamil citizens as equals. And it is futile if the Sinhala people continue to evince group prejudice towards the Tamil people and the state continues to act on it.

### *V.a. From War to Peace?*

Federalism is irrelevant because resolving the ethnic conflict, politically, will not end the war, militarily. Whatever the origins of the war in rival ethnic claims, today's violence has gone beyond them. The armed forces of the Sri Lankan state, the Tamil Tigers and the numerous paramilitary groupings have converged on a violent conflict that has little to do with competing claims of justice and equality.<sup>lix</sup> Realising political equality through federalism will have no impact on the war. And it is the pain and suffering of the war not ethnic prejudice that is the primary political problem faced by



ordinary Sri Lankans. The fact that federalism is morally more desirable than either a unitary state or a separate one may move philosophers and saints, but it is unlikely to convince politicians and citizens. Even those who share the political moral values that justify federalism will not be mobilised by moral arguments, alone, leave aside those who do not. If federalism will not end the war why support it?

To persuade the Sinhala liberal to go beyond a federal state and to dissuade the Tamil liberal from supporting a separate state, I assumed federalism will not end the war in Sri Lanka. Avoiding the exaggerated claim that federalism will lead to peace in Sri Lanka must not be confused with denying the more modest claim that federalism will contribute to it. Federalism is the only political arrangement in Sri Lanka that can obtain support from an overlapping consensus, not only of diverse reasonable political moralities, but also of some unreasonable ones. This makes federalism more stable, politically, than either of its alternatives, a unitary state or a separate one.

Let us contrast the choice of political arrangements that have emerged from our discussion with those that preceded it. Initially, Sinhala liberals and Sinhala nationalists supported a unitary state while Tamil liberals and Tamil nationalists supported a separate one. Federalism was the least viable option obtaining support only from the left-liberal. But this has changed. Federalism now has the support not only of the left-liberal, but also of both the Sinhala and Tamil liberals. In contrast, the unitary state is supported by only the Sinhala nationalist and the separate one by only the Tamil nationalist. But support for federalism does not stop here. It is possible under appropriate circumstances to also convince the Tamil nationalist and Sinhala nationalist to support federalism. To

do this we need to make one more distinction - between the nationalist and the ultranationalist.

Consider the distinction between the Tamil nationalist and the Tamil ultranationalist. Like the Tamil ultranationalist, the Tamil nationalist is moved by partiality towards his co-nationals and concern for his culture as an impersonal good.<sup>lx</sup> He favours fellow Tamils over members of other ethnic groups in the distribution of public goods and he views his national culture, not only as a good that provides benefits to individuals, but as a good in, itself. Unlike the Tamil ultranationalist, the Tamil nationalist neither disregards the interests of those who are not his co-nationals, nor rejects the role of culture as a personal good. This can make him amenable to a federal solution within a united Sri Lanka not simply as a compromise of his Tamil nationalist principles but even as an instantiation of them. The Tamil ultranationalist considers culture primarily as an impersonal good and disregards the interest of those who are not his co-nationals. Thus, any political arrangement short of secession is a compromise of his principles. The distinction between the Tamil nationalist and the Tamil ultranationalist here is an important one. It suggests that even if a Tamil nationalist believes a separate state will increase the good of a national culture, he may still be willing to support a federal solution within a united Sri Lanka if it leads to an increase in his basic liberties and material interests.

There are four ways in which a federal state can appeal to a Tamil nationalist over a separate one. First many Tamils, even those living in the Northeast, have important economic links to the predominantly Sinhala South. These include agriculture, commerce, and employment in the public sector. There is also considerable migration as

Tamils come South either to flee the war or to seek work. Second, a united Sri Lanka with federal autonomy is more likely to provide a framework for Tamils to enjoy individual freedoms than a separate Tamil state. Third Tamils living in predominantly Sinhala areas will have greater access to their national culture. Fourth Sinhalese living in pre-dominantly Tamil areas will also have greater access to their national culture.

The distinction between the Sinhala nationalist and Sinhala ultranationalist is similar to that between the Tamil nationalist and Tamil ultranationalist. The Sinhala nationalist prefers peace and stability in a federal state over war in a unitary state. In this he differs from the Sinhala ultranationalist who single-mindedly rejects federalism. Clearly, there is no political argument that can decisively convince the Sinhala nationalist of the political desirability of a federal Sri Lanka over a unitary one. Similarly, there is no political argument that can decisively convince the Tamil nationalist of the political desirability of a federal Sri Lanka over a separate Tamil state. There are only a series of political considerations, some more or less convincing than others.

