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**Revolutions and Institutions:  
Political Violence and Sri Lanka's 1972  
Constitution**



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Constitutions are designed to allow citizens peacefully to disagree, when possible, and peacefully to resolve their disagreements, when necessary. Patience with disorder and even discord is therefore part and parcel of constitutionalism. There is, however, an outside limit: citizens must broadly agree on the legitimate uses of political violence, whether by the state or against it, because ultimately the domestication of political violence must rest with the citizenry considered as a whole.<sup>1</sup> In a democratic republic, the alternatives are unthinkable: either the state holds a monopoly of political violence and uses it to discipline the citizenry – an arrangement which threatens authoritarianism; or individuals hold the right to use political violence against the state and each other – an arrangement which threatens anarchy. In either case, the constitutional regime will likely not last long: either the government will make war on the people, or individuals will make war on the government.

In other words, constitutionalism will not work with citizens who are resolved to kill each other, or who, more broadly, disagree on when it is legitimate to use force to pursue political ends. When it comes to political violence, the citizenry must resemble a people, with shared cultural norms, rather than individual persons. That peoplehood may pre-date the constitution: the citizens may share a culture with specific notions about the appropriate use of violence, or they may feel mutually committed to each other and therefore to the avoidance of political violence, as ethnic and religious groups sometimes do. In such cases, the constitution is parasitic on a pre-existing social solidarity.

In other cases, such as Sri Lanka's 1972 constitution, the constitution comes into existence without the necessary social solidarity: clearly, Sri Lankans had very different notions about the proper use of violence and very different senses of

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<sup>1</sup> By 'political violence' I mean all violent actions undertaken to change the political structure of a society—in other words, to change who has how much power. Thus defined, political violence includes actions taken by non-governmental entities such as insurrection, terrorism, and interference with elections. But it also includes governmental actions, such as attempts to suppress insurrection and to enforce the extant election laws. Obviously, not all political violence is necessarily illegitimate, but it is all violent and therefore in need of legitimation.

peoplehood.<sup>2</sup> When such is the case, the consensus on political violence will need to be built after the fact. Frequently, the constitution itself can form the basis for the necessary unity: it can specify the appropriate use of political violence. But again, it will work only if it inspires the citizenry to embrace its view on the subject. If it relies merely on government institutions created by the constitution to discipline the people, it risks reverting to authoritarianism. It is neither safe nor ultimately possible to control political violence through a command and control model of constitutionalism.

In the short run, in a country such as Sri Lanka was in 1972, the people will not feel the necessary loyalty to the constitution. By definition, the constitution is brand new, and it does not rest on a pre-existing social solidarity. For that reason, the people will come to support the constitution over time only if it allows them to live better lives: happier, healthier, safer, wealthier. Under these conditions, the proof can only be in the pudding, and legitimacy must be the product of outcomes delivered by the constitution, rather than the democratic procedures used to create the constitution.

That process inevitably takes time, and in the meantime, any significant strain can threaten the constitutional order. If they have weapons, even minorities can sabotage the peace, and the state will then undertake armed repression. Almost inevitably, when governments in divided societies with fragile democratic structures make war on their own citizens, destructive consequences follow: widespread militarisation, terrorism, policing of the citizens, human rights infractions, and ultimately the hyper-concentration of power in the executive.

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<sup>2</sup> R. Edrisinha, 'Sri Lanka: Constitutions Without Constitutionalism: A Tale of Three and a Half Constitutions' in R. Edrisinha & A. Welikala (Eds.) (2008) *Essays on Federalism in Sri Lanka* (Colombo: CPA): pp. 22-30. See also, in this volume, R. Coomaraswamy, 'The 1972 Republican Constitution in the Postcolonial Constitutional Evolution of Sri Lanka'; R. Coomaraswamy (1984) *Sri Lanka: The Crisis of the Anglo-American Constitutional Traditions in a Developing Society* (New Delhi: Vikas): Ch.II; K. Loganathan (1996) *Sri Lanka: Lost Opportunities: Past Attempts at Resolving Ethnic Conflict* (Colombo: CEPRA): Ch.3.

