

Chapter XV

BEYOND FEDERALISM? LIBERALISM'S CHALLENGES IN SRI LANKA

Asanga Welikala

This columnist has been associated for the past several years with that much-maligned minority which can be broadly labelled 'liberal federalists' on the question of peace and constitutional reform in Sri Lanka. Allowing for individual nuances of emphasis and premise, Sri Lankan liberal federalists are those who have advocated (a) a negotiated resolution to the ethnic conflict (b) along the lines of a federal-type constitutional settlement that accommodates the secessionist ethno-territorial Tamil minority in the North and East (c) within a united Sri Lanka through regional autonomy and power-sharing at the centre. The key assumptions of this worldview are that a politically liberal conception of a unified Sri Lankan citizenship is both possible and desirable, that this notion of citizenship involves recognition of multiple identities, and that this can be institutionally expressed through federal-type constitutional arrangements reflecting some appropriate configuration of the shared-rule – self-rule ideal. That the constitutional prescriptions of liberal federalists retain enduring relevance in respect of peace in Sri Lanka is beyond reproach, for the federal idea as the fundamental organising principle of a constitutional order embraces a range of options from devolution to confederation. For reasons canvassed below, however, liberal federalists' political premises about democratic citizenship and the ethno-political foundations of the Sri Lankan State would require to be fundamentally revisited, if the objective is a viable and united Sri Lanka.

Even though the federal idea in Sri Lankan political debates is older than the post-colonial State itself, it only enjoyed a brief moment of mainstream respectability in the aftermath of the Oslo Declaration of 5th December 2003, when the government of Sri Lanka and the

LTTE stated that their future explorations of a substantive settlement would be guided by the federal idea. The LTTE's commitment to federalism understood in a conventional sense was less than unequivocal from the start. Its subsequent ISGA proposals (which made no reference to Oslo) revealed that to the extent the LTTE felt constrained by the normative parameters of federalism at all, its understanding of federalism was highly unorthodox, asymmetrical, and concerned only with the maximisation of autonomy for the Northeast.

In the South, the federal idea has been comprehensively defeated in the general elections of April 2004 and the presidential elections of November 2005. These two elections have seen a significant realignment of the Southern polity with the ascendancy of majoritarian nationalism, not only in the belief in a military solution to what is perceived as an essentially terrorist problem, but also in the rejection of any notion of political power-sharing apart from the most minimalist administrative decentralisation. Accordingly, we have seen the robust pursuit of counter-insurgency measures against the LTTE, with the government claiming victory in the East. The government vows similar commitment of purpose and conviction that the LTTE will be defeated in the North as well. Many believe that the Northern campaign is the litmus test for the hawks, in that while capturing the East is not unprecedented (although holding and normalising it would be), regaining and controlling the ethnically more homogenous North is another matter altogether. In a sense, this gravely misses the point, because conflict resolution is more about how the Sinhalese, Tamils, Muslims and others may coexist within a viable constitutional State, or indeed, peacefully separate, than about whether the LTTE or the government prevails in the battlefield. As the late Kethesh Loganathan used to frequently remind this writer, federalism in the Northeast is about a people and a region, not an organisation.

Nevertheless, this is the current context that confronts any attempt at envisioning post-conflict possibilities for Sri Lanka. It is a context in which two nationalisms are pitted against each other, their differences sharpened and entrenched by armed conflict, and further

complicated by factors such as the position of the Muslims, and Karuna's assertion of Eastern Tamil distinctiveness. The ideological reversal of the federalists in Southern electoral politics and dismissal by the LTTE are made worse by what appears to be a distasteful reassertion of primordial ethno-nationalism, in which many of the liberals' most cherished values are defiled and destroyed. It is clear in this context that what Sri Lankan liberal federalists face is not only a strategic challenge of popular persuasion; it is also a fundamentally theoretical challenge of how democratic politics and constitutionalism are conceptualised. It can be contended that the very idealism that characterises the liberal federalist project is also a failure to understand the real dynamics of ethno-nationalist politics, which has led to that project being totally sidelined.