#### *V.b. The Futility of Federalism?*

The second objection is that federalism is either unnecessary or futile. It is unnecessary if the Sinhala people and Sri Lankan state are willing to treat all fellow Tamil citizens as equals. It is unnecessary because in such a state they will enjoy equal rights and be able to pursue their economic and cultural interests without the hindrance and, indeed, with the help their fellow citizens. In the absence of group prejudice, all Tamils will have to do is communicate their reasonable interests to their fellow Sinhala citizens. Their fellow

citizens will take these interests into consideration when they vote on particular policy issues. Thus federalism is unnecessary.

Federalism is futile if the Sinhala people continue to evince group prejudice towards the Tamil people and the state continues to act on it. While federalism may provide a temporary block to Sinhala prejudice, it will fail to prevent consistent Sinhala effort to undermine any regional autonomy Tamils may enjoy. The bureaucracy will undermine federalism by refusing to decentralise administrative power. Politicians will undermine federalism by passing laws that weaken constitutionally granted powers or by invoking emergency measures. Ultimately, the federal autonomy of a Tamil province in a united Sri Lanka will be stymied by the combined efforts of prejudiced Sinhala bureaucrats and politicians. Since federalism is unstable, secession becomes the only stable option, politically, in the presence of Sinhala prejudice.

But this criticism of federalism applies to a *modus vivendi* defence of it, not a political liberal one. The political liberal stability of federalism is not based simply on its garnering the support of the most number of persons in Sri Lanka. Neither is federalism just a political and institutional mechanism that helps realise the aspirations of all persons, equally, whatever those aspirations are. Rather than simply aggregating the pre-existing (prejudicial) preferences of citizens, federalism helps shape them. A political liberal defence of federalism seeks to constitute a political community where all citizens are treated as equals from one where all were not. Even as federalism is constituted by the recognition of group prejudice, the political deliberation involved in justifying and institutionalising federalism helps diminish the very prejudice that it is instituted to

protect citizens from.<sup>lxi</sup> It is this that provides federalism with political moral stability; stability that a unitary state and a separate one lack.

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<sup>ii</sup> For a political liberal theory of federalism, more generally, see Wayne Norman, "Towards a Philosophy of Federalism," in ed. Judith Baker, Group Rights, University of Toronto Press, 1994.

<sup>iii</sup> There are two other prominent ethnic communities in Sri Lanka - the Muslims and the Hill-country Tamils. For the sake of brevity, I do not deal with them in this chapter because they do not pose an obstacle to my argument. They are both willing to support a federal solution to the conflict in Sri Lanka.

<sup>iv</sup> I want to emphasise these positions are representative political positions associated with real political positions in Sri Lanka. They are stylised descriptions and are not intended to be exhaustive. By this I mean there are many Tamil liberals and Sinhala liberals who may support federalism. My point is to develop the normative rationale for Tamil liberals and Sinhala liberals who may not, and convince them to do so.

<sup>v</sup> Here I follow the neo-federalist approach. For example see Bruce Ackerman's We the People I: Foundations, Harvard University Press, Cambridge, 1991 and Akhil Reed Amar, "Of Sovereignty and Federalism," *The Yale Law Journal*, June 1987. Also see Michael W. McConnell, "Federalism: Evaluating the Founders' Design," *University of Chicago Law Review*, Fall 1987. For an argument that the distinction between a federal and a unitary system is ultimately a practical rather than a theoretical distinction see Dahl, "Federalism," in Democracy and Its Critics, Yale University Press, New Haven, 1989, pp. 197-209.