For that reason, neither the constitution nor government policy should be provocative toward smaller groups. Constitutions must primarily focus on creating institutions and processes that will allow discordant groups peacefully to resolve their differences. If the constitution is instead cast as the expression of the particular identity of one social group, the others will be instantly alienated. Such constitutions must therefore be culturally ‘thin’: long on process and individual rights and short on substantive provisions celebrating a peoplehood that is in fact shared only by part of the population.

The government, too, must take care not to make waves; it must work hard to earn outcome legitimacy for itself and the constitution with groups that might be disaffected. Outcome legitimacy must be confined to tangible results that all significant groups can recognise as valuable: typically health, wealth, education, a clean environment, social equity, and the like. Outcome legitimacy cannot include the symbolic or actual elevation of one identity group over others. If the constitutional regime consistently delivers tangible, broadly shared benefits, then over time it will earn the loyalty of all of a country’s social groups, even the smallest and most alienated. And outcome legitimacy is most likely when governments are forced to be broadly accountable to all their constituents through a system of checks and balances.

If peace holds, if the citizens’ lives improve, eventually the country will witness greater social cohesion, and then but only then may the government undertake bolder and more activist projects. Finally, if all goes well, the citizens will develop the shared social norms on the use of political violence necessary for stability. As citizens come to give the constitution their loyalty, they will also be accepting as legitimate the constitution’s norms regarding the legitimate use of political violence. At that point, the citizenry will have come to resemble a people in the narrow sense that they imagine themselves as bonded through shared cultural norms on the appropriate use of political violence. Such a constructed peoplehood is not the soil out of which constitutions grow, as in some places; instead, the constitution is the soil out of which

peoplehood grew.<sup>3</sup> Peoplehood is an achievement in such countries, not a given, and it is civic, rather than ethnic, religious, or linguistic.<sup>4</sup> And it will take time.

As we recognise the fortieth anniversary of Sri Lanka's first republican constitution, we must simultaneously recognise that the constitution did almost everything wrong in organising political violence. It was cast as a constitution rooted in a peoplehood that pre-dates the constitution, as though it were an expression of a single organic identity. It was culturally 'thick,' full of provisions symbolically celebrating the existence of the Sinhala people, and eliding the distinction between the Sri Lankan citizenry and the Sinhala people.<sup>5</sup>

It is very unlikely that such a constitution could ever serve as the foundation for the eventual development of the broadly shared norms for the use of political violence necessary in a constitutional republic. It is remotely possible that, if the government had concentrated on delivering tangible results for all of Sri Lanka's groups, then the citizenry as a whole might have still come to develop loyalty to the constitution – despite its thickness – though doubtless the constitution would have had to be amended over time. But the government did not give that process time to get going. Instead, it adopted economic policies leading to high unemployment and inflation and low economic growth.<sup>6</sup> It then took provocative action to reduce the number of Tamils in the universities and the army.<sup>7</sup> And the constitution facilitated these

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<sup>3</sup> See D.C. Williams, 'Civic Constitutionalism' (2004) *Indiana Law Journal* 79: p.385.

<sup>4</sup> See D.C. Williams (2003) *The Mythic Meanings of the Second Amendment: Taming Political Violence in a Constitutional Republic* (New Haven: Yale UP): pp.306-10.

<sup>5</sup> See Edrisinha (2008).

<sup>6</sup> K.M. de Silva (1998) *Reaping the Whirlwind: Ethnic Conflict, Ethnic Politics in Sri Lanka* (New Delhi: Penguin): p.292; J. Richardson (2007), *Paradise Poisoned: Learning about Conflict, Terrorism and Development from Sri Lanka's Civil Wars* (Kandy: ICES): p.327. Cf., in this volume, K. David, 'The Left and the 1972 Constitution: Marxism and State Power'; B. Hewavitharana (2006) *Dr N.M. Perera's Policies and Achievements as Finance Minister* (Colombo: Stamford Lake)

<sup>7</sup> See de Silva (1998): pp.132-38, 141; C.R. de Silva, 'Sinhala-Tamil Relations and Education in Sri Lanka: The University Admissions Issue – The First Phase,

policies by concentrating power in a small number of hands.<sup>8</sup> In the absence of an effective system of checks and balances, the government was under no compulsion to be accountable to all its citizens, the Tamils and Muslims as well as the Sinhala majority.

