

Chapter XVI

ETHNOS OR DEMOS? QUESTIONING TAMIL NATIONALISM

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As the major military onslaught against the LTTE gathers pace to the accompaniment of increasingly jingoistic rhetoric of ruling party politicians, bureaucrats and military top brass, Tamil nationalism in Sri Lanka finds itself at a critical crossroads. What may or may not happen in the battlefield this year is still a matter of conjecture, in spite of the bellicose rhetoric of both parties. Faced with the military resolve of the State and the seeming apathy of the international community in respect of any form of intervention, what is also clear, however, is that Tamil nationalism appears to be running out of ideas at the political level. The paucity of political ideas and their articulation in constitutional and legal claims to rights, including on the questions of self-determination and secession, is due to the primary focus on military means to achieve political goals that characterises the worldview of the LTTE, which has posited itself as the exclusive vehicle of Tamil nationalism through the elimination of plural voices within the Tamil polity. Consequently, not only does Tamil nationalism find itself bereft of the necessary theoretical frameworks that can plausibly engage the support of the international community in its cause, but their attempts at so doing, evinced most recently in the letter by Nadesan of the LTTE's Political Wing to the UN Secretary General on 31st January 2008, come across as insincere and entirely unpersuasive. When the LTTE is internationally perceived to be a terrorist organisation, using suicide bombers, and committing human rights violations including the indiscriminate and deliberate killing of civilians, it would seem that it takes much more than a complaint about an alleged claymore attack by the Army's deep penetration units to attract the attention and sympathy of the international community.

To be sure the State is a gross human rights violator itself, and in its current incarnation, fundamentally hostile to the constitutional recognition of diversity quite apart from Tamil nationalism. But for Tamil nationalism to gain the advantage of that fact, it must itself be immune to similar accusations (which in the hands of the LTTE it clearly is not), and demonstrate the capacity to think and behave like the State that it so wants to establish in the North and East. Our concern here is with the latter set of issues, i.e., the conceptual poverty of Tamil nationalism to articulate a persuasive vision for constitutional accommodation, indeed even division, that the international community finds attractive, and which can be deployed to favourably distinguish itself from the hegemonic majoritarianism of the Sri Lankan State. This reveals, if we go beyond the mere lack of organisational capacity within the LTTE with the death of Balasingham, the lack of clarity within the broader Tamil nationalist discourse about defining the challenges it faces and thereby an inability to engage in a much more broader and deeper theoretical exploration of the socio-political and legal arguments that can be marshalled in its cause with the benefit of comparative experiences.

The first step in this direction is the clear definition of the fundamental challenge faced by Tamil nationalism, which like the Scots, Quebecois, Catalans, Southern Sudanese, Kosovars, Timorese, Iraqi Kurds or Acehnese, is a group identity with distinct cultural / linguistic, socio-political, and historiographical dimensions on the basis of which, it can make legal claims to certain rights, and constitutional claims to certain forms of institutional accommodation. They thus present a fundamental normative challenge to the dominant liberal constitutionalist conception of the 'nation-state' – upon which the international legal system is founded – which conceives of the political 'nation' legitimising the juridical 'state' in singular or unitary terms. The claims of sub-state nationalisms belie the unitary conception of a unified 'people' exercising a common popular sovereignty within a State; and challenge us to rethink that particular legal and political fiction so as to recognise those claims in institutional forms that may or may not be within the existing State in which they are currently situated.

The claims of groups comparable to the Tamil nation go beyond those of 'minorities' in a plural polity, in that the conventional mechanisms of accommodating multicultural citizenship ranging from affirmative action or inclusive linguistic policies to consociational representation, and perhaps even territorial autonomy through devolved institutions, are insufficient to deal with the nature of the claims they make from a distinctly 'national' standpoint. Their historical, socio-political and cultural distinctiveness is so well developed as to warrant their identification as separate States, albeit that international law does not recognise a unilateral right to secession, nor typically would their host State allow such a dismemberment. Nonetheless, liberal constitutional theory would readily recognise, either through a commitment to the Rawlsian notion of distributive justice, or through the application of other liberal values and moral principles such as the freedom of choice and association and conscience (for example, Chandran Kukathas's conception of the 'liberal archipelago'), that the claims presented by these 'societal cultures' (Kymlicka's term) require serious consideration and a search for genuine accommodation. In short, therefore, the principal theoretical challenge before sub-state nationalisms is how to engage liberal theory in the disaggregation of 'nation' and 'state'.

A debilitating weakness of Tamil nationalism, both in Sri Lanka and in the Diaspora, has been its proponents' unwillingness to ask this question and engage the debates on this theme within liberal constitutionalist theory to suit their particular context. In not doing so, and in dogmatically pursuing an all-or-nothing strategy of secession (parsimonious public references to internal self-determination during a short phase notwithstanding) they have not merely ignored a rich source of constitutional and political ideas, but made a serious strategic error in the engagement of the international community with regard to the realisation of Tamil aspirations. The attendant primitiveness of their constitutional thinking, exemplified in the ISGA proposal, which in short was nothing more than the reproduction for the North and East of the congenitally centralised, majoritarian anomaly of the unitary State they were seeking to secede from in the first place, consequently attracted few supporters

(apart from the diehard optimists such as this author and his liberal-federalist ilk, who argued at the time that the ISGA could at least be the basis of negotiation, provided the LTTE was willing to countenance critique and necessary transformation).