<sup>vi</sup> However, the relations between the two new states may affect the political stability of separation. The question of which political arrangement - a unitary state, a federal state or two separate ones - is politically stable is a separate one. I do not address it here. Scholarly advocates of separation as a stable solution to ethnic civil wars include Chaim Kaufmann, "Possible and Impossible Solutions to Ethnic Civil Wars," *International Security*, Spring, 1996, John J. Mearsheimer, "Shrink Bosnia to Save It," *New York Times*, 31 March 1993, and with Stephen Van Evera, "When Peace Means War," *New Republic*, 18 December 1995. For a broader argument in favour of separation as a viable policy option, rather than simply a last resort to claims of national self-determination, see Michael Lind's "In Defence of Liberal Nationalism," *Foreign Affairs*, May/June 1994. For critiques of secession as solutions to civil wars see Radha Kumar, Partitions, and Daniel Byman, "Divided They Stand: Lessons about Partition from Iraq and Lebanon," *Security Studies* 7, no. 1, autumn 1997. The stability argument for separation with regard to Sri Lanka is made by Sirimal Wijesinghe, "The Myth of Peace," *Pravada(Sinhala)*. For a critique of separation as a politically stable solution in Sri Lanka see Ram Manikkalingam, "The Myth of Eelam," *Pravada(Sinhala)*.

<sup>vii</sup> H. L. de Silva's "An Appraisal of the Federal Alternative for Sri Lanka," Dehiwela, 1991, is representative of the Sinhala liberal basis for supporting a unitary state. The Sinhala liberal position I refer to is a constitutional doctrinal position, not necessarily a general political one. For example, the Minister of Constitutional Affairs and architect of Sri Lanka's first Republican constitution of 1972 was a Trotskyist, Colvin R. de Silva (see his "Safeguards for the Minorities in the 1972 Constitution," A Young Socialist Publication, 1987).

<sup>viii</sup> S. L. Gunsekere's Tigers, 'Moderates' and Pandora's Package, Colombo, 1996, is representative of the Sinhala nationalist basis for supporting a unitary state.

<sup>ix</sup> The basic liberties here include freedom of association, freedom of expression, freedom of conscience and other political and civil liberties. For a list see John Rawls, Political Liberalism, Columbia University Press, 1993, Lecture VIII.

<sup>x</sup> My own position is that of a rootless left-liberal cosmopolitan of Tamil ethnic origin. My position combines a left-liberal political morality with a post-modern sociological sensibility. I support a political order based on socio-economic equality and respect for individual freedoms. Morally, I consider the

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individual as the basic unit of a political society. Politically, I conjecture that seeking to ensure individuals have basic freedoms with socio-economic equality leads to tolerant and humane political orders. Sociologically, I accept the post-modern claim that our identities - social, cultural and political - are invented. I seek neither to defend nor to analyse my left-liberal cosmopolitan position because my argument in favour of a federal solution in Sri Lanka does not rest on it. Rather I try to build a political liberal defence that goes beyond my left-liberal cosmopolitan rationale. I hope this defence will allow Sinhala liberals and Tamil liberals to also accede to federalism from within their somewhat more pure ideological and cultural positions.

<sup>xi</sup> The constitutional proposals of this left-liberal position is exemplified in "A Democratic Structure for Sri Lanka," published by the Movement for Constitutional Reform, 1995. Also see Chanaka Amarantunga, ed. Ideas for Constitutional Reform, Council for Liberal Democracy, Colombo; Jayadeva Uyangoda, Bandaranaike Memorial Lecture, 1994; Manikkalingam and Ratnayake, eds. Federalism: A Necessity for Sri Lanka, (in Sinhala) Social Scientists' Association, Colombo, 1995.

<sup>xii</sup> Let me clarify that my argument is not a theory about the political conditions that justify federalism, generally. It is an argument about when federalism is justified under conditions of cultural diversity.

<sup>xiii</sup> It is important to clarify the distinction between political desirability and moral requirement. A political institution or policy may be politically desirable without being morally required. By this I mean that individuals may recommend or support a policy or an institution because it leads to outcomes that are desirable, such as a better environment, greater diversity, and better health. But the failure to implement these policies or institutions need not by itself lead to political inequality. They are not required to ensure that individuals are treated as equals.

Arguments about the political desirability of federalism under conditions of ethnic conflict are common. For a prudential version of this argument see Donald Horowitz, "The Conciliatory Potential of Federalism," in A Democratic South Africa: Constitutional Engineering in a Divided Society, University of California Press, Berkeley, 1991, pp. 214-226 and "Federalism, Regional Autonomy, and Conflict Reduction," in Ethnic Groups in Conflict, University of California Press, Berkeley, 1985, pp. 601-628. For a multiculturalist version of this argument see James Tully, Strange Multiplicities: Constitutionalism in an age of diversity, Cambridge University Press, Cambridge, 1995, pp. 140-176.