The result was inevitable. When there is no constitutional people to tame political violence, the options are either that the state will attempt to hold a monopoly on the use of violence, portending potential autocracy, or individual people will insist on their right to make war on the government and each other, portending potential anarchy. In the event, Sri Lanka witnessed both autocracy and anarchy, leading to decades of civil war.

For the time, the war is past, but the question now facing the country is whether the government will put in the hard work to earn the loyalty of all the groups making up the citizenry. If it does, Si Lankans of all backgrounds may eventually come to feel loyal to the constitution; they may even come to experience themselves as a civic people with shared norms on the use of political violence. But if the government instead focuses on making itself unaccountable and/or celebrating Sinhala nationalism, the country may be facing yet more violent years.

Part I of this essay will lay out the basic problem of constitutionally taming political violence in a democratic republic: neither a state monopoly of the means of violence nor an individual right to overthrow the government is a sensible or safe solution. Part II will propose a different solution to the problem: only a citizenry united around shared norms on the legitimate uses of political violence can provide the foundation on which to build the constitutional edifice. Part III will consider how a

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1971-7' in R.B. Rotberg & A.J. Wilson (Eds.) (1984) *From Independence to Statehood: Managing Ethnic Conflict in Five African and Asian States* (London: Frances Pinter): Ch.9.

<sup>8</sup> See Edrisinha (2008): pp.22-30; Richardson (2007): pp.271ff; J. Uyangoda, 'The United Front Regime of 1970 and the Post-Colonial State of Sri Lanka' in T. Jayatilaka (Ed.) (2010) *Sirimavo: Honouring the World's First Woman Prime Minister* (Colombo: The Bandaranaike Museum Committee): pp.31-34; R. Edrisinha, M. Gomez, V.T. Thamilmaran & A. Welikala (Eds.) (2008) *Power Sharing in Sri Lanka: Constitutional and Political Documents, 1926-2008* (Colombo: CPA): Ch.11.

constitution can help to build such unity when it does not exist beforehand. Part IV will then analyse the reasons for the failure of the 1972 Constitution to foster such unity. The conclusion will consider ways that Sri Lanka might build a better constitutional future.

### **b. The Problem of Political Violence in a Constitutional Republic**

The last century has been haunted by two different nightmares about the use of political violence. The first nightmare is that a tyrannical government seeks to control the means of violence so as to oppress its people and punish dissenters. We need not look far for examples: this nightmare describes virtually all the Arab Spring countries before their respective revolutions. It also describes the decades-long conflicts – hopefully now ending – in Burma and South Sudan, countries where I have been advising constitutional reform. To some extent and during some periods, it also describes the conduct of the government of Sri Lanka.

When people are oppressed, they frequently take up arms to resist the government. Sometimes they are heroes, sacrificing their own safety for the wellbeing of their people and the generations yet to come. I believe that some of my friends in the Burmese resistance fit that description. But sometimes they aren't heroes, and that fact brings us to the second nightmare scenario: a group of people who claim to be freedom fighters but who are actually terrorists viciously attacking other people – fellow citizens, foreign civilians, government officials – so as to advance an agenda that is itself oppressive. Again, examples abound: the events of 9/11, the campaigns of terror launched by the IRA and the Chechens. And again, during some periods, it also describes the conduct of the LTTE.

These twin nightmares are similar in that both are about the use of political violence to unjustifiably harm others. But they are quite different with respect to the source of the threat: in the first nightmare, it is the government that we fear, but in the second it is private individuals and associations. In other words, these stories are about our anxieties over who should hold the means of

political violence: neither the government nor private actors seem a very safe bet. And that's a problem for constitutional design, because one of the chief jobs of constitutionalism is to organise political violence.

Constitutions enshrine certain primary norms, values that we hold valuable in themselves, such as equality, liberty, and justice. But without enforcement mechanisms, those norms are merely words on a page. So constitutions must also embed secondary norms – not valuable in themselves but essential as strategies for enforcing the primary norms. Most fundamental to this task is the domestication of political violence: constitutions must seek to organise the means of political violence so as to maximise the likelihood that it will be used to uphold the constitution's primary norms, rather than to defeat them.