The challenge before liberals therefore is how to rationalise political conditions of competing nationalisms in a way that can promote conflict transformation. They are ill equipped to do so with their traditional theoretical tools such as individual autonomy and freedom of choice, because this discursive language clearly has no traction in the popular imagination of Sri Lankans of whichever ethnicity. This is why teleological liberal arguments about the need to conceptualise an overarching and inclusive Sri Lankan political identity based on liberal principles of justice such as equality, fairness and respect for diversity have failed. Of course, liberals have been concerned to recognise diversity and institutionally guarantee respect for it through federal autonomy of regions. But the flaw in this approach is that it elevates a politically deracinated conception of liberal democratic citizenship as the identity of the State, and relegates the more resonant sources of popular identity such as ethnicity to be dealt with regionally within federal structures. In this sense, liberal citizenship is actually a unitary ideology that conceives of a single, modern, values-based nation that must constitute the State. This reveals the liberal disdain for pre-modern notions of collective identity such as ethnicity, the persistence of which is an inconvenience that must be addressed through regional autonomy (suitably attenuated with human rights guarantees etc), in the wider interests of conflict management and peace, and not least in the hope that ethno-nationalism will one day wither away. It is not only in

conflict-affected plural societies such as Sri Lanka that liberals become irrelevant because of this approach to Statehood; in prosperous and peaceful liberal democracies elsewhere, the experiences of Scotland, Quebec and Catalonia demonstrate that liberalism has had to make fundamental theoretical adaptations in order to rationalise powerful dynamics of sub-State nationalism.

In Sri Lanka, what is clear is that armed conflict among nationalisms has consolidated a historically fragmented and plural society into two distinct polities. Any possibilities that were there for the constitutional accommodation of political space in the traditional liberal mould are now no longer available. The current military phase of the conflict will result in the consolidation of that separation, not unification of the polity, regardless of whether the LTTE (or indeed the State for that matter) is left standing at the end of it. The existence of multiple nationalisms therefore has to be taken at face value. Short of successful secession, the challenge before liberals then is about how to conceptualise Statehood that guarantees liberal values yet addresses the ground reality of plural nationalisms. It is essentially a modernising challenge of transforming hard and intolerant ethno-nationalisms into nationalisms that are collective identities which can coexist within a multinational State.

Substantively, the departure from liberal orthodoxy lies in abandoning Sri Lankan nation-State building (i.e., the constitutional construction of a Sri Lankan political identity), as the principal purpose of post-conflict constitution-making. Likewise, traditional liberalism's central principle of individualism needs reinterpretation in a way that accommodates intermediate ties of collective loyalty such as ethnicity, which intercede in the relationship between citizen and State. Structurally, the acrimony and division that has been generated by decades of military conflict, especially in the manner it has been and is conducted, has rendered conventional federal forms inadequate for the construction of a future Sri Lankan State.

In this context, the future Sri Lankan identity can only be a minimalist legal personality. The political legitimacy of the State will need to be derived from the full and equal recognition of multiple

nationalisms. Liberal individual autonomy can be guaranteed, but in the relationship between citizen and State, its exercise would be institutionally mediated through the self-determination of the sub-State nationalism to which the citizen belongs. Thus, federal-type arrangements in the architecture of State are not entirely rejected, but they would look more like a confederation than liberal federalists have so far been willing to countenance. It is only by overturning the unitary presumptions of liberal citizenship that underpin federal constitutionalism that liberals can hope to make any relevant intervention in conflict resolution in Sri Lanka. The danger of complete exclusion from the political process is that only liberals have the intellectual wherewithal to salvage democracy and human rights in a future constitutional settlement, which would otherwise be concluded by ethno-nationalists or conservatives. Needless to say, the ideas expressed here would be anathema to majoritarian nationalists in the South. However, the fact is that it is precisely their intolerance and myopia that has brought Sri Lanka to the present pass, and if that leads to secession, it is their problem. But for liberals, the challenge put simply is whether we are prepared to contemplate a multinational confederation, once the guns have fallen silent.