<sup>xiv</sup> For examples of this argument see Gerald E. Frug, "City Services," *New York University Law Review*, April, 1998, and Iris Marion Young, "City Life and Difference," in Justice and the Politics of Difference, Princeton University Press, Princeton, 1991.

<sup>xv</sup> See Tressie Leitan's "Political Integration Through Decentralization and Devolution of Power: The Sri Lankan Experience," Dept. of History and Political Science, University of Colombo, 1990, for an excellent survey of the challenges to effective local autonomy in Sri Lanka. Leitan's article focuses on the local government structures within a province, not a province's relation with the centre. She does not discuss the question of federalism. The brief discussion of local government in Sri Lanka follows Leitan.

<sup>xvi</sup> Leitan, p. 9.

<sup>xvii</sup> The Northern Province is predominantly Tamil, while the Eastern province is 40% Tamil, 30% Muslims (who speak Tamil) and 30% Sinhala.

<sup>xviii</sup> See Rohan Edirisinha and P. Saravanamuttu, "The Case for a Federal Sri Lanka," The Centre for Policy Research and Analysis, University of Colombo, 1994 and Ketesh Loganathan, Sri Lanka: Lost Opportunities, CEPRA, Colombo, 1996, pp. 134-138 and pp. 144-150.

<sup>xix</sup> These two developments are captured by the following observation:

"...if one asks why, over the past thirty years or more, reform proposals have not been more extensively and effectively implemented, the answer which suggests itself is that successive governments have been unwilling to permit a close relationship between democratic control and the capacity to achieve substantial effects, which is the basis of a healthy local government system."

Peter Dawson, *Implications of the District Minister System for District Administration* (Ministry of Planning and Economic Affairs, 1977), p.36, quoted in Leitan, p. 33.

<sup>xx</sup> These arguments are made by H. L. de Silva (op cit).

<sup>xxi</sup> Of course adequate representation can also be an obstacle at the provincial and local levels. But even in cases where minorities do not live in geographically contiguous units, this is less of a problem. The smaller the political sub unit, the easier it is to demarcate it along linguistically contiguous lines. At the national level, however, adequate political representation can pose a challenge to minorities.

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<sup>xxii</sup> See for example Charles Beitz, Political Equality, Princeton, 1989, pp 137-140 and pp.156-157; Josh Cohen, "Liberty, Equality and Democracy," Unpublished, August 1996, pp. 84-87; David Plotke, "Racial Politics and the Clinton-Guinier Episode," *Dissent*, Spring, 1995.

<sup>xxiii</sup> See Jane Russell, Communal Politics under the Donoughmore Constitution, 1931-1947, Chap XII, 1982, Tisara, Dehiwela.

<sup>xxiv</sup> By minority political parties I mean the political parties representing the Tamils, the Muslims, as well as the left political parties.

<sup>xxv</sup> There is a fourth interaction: that of monolingual English speakers with government authorities at all levels. I do not think this disadvantage is as significant because most monolingual English speakers are economically better off and can generally bear the burden of the cost of these interactions. And any linguistic disadvantages monolingual English speakers endure are offset by the class advantage they enjoy.

<sup>xxvi</sup> Anti-secessionist amendments were written into the constitution in 1963 to suppress secessionist demands by regional parties.

<sup>xxvii</sup> In his dissent opposing the constitutionality of the 13<sup>th</sup> Amendment, Justice Wanasundere argued the special status granted to Sinhala Buddhism in the Sri Lankan constitution was one of the factors making regional autonomy incompatible with it.

<sup>xxviii</sup> "...regional demands (in India) must stop short of secession. All demands short of secession will be allowed full expression, but secessionist demands will be suppressed, if necessary, by armed force. On the other hand, once secessionist demands have been dropped, regional movements are permitted full expression." See Paul Brass, Language, Religion and Politics in North India, Cambridge University Press, 1974, p. 17.

<sup>xxix</sup> "if any group within an established State believes that they have been the subject of discrimination on grounds of race, creed or language, they should in the first instance seek a domestic remedy.

Obviously such a remedy would be available only where the government wishes to protect the rights of all its citizens but some agencies of the government is denying the enjoyment of the guaranteed right.