In social contract theory, people enter the social contract with their government so as to escape the brutality of private violence; the first task of governments is to make people safe. But having escaped private violence by creating a government, all too often people then face the brutality of governmental violence. Governments are instituted to care for their citizens according to constitutional precepts, but government office holders often abandon those precepts and govern according to their own will. Either the government controls the means of violence or the people do: if these are our only options, then we are indeed on the horns of a very painful dilemma. And yet it is remarkable that these are the only two options in common consideration: though each has been proposed as a solution, each is also a nightmare to some of the people all of the time and to all of the people some of the time.

Europeans, for example, tend to be quite Weberian in the sense that they believe that the state and only the state can and should be trusted with a monopoly on the use of legitimate force.<sup>9</sup> That

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<sup>9</sup> Consequently, many European states, Switzerland and Finland being notable exceptions, have highly restrictive gun laws. See, e.g., The Firearms (Amendment) (No. 2) Act 1997 (UK), banning nearly all handguns, available at <http://www.legislation.gov.uk/ukpga/1997/64/contents> (last accessed, 15<sup>th</sup> September 2012). Alternatively, the German approach is to strictly monitor individuals who seek to possess firearms. See German Department of the

view makes sense if, but only if, we believe that our governments will be rational, kindly, and just, and that its agents will be self-denying, honest, and obedient. Perhaps European governments fit that general description, or perhaps Europeans just think they do, or perhaps as much as Europeans dislike their governments, they dislike the idea of violent popular resistance still more.

But that European complacency has no place in a country in which the government is making war on its civilian population. When the government is mortaring villages, forcing the population to run into the jungle, or using rape as an instrument of population control, or coercing the civilians to act as involuntary porters, in effect enslaving them, or deliberately destroying the food supply, so that the people will starve, then it gives up its claim on their loyalty. In Burma, until recently, the government was doing all these things, and to some extent, the abuse continues even now.<sup>10</sup> When one has witnessed such conditions, the sunny confidence in the state monopoly of violence seems a prescription for disaster; of course, the people must defend themselves, by force of arms if necessary and possible.

As I have argued elsewhere, many in the international community celebrate the Dalai Lama because he represents the possibility that oppressed people can seek freedom through non-violent means.<sup>11</sup> Clearly, he is appealing because by supporting him, his friends can support a victimised people without also supporting armed resistance, which they find morally troubling.<sup>12</sup> For example, in his presentation speech awarding the Nobel Peace Prize to the Dalai Lama, the chair of the Norwegian Nobel Committee praised his pacifism, implicitly criticising those resistance movements who use arms: “This is by no means the first community of exiles in the world, but it is assuredly the first

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Interior, *Waffenrecht* [Weapons Law], available at [http://www.bmi.bund.de/cln\\_145/DE/Themen/Sicherheit/Waffenrecht/waffenrecht\\_node.html](http://www.bmi.bund.de/cln_145/DE/Themen/Sicherheit/Waffenrecht/waffenrecht_node.html) (last accessed, 15<sup>th</sup> September 2012)

<sup>10</sup> See L.K. Jha, ‘Progress in Burma but Abuses Persist: US Report’ *The Irrawaddy*, 25<sup>th</sup> May 2012, available at <http://www.irrawaddy.org/archives/5066>.

<sup>11</sup> See D.C. Williams (forthcoming) ‘*Sometimes Guns Are the Answer: The Path to Autonomy in Tibet, Burma, and South Sudan.*’

<sup>12</sup> See W.W. Smith, Jr. (2009) *China’s Tibet?: Autonomy or Assimilation* (Plymouth: Rowman & Littlefield): pp. 267-68.

and only one that has not set up any militant liberation movement. This policy of nonviolence is all the more remarkable when it is considered in relation to the sufferings inflicted on the Tibetan people during the occupation of their country.”<sup>13</sup>

But, again as I have argued elsewhere,<sup>14</sup> the Dalai Lama’s pacifist approach has been remarkably unsuccessful: China has shown no sign that it will grant Tibet any meaningful degree of autonomy. By contrast, some violent resistance movements have yielded surprising results: in Sudan, the southern ‘rebels’ secured their independence, and in Burma, the ethnic resistance armies are now in ceasefire negotiations that will lead to political settlements. In other words, a state monopoly on the use of violence is sometimes the problem, and guns in private hands are sometimes the answer.