The reasons for Tamil nationalism's reluctance to relocate its substantive constitutional and legal claims within the liberal discourse are several. First, a markedly constitutionalist and even liberal vocabulary characterised the political language of Tamil nationalism's embryonic stages in the colonial and immediate post-colonial era. Even after Vaddukoddai, Tamil federalists' language of negotiation within institutional politics was in the main constitutionalist. The eclipse of Tamil federalists by militant secessionists necessitated the rejection of the former's language of negotiation also. Secondly, the source of ideological inspiration for especially the Tamil youth militant movement was revolutionary socialism, which in particular relied heavily on the Stalinist settlement of the question of national self-determination. Even in an organisation relatively unhampered by doctrinal niceties such as the LTTE, Balasingham's writings well into the 1980s borrow extensively from the socialist idiom of political polemicism. Thirdly, Tamil nationalists have been suspicious of the liberal constitutional discourse because they see in the latter's preoccupation with individual liberty, autonomy and freedom of choice, a theoretical platform that can be insidiously used (not least by proponents of majoritarian unitarism masquerading as democratic constitutionalists), to undermine claims of collective identity as illegitimate and 'communalist' (a pejorative term consistently and hypocritically used by Sinhala nationalists against their Tamil counterparts). Tamil nationalists' unease with attempts to institutionalise human rights protection in the peace process of 2002-04 was an aspect of this, and was further exacerbated by the perception that the international community was using the human rights issue to differentiate its treatment of two nationalisms, Sinhala and Tamil, which ought to have been treated as co-equals in peace negotiations aimed at the creation of a new pluralist State and constitutional order, but when in fact the nationalism in control of the State was given a privileged status.

While these reasons help us understand the trepidations Tamil nationalists entertain towards the discourse of liberal constitutionalism within which the wider international system, the Donor Co-Chair countries and India operate, they do not in any way mitigate the grave disservice these attitudes have caused both to Tamil nationalism and peace in Sri Lanka. In the upshot, Tamil nationalism can be, and is, easily dismissed as pre-modern ethnic-communalism; and because its principal purveyor uses terror as a method of political bargaining, can also legitimately be internationally suppressed. That the Sri Lankan State is also in the control of a similarly primitive ethnic-nationalism is neither here nor there for present purposes. That nationalism is in possession of a State that pursues its ethnic supremacism with a legitimacy that is without doubt morally questionable, but is formally demonstrable through democratic arguments, and for a realist understanding of the dynamics of international politics, short of State-sponsored genocide, that is all that matters.

So how does Tamil nationalism deal with this conundrum and engage with both the international community and liberal discourse, without at the same time, losing its integrity, its internal coherence? How are institutional arrangements imagined that can lead to either co-existence or separation through the use of liberal discourse? The answer lies in the burgeoning theoretical and practical debates that are informed by the constitutional praxis of successful 'plurinational states' in the West, as well as those examples of (more or less) successfully negotiated constitutional settlements elsewhere that represent complex power-sharing models which transcend the traditional nation-state, both with regard to institutional forms and normative foundations.

The central normative challenge for Tamil nationalism is one of transformation: it must demonstrate that it has the potential to undertake a process of 'nation-building', to emerge as a modern entity comparable to the contemporary liberal democratic State. It must demonstrate its evolution from pre-modern community to a fully modern national society: in other words, this denotes a

transformation, discursively, normatively and institutionally, from the notion of '*ethnos*' to a '*demos*'. The Tamil nation therefore must project a 'civic societal' as opposed to an 'ethnic communal' model of national identity, within its historically contextualised territorial space. Only then will the Tamil nation be able to persuade the world at large that its territorial claims to self-government need to be treated on par with other such national societies, and be addressed in constitutional forms of governmental organisation with the support of the international community. As implicitly stated before, there is no need to abandon the desire for separation as an element of this transformation. That can be a matter for negotiation later; but to get to that stage where it can engage and sustain the international community's attention to the Tamil nationalist project in any meaningful way, especially in the context of opposition to a repressive yet formally democratic State, the project itself must fundamentally change.

The critical factor in the inability of the LTTE to have persuaded the international community that its claim to nascent statehood should be taken seriously even at the time it controlled larger extents of territory than now and established governmental institutions such as a standing military, a police force, a court system, post office, etc was this failure to demonstrate the quality of being and representing a *demos*. On the contrary, the LTTE's own unreconstructed behaviour brought about ridicule on, as well as apprehensions about, the entire Tamil nationalist project. This was why, for example, the LTTE's tax collecting apparatus was regarded as an extortion racket rather than a fiscal regime of an emerging State: as any economist would say, efficiency is one thing, fidelity to democratic principle quite another.

What happens in the next phase of the military conflict between the antagonistic nationalisms of Sri Lanka remains to be seen. But if Tamil nationalism in Sri Lanka is to survive and regenerate itself, so as to have the capacity to play a role in any future re-conception of the Sri Lankan State as a multi-level, polyarchical, plurinational polity, then at least its more thoughtful members should lose no time in thinking in the directions suggested here. The refusal to do so

means not only the possibility of the destruction of the Tamil nation (with what seems on present indications to be the tacit acquiescence of the international community); it also means nothing less than the end of pluralism in Sri Lanka.