Even where the government is itself the perpetrator of the discriminatory practices, one presumes that the national judicial structure is sufficiently independent to provide relief.

It is only where governmental agencies and the national judicial institutions are unwilling (or unable) to provide satisfactory remedial measures, that the aggrieved group can seek "off shore" relief and assistance through the UN Agencies."

Sunil De Silva, "The right to Self-Determination in the Sri Lankan Context," 7<sup>th</sup> Sri Lanka Studies Conference. Although federalism is clearly a remedy sought within the state's current boundaries, Mr. Sunil De Silva raised this potential objection to federalism as well in verbal comments on a previous version of this paper at the above conference.

<sup>xxx</sup> Neither of which are being carried out by the Sri Lanka state.

<sup>xxxi</sup> There is another objection to federalism. Namely, that it was Tamil prejudice towards Sinhalese that provoked bias towards Tamils. Granting federalism where there is mutual prejudice that is a product of minority hostility may provide perverse incentives to minority groups who wish to secede or get their own federal state to incite majority hostility. This objection does not hold. First minorities are unlikely to gain from instigating prejudice or hostility. Second, federalism is granted here not simply because a minority incites the majority leading the state to suppress it, politically. In this case suppression would be justified. What justifies federalism here is the action of the majority in responding with hostility or prejudice, not any majority response to minority incitement. Using this criteria provides incentives for the majority to refrain from generating hostility, just as it provides an incentive to minorities to refrain from utilising it for political purposes, in the absence of such majority hostility. Furthermore under conditions of mutual prejudice, the minority will always be at a disadvantage. Federalism thus becomes morally required to ensure that a minority can protect itself against majority prejudice.

<sup>xxxii</sup> For an abstract model of the simple liberal argument see Robert Nozick's "A Framework for Utopia," Chap 10 of Anarchy, State and Utopia, Basic Books, 1974. For examples of the simple liberal argument for secession see Harry Beran, "A Liberal Theory of Secession," *Political Studies*, 1984, XXXII-21-31; David Gauthier, "Breaking Up: An Essay on Secession," *Canadian Journal of Philosophy*,

<sup>xxxiii</sup> The complex liberal argument is mainly derived from Caney, "Self-Government and Secession: The Case of Nations," *The Journal of Political Philosophy*, Vol 5. No. 4, December 1997. But it also

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incorporates elements of Rachel Brown's argument for secession from "Liberalism and the Right to Secede," MIT Political Theory Workshop, 1997, unpublished (*op cit*, pp 18-22), and Avishai Margalit and Joseph Raz, "National Self-determination," *Ethics*, September 1990, pp. 442-447.

<sup>xxxiv</sup> Following quote from John Stuart Mill captures the use of the simple liberal argument to justify nationalist secession.

"Where the sentiment of nationality exists in any force, there is a prima facie case for uniting all the members of the nationality under the same government, and a government to themselves apart. This is merely saying that the question of government ought to be decided by the governed."

"Of Nationality," in Considerations on Representative Government, in Utilitarianism, Ch. 16, ed. Geraint Williams, 1994, p. 392.

<sup>xxxv</sup> See Christopher Wellman's "A Defense of Secession and Self-Determination," *Philosophy and Public Affairs* 24, no. 2, Spring 1995.

<sup>xxxvi</sup> Of course there have been individuals who have advocated secession for Tamils all along. But they never received much political support from Tamils during the first three decades of independence.

<sup>xxxvii</sup> Of course they can still reject separation as politically undesirable - economically inefficient or decreasing diversity.

<sup>xxxviii</sup> There are several arguments for secession that do not depend on claims of national self-determination, such as unfair distribution or the deprivation of basic liberties. I do not consider them here. For a survey see Allen Buchanan, Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec, Westview Press, Boulder, 1991, and "Theories of Secession," *Philosophy and Public Affairs*, Winter 1997 v 26 n 1.

<sup>xxxix</sup> I use the term politics here in the broad sense, i.e., to include struggles over state, economic, and cultural power.

<sup>xl</sup> For an insightful discussion of how this narrowing of the Tamil identity is intrinsic to the logic of nationalism see Qadri Ismail's "Constituting Nation, Contesting Nationalism: The Southern Tamil (Woman) and Separatist Tamil Nationalism in Sri Lanka," in eds. Partha Chatterjee and Pradeep Jeganathan, eds., Community, Gender, Violence: Essays on the Subaltern Condition, forthcoming.