But when people reject the state monopoly, most often they run to the other extreme: because states are oppressive, individuals or groups must have the right to resist or even overthrow the government. Most commonly, the resistance is justified on substantive grounds: i.e., the resistance is good because the cause for which it is being waged is good. Al-Qaeda defends its terrorist acts on the grounds that it is acting on Allah’s will. The LTTE claimed to be fighting for an independent Tamil Eelam, where Tamil people could govern themselves in their own way. But as those examples illustrate, if the decision to resist is left to individuals and private groups, then most commonly, a faction of the population will form a resistance group and fight on behalf of a substantive vision particular to it, connected to its identity – radical Islam, Tamil nationalism. When they seek to impose that vision on the rest of the country, then they have themselves become oppressive, and it will be only a matter of time before other groups in the country rise up to perpetuate the cycle. Sometimes, guns in private hands are not the answer.

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<sup>13</sup> Egil Aarvik, Chairman of the Norwegian Nobel Committee (Award Ceremony Speech, Nobel Peace Prize, Oslo, Norway, 1989), available at: [http://www.nobelprize.org/nobel\\_prizes/peace/laureates/1989/presentation-speech.html](http://www.nobelprize.org/nobel_prizes/peace/laureates/1989/presentation-speech.html). (last accessed, 15<sup>th</sup> September 2012)

<sup>14</sup> See Williams (forthcoming).

Sometimes, resistance groups claim that they do not want to impose their own identity-based vision on others; rather, they want merely to govern themselves according to it, on their own homeland, through secession or some strong form of territorial autonomy. If, but only if, the group actually shares an identity, especially including norms respecting the legitimate use of political violence, then this claim may be a legitimate plea for self-determination, rather than an insistence on the right to oppress others. Again, the struggle for South Sudanese independence or for Burmese federalism may be good examples. The Tamil Tigers, by contrast, long ago gave up their right to speak on behalf of the Tamil people: when they began to assassinate dissenters and terrorise civilian Tamils, they were seeking to impose their own substantive vision, including especially norms on the use of political violence, on those who did not share it.

Notice, however, that in introducing the idea that armed struggle might be legitimate in the quest for self-determination, we have introduced a new possibility in the search for a way to constitutionally organise political violence. A claim for regional self-determination is persuasive only if, at a minimum, it is made on behalf a people that shares norms regarding the use of political violence. But then the means of violence belongs not to random individuals or groups who happen to own guns but to a people, here stipulatively defined as a body of individuals united by their agreement on the reasons for and manner by which political violence will be used.

In other words, we are not caught on the horns of our dyadic dilemma after all: it is not true that either the state must have a monopoly on the means of political violence or else random individuals and groups must have the right to willy-nilly contest government authority. Instead, it is possible to hold that constitutional republics must depend on broad-based popular agreement on the legitimate uses of political violence. If true, the proper master of political violence is the people, considered as a whole and a unity.

And as the next section will explore, what is true for a region of the country might be true for the country as a whole: rather than betting on the state monopoly or private resistance, we should

seek to cultivate widespread concurrence on the uses of political violence, as the essential soil from which constitutions grow.

### **c. The Body of the People**

There is an alternative to our dyadic dilemma: neither individuals nor the government should ultimately control the means of violence; instead, only the citizenry as a whole, considered as a people, can serve as our hedge against either autocracy or anarchy. If the people do not share norms on the legitimate uses of political violence, then either the government will have to impose an iron discipline on the unruly masses, or elements of this fractured populace will have to overthrow the government, becoming in its turn an oppressive regime seeking to impose its own partial vision on all the others.

We like to believe that constitutions exist to allow us personal and communal liberty, freedom to disagree and to stake out our own particular life path. But in truth, disagreement and diversity can go only so far. On some questions, constitutions demand unity, and they cannot function without it. I believe that the legitimate use of political violence is one of those questions. Constitutions give us freedom and allow us diversity through their primary norms such as liberty and self-government. And if we could be certain first, that our constitution has codified a good set of primary norms and second, that it will always and everywhere be safely enforced, then we might not need unity regarding the legitimate uses of political violence. But neither assumption is warranted across the boards.