<sup>xli</sup> The Tamil liberals defence of the contingency of the Tamil community is akin to (albeit not identical to) Rorty's defence of the contingency of the liberal community. (See Richard Rorty, "The contingency of a liberal community," Ch. 3, in Contingency, irony and solidarity, Cambridge, 1989). It is not identical because the Tamil liberal is a universalist to the extent that he seeks to justify his defence of the Tamil community and its value in his life to non-Tamils.

<sup>xlii</sup> See for example the distinction Margalit and Raz draw between Tottenham Football Club supporters or the fiction reading public and peoples or nations in "National Self-determination," *Ethics*, September 1990, pp. 442-447.

<sup>xliii</sup> Just to clarify, I do not want to deny the possibility of a liberal workers' state. But this state would not be created by secession, but by revolution. The former case requires workers to leave both capitalists and capital behind and proceed to their own state. The latter involves workers expropriating the capital of owners and hiring them as managers.

<sup>xliiv</sup> For an insightful sketch of an alternative to the contemporary system of sovereignty see Thomas Pogge, "Cosmopolitanism and Sovereignty," *Ethics*, October, 1992.

<sup>xli v</sup> For a territorial based theory of secession see Lea Brilmeyer, "Secession and Self-Determination: A Territorial Interpretation," *Yale Journal of International Law*, Vol 16: 177, 1991.

<sup>xli vi</sup> For example, the leading Tamil moderate party in parliament - the Tamil United Liberation Front in Sri Lanka has called for "constitutional and legal reforms in Sri Lanka to ensure conformity with international legal obligations in .....the Convention on the Elimination of Discrimination Against Women, and for a program to ensure that women have full and equal enjoyment of human rights" (Manifesto of the Tamil United Liberation Front for the Tenth Parliamentary Elections of 1994). However, it has failed to seek the elimination of unequal property rights for Tamil women. This reform could be made with little political effort. In Sri Lankan parliamentary practice the reform of customary laws that affect a particular community is rubber stamped by parliament if a majority of the representatives of the community concerned supports it. Thus granting Tamil women equal property rights simply requires the support of the majority of the Tamil representatives in parliament.



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<sup>xlvii</sup> In her discussion of customary law in Sri Lanka Ramani Muttettuwegama makes this point about minority ethnic rights, more generally:

“...in the discussions on retention of minority rights, the interests of women seem to have become invisible and the discriminatory aspects of traditions, vis a vis women remain unacknowledged and unaddressed. The question arises whether the rights of women within a particular minority group must always be subordinate to the rights of the group to be recognised as a separate entity, thus creating a “minority” within the group.” “Parallel Systems of Personal Laws in Sri Lanka,” Muslim Women’s Research and Action Forum, 1997, p. 24

<sup>xlviii</sup> See Bryan Pfaffenberger’s “The Political Construction of Defensive Tamil Nationalism: The 1968 Temple-Entry Crisis in Northern Sri Lanka,” *The Journal of Asian Studies*, Feb 1990, for a discussion of how caste conflict in Tamil society spurred the moderate Tamil political party to mobilise along nationalist grounds. Discussing the struggle by oppressed castes to gain entry to a Hindu temple at Maviddapuram in the Tamil North of Sri Lanka from which they had traditionally been excluded, he observes: “Yet the more the intercaste crisis deepened, the more the leading Tamil political party, the Federal Party (FP), found itself tempted to direct attention away from the Jaffna Peninsula and toward issues around which all Tamils can be politically united. If the party expressed support for either side in the Maviddapuram fracas, it would lose support. In the end, the FP chose to direct public attention away from the conflict by emphasising the Colombo government’s insensitivity to Tamil Hindu concerns, which was manifested by several untimely policy decisions before and after the Maviddapuram conflict. Without denying that Tamils had every right to regard the government’s decision as insensitive (at best), one can still chronicle how FP politicians had yet one more reason to construct a politics of defensive nationalism - a policy that succeeded in rallying the community solidly behind their leadership and clearly led the way to the separatist politics of the FP’s successor, the Tamil United Liberation Front (TULF).”