The constitution might itself be oppressive: consider the ‘constitutions’ of Iran and Saudi Arabia – and, to a much lesser extent, Sri Lanka’s 1972 Constitution (and its successor). Or, even if the constitution is not itself oppressive, the government might be acting oppressively in routine violation of the constitution: consider Zimbabwe or Tibet – or, to a lesser extent, the conduct of the Sri Lankan government during periods of crisis. In either case, political violence is inevitable: the government inflicts it on the people, and very likely the people resist the government.

Under those circumstances, there are only two possibilities: the citizenry shares norms regarding the legitimate uses of political violence, or it does not. If the latter, then we have returned to our original dilemma: either a potentially autocratic government will monopolize political violence, or some subgroup will overthrow the government, taking its place, with short-term anarchy as a way-station to long-term autocracy.

Of course, it is not possible that every single citizen will ever take exactly the same view regarding the legitimate use of political violence; there will always be some diversity even on this question. But democratic constitutionalism does not require perfect unity. Its ideal is not ecstatic romantic merger into the *volk*. Instead, its ideal is deeply pragmatic; it demands only enough unity to help us avoid the political perils implicit in the alternatives, a state monopoly or an individual right to resist. To that end, it is not necessary that every citizen agree, but nor is it enough that merely more than half agree. Instead, what is necessary is that every group of a size sufficient to pose a threat to public order must agree.

In any state, small numbers of people may disagree with the prevailing constitutional order, to the degree that they will commit acts of political violence – usually terrorist acts – against the state, its agents, or their fellow citizens. The grievances may be legitimate and their suppression unjust, or the grievances may be illegitimate and their suppression just. If the grievances are legitimate, the constitution should be structured in such a way that they can be peacefully addressed through the ordinary political system. But whether the protestors have legitimate or illegitimate grievances, either way, they cannot constitutionally seek redress through political violence, and the state must have the power to control such acts. It is always the case that small numbers will disagree regarding the legitimate uses of political violence; no constitutional regime ever earns universal support. If the dissenters nonetheless had a constitutional right to use political violence against the state, the country really would be plunged into anarchy, and their fellow citizens would suffer at least as much as the state. Moreover, if they are speaking for a tiny number of like-minded associates, it is less likely that the grievances are legitimate.

But the situation is very different when a significant minority of the citizenry fundamentally disagrees with the constitutional order and is prepared to use political violence to subvert it. Although it may be impossible to secure the agreement of every single citizen to the constitutional regime, it is often much more possible to secure the agreement of every significant group, if the constitution is drafted in a spirit of compromise, pragmatism and mutual respect, and if the government then delivers tangible benefits to all the groups. In addition, if a significant minority takes up arms against the government, and if the government responds in kind, then the country will face civil war, which almost inevitably leads to militarisation of the culture, human rights abuses, and a shredded social fabric. Finally, when certain grievances are shared by a large minority, they are more likely to be legitimate than when shared by only a few people.

The first task of every constitutional order must therefore be to earn the support of every significant social group. It is especially important that the constitution earns support for its norms regarding the legitimate uses of political violence. And the need is especially pressing in a new, struggling, or fragile democracy. As others have observed, in such a democracy, even though particular government actions may command only bare-majority support, the support for the constitutional regime as a whole must be far more than a mere majority. Any significant minority has the potential to wreck the constitutional settlement. If such a minority perceives the constitutional order to be legitimate, it is much more likely to acquiesce in particular government actions that it does not like, because those actions came from a process perceived to be fair. If the constitution's drafters do not put in the hard work of developing across-the-boards support, they are risking the future of their country.

Historically, the framers of the American constitution thought in just this way about political violence. As a personal matter, I first started to think about the constitutional treatment of political violence when writing about the Second Amendment to the

United States Constitution.<sup>15</sup> Nonetheless, I believe that this particular part of the American constitutional tradition rests on truths that are broadly applicable throughout the world.

The Second Amendment grows from a profound distrust of government: most of the men who voted for it had suffered through the American Revolution – in their view, a legal war fought to defend their legal rights against a distant and oppressive government. None of the American founders were Weberians, believers in the state’s monopoly on the legitimate use of political violence, because they understood all too well that government will not always use such a monopoly for just ends. To believe that armed popular resistance against government was never legal or legitimate was to believe that the American Revolution itself was neither legal nor legitimate and therefore that America itself was neither legal nor legitimate.

For that reason, in the Second Amendment, the framers provided that the “right of the people to keep and bear arms shall not be infringed.”<sup>16</sup> The provision is quite radical: it guarantees the civic right to arms not for hunting, self-defence, or target shooting, but for revolution. When the government itself subverts the constitutional order, then in resisting such subversion, the people are defending the constitution itself. Such resistance is both constitutionally protected and undertaken to restore the constitution. In the American tradition, a constitutional revolution is thus not a contradiction in terms because although all revolutions are designed to overthrow a government, the government and the constitution are not the same. Of course, the framers hoped that the new government in Washington would not be as oppressive as the old government in London, but there was no way to be sure – so the people should hold their guns close.

At the same time, the framers also understood that an individual right to resist the government would portend only anarchy, empowering every angry crackpot with a crusade and a gun. For

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<sup>15</sup> For a more thorough discussion of the relationship between the Second Amendment and the American founders’ views of the legitimate uses of political violence, see Williams (2003).

<sup>16</sup> U.S. Const. amend. II.

that reason, they gave the right of resistance, not to the people considered as individuals, but to the people as a collective whole, unified by shared norms on the legitimate use of political violence. The framers had a particular vocabulary to refer to this distinction. A ‘rebellion’ was resistance conducted by a faction for a particularistic agenda and hence was illegitimate. But a ‘revolution’ was resistance conducted by the people as a whole for the common good and hence was legitimate. Frequently, the framers explained that a revolution could be undertaken only by “the Body of the People.”<sup>17</sup> That phrase was richly meaningful: it connoted the people as an organic entity, with the various parts intimately connected in the way that the parts of a human body are.

Read in its entirety and in historical context, the Second Amendment bears exactly this meaning: “A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.” The provision specifies that the people shall have the right to bear arms, and as we have seen, the purpose was to secure the right to revolution. But the right was not given to individuals *qua* individuals. Rather, as the introductory clause explains, the central goal was to ensure that the people assembled in “a well-regulated militia” should have the right to arms. In the framers’ constitutional discourse, the militia was not just an institution; it was another deeply resonant concept, an icon of a certain way of thinking about political violence. For the framers, the right of resistance belonged only to a ‘universal militia’ – a militia composed of the whole people, the Body of the People, deeply connected each to each.<sup>18</sup> Again, this sort of militia could be trusted with the right of resistance because it was the organic people by another name. The state must raise such a militia and train it to virtue, but if the state should then become corrupt, the militia must resist, because the Body of the People is the ultimate master.

By contrast, a ‘select militia’ referred to a militia composed of less than the Body of the People – a factional force to serve factional

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<sup>17</sup> Williams (2003): p.50.

<sup>18</sup> *Ibid*: p.49.

interests, typically raised by powerful men or by the Crown itself to cow the people into submission.<sup>19</sup> Such a body had no right to resist the government, nor even to discipline the citizenry. Indeed, select militias had no place in a free republic.

The Second Amendment sought to protect the right of the Body of the People in a universal militia, not a select militia. This interpretation is clear from historical context, and it would have seemed obvious to all contemporary observers. But we also have more specific evidence: early drafts of the Second Amendment referred to a “well-regulated militia *comprised of the Body of the People*” – clearly indicating a universal militia.<sup>20</sup> Later drafts omitted the phrase but apparently only for the sake of brevity: everyone knew that the right to arms rightly belonged only to a universal militia, so it was not necessary so to specify.

The proponents of the Second Amendment blithely assumed that the states would maintain universal militias, and that the militia members could comprise a people, not just random individuals. But however great their sagacity might have been, their gift for prophecy was limited. Within a few short years, the states allowed their militia to fall into desuetude and then to rest on an increasingly limited membership. Meanwhile, to whatever extent the American citizenry ever exhibited characteristics of peoplehood, as the years went on, it showed fewer and fewer of those characteristics, becoming increasingly individualistic and even atomistic. As a result, it has become increasingly difficult to know what the Second Amendment can mean today: by its own terms, it makes operational sense only in an America with universal state militias and a citizenry that is a people. When those conditions evaporate, it cannot mean what once it meant.