<sup>xlix</sup> Here I follow the point about non-contiguous minorities in Sri Lanka made by Darini Rajasingham-Senanayake:

“The idea of “local minorities” and “local majorities” confounds the likes of the Sinhala Commission which believes in the tyranny of the majority, the LTTE which confuses Eelam with paradise, and liberals who equate devolution with Utopia. The notion of local minorities defeats the logic of ethno-nationalist chauvinism and forces us to think empirically through other blue prints for peace turned recipes for war.” “After Devolution: Protecting Local Minorities and Mixed Settlements,” in *Pravada*, Vol. 5 No. 4&5. Unlike her argument, mine rests simply on the presence of local minorities rather than on the claim that they are mixed or hybrid. Whether they are “hybrid” or “purely” Tamil or Sinhala, separation limits their options.

<sup>1</sup> Consider the following quote from one Tamil liberal who appears to endorse this position.

“In the process (of protecting the Ceylon Tamil identity) it has become necessary to write off the ‘Colombo (Tamil) man.’ The ‘Colombo man’ has one of two alternatives, either to remain in Colombo and survive, facing all the uncertainties of an unpredictable future, or return to the (Tamil majority) homeland and start life anew.” A. J. Wilson, “The Colombo Man, the Jaffna Man, and the Batticaloa Man,” in Manogaran and Pfaffenberger, eds. *The Sri Lankan Tamils: Ethnicity and Identity*, 1994, cited in Ismail *op cit*.

This position is, however, becoming less and less plausible with the increasingly large numbers of Tamils who now live outside the predominantly Tamil Northeast. Some estimates suggest that most Tamils no live outside of these regions.

<sup>ii</sup> Of course French liberals and Dutch liberals need not.

<sup>iii</sup> Liberals do not endorse the view that increasing one’s set of choices is always beneficial. The liberal case for banning slavery, i.e., preventing people from selling themselves off, is a classic example of when liberals support restricting individual choices. See Thomas Pogge, *Realizing Rawls*, pp. Sometimes restrictions can also increase one’s set of choices in “tragedy of the commons” type situations. For an application of this to international borders see Brian Barry’s criticism of unrestricted international borders in “The Quest for Consistency: A Sceptical View,” eds. Barry and Goodin, *Free Movement*, Pennsylvania State University Press, University Park, 1992, Chapter 19.

<sup>iiii</sup> For a factually precise description of human rights violations in Sri Lanka that document and describe the violations of the Tamil Tigers, amongst others, see the series of Human Rights Reports published by the University Teachers for Human Rights, Jaffna, particularly *The Broken Palmyrah*, 1988 and *The Death of a Heroine*. Also see T. S. Subramaniam, “Chronicle of Murders,” *Fontline*, Aug 14-27, 1999.

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<sup>liv</sup> I am grateful to Neelan Tiruchelvam for helping me strengthen my argument by pointing out this Tamil liberal objection to the claim that a separate Tamil state would be illiberal.

<sup>lv</sup> In South Africa a majority of people – Black South Africans – could not vote and Nicaragua was ruled by a dictator – Somoza.

<sup>lvi</sup> In fact most Tamils are fearful of expressing criticism of the Tamil Tigers not of the Sri Lankan government.

<sup>lvii</sup> “The priority of liberty implies in practice that a basic liberty can be limited or denied solely for the sake of one or more other basic liberties, and never, as I have said, for reasons of public good or of perfectionist values. This restriction holds even when those who benefit from the greater efficiency, or together share the greater sum of advantages, are the same persons whose liberties may be limited or denied.” Rawls, 1993, p. 295. For a more general discussion of the priority of the basic liberties see Lecture VIII.

<sup>lviii</sup> See William Riker, “Six Books in Search of a Subject or Does Federalism Exist and Does It Matter?” *Comparative Politics*, October, 1969.

<sup>lix</sup> For a description of the Sri Lankan conflict emphasising it as a “dirty war” rather than an “ethnic war,” see Darini Rajasingham-Senanayake, “From Ethnic Conflict to Dirty War,” *Pravada*, Vol. 5 #8 1998.

<sup>lx</sup> See Thomas Hurka’s “The Justification of National Partiality,” in eds. Robert McKim and Jeff McMahan, *The Morality of Nationalism*, Oxford University Press, 1997, for an insightful discussion of national partiality.

<sup>lxi</sup> In the Sri Lankan political context such deliberations would involve forging a consensus between the two major political parties and securing majority support at a referendum.