The situation is perilous for America: as social fissures open and anger kindles, domestic terrorism becomes increasingly likely. As improbable as it sounds, if the splits widen further, even civil war looms as a possibility, because different identity groups hold different views on the legitimate use of political violence. The only effective solution would be to rebuild the American citizenry into

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<sup>19</sup> Ibid: p.57.

<sup>20</sup> Ibid: p.48.

a genuine people – wildly diverse on almost everything but sharing norms with respect to political violence. And what is true for the United States might be equally true for Sri Lanka.

#### **d. Building the Body of the People**

Occasionally, before making their constitution, the people of a country share a common identity as a people, especially on the uses of political violence. When such is the case, the constitution merely expresses this pre-existing popular identity, and so it is likely to command immediate and broad-based loyalty. Some writers take such a case as typical, but in fact it is quite rare: Iceland is one of the few clear cases. In fact, most countries are plural societies, cobbled together from a number of identity groups, and they cannot take a sense of peoplehood for granted.

But if peoplehood does not come before the constitution, then it must come after because, as we have seen, no country is safe without shared norms respecting political violence. The constitution itself can be instrumental in developing such a sense of shared identity; though the various groups may have felt little commonality beforehand, over time they may develop a sense of shared civic identity rooted in their membership in a common constitutional regime. The nurturance of such a sense is difficult, complicated, and risky. To some extent, the approach must be contextual, because each country has a distinct set of contestants with a distinct history of conflict and tension.

At the same time, certain guidelines seem to be generally applicable across cases. First, in order to earn the loyalty of every significant group, the constitution must be seen to belong to all those groups. It must not be perceived as the special property or the alter ego of any one group, be it ever so dominant. In this respect, two dimensions of constitutional design are especially important. First, the constitution must give to each significant group a fair share of practical political power. When there is tension between a dominant majority group and a smaller group or groups, it is important to avoid simple majoritarian democracy because in such a system, the minorities will be swamped by the votes of the majority. Frequently, the constitution will need to give

the minorities super-proportional power in the central government and devolution of power to areas of the country in which the minorities are concentrated. Second, the constitution must not symbolically align itself with the characteristics of a particular dominant group, such as religion or language. Such an alignment is, in effect, an assertion that the minorities are not full citizens; that they do not really belong in the country in the way that the majority does.

The second guideline is that to earn the loyalty of all significant groups, the constitution must create a government that will reliably deliver tangible benefits to all of those groups. Instead of making symbolic cultural claims, the government must focus on 'bread and butter' issues, such as health care, education, a clean environment, a strong and growing economy, and above all, personal security. Equally importantly, the government must be perceived as making concerted efforts to ensure that these benefits reach all the significant groups in equal measure.

The third guideline, implicit in the second, is that in the short term, the government must refrain from taking unnecessarily provocative actions. It must concentrate on delivering those benefits that all would recognise as benefits. It must take steps practically and symbolically to assure minorities that they are of co-equal status with the majority. It must find way to address the particular concerns of minorities that might not be shared with the majority. Above all, it must undertake not to make war on any fraction of its population unless absolutely and unmistakably necessary. If war is necessary, the government must seek to keep it as constrained as possible.

The fourth guideline is that the constitution must not concentrate power in a small group of people or government institutions; in other words, it must incorporate an expansive set of checks and balances. This guideline is functionally necessary to effectuate the first three. If power is concentrated, then the constitution will almost inevitably be perceived as specially belonging to those who hold the power, often members of the dominant ethnic, religious, or linguistic group – thus violating the first guideline. If power is concentrated, then the government will be less accountable to its citizens, especially the minority groups, and so it will feel less need

to deliver ‘bread and butter’ benefits – thus violating the second guideline. If power is concentrated, then the government will feel freer to take provocative actions, even to the point of using the military against its citizens – thus violating the third guideline. Indeed, when power is concentrated in a small group of people who imagine themselves principally as leaders of identity groups, then the concentration actually gives them an incentive to take provocative action: in order to keep their followers happy, they may ‘play the ethnic card’ by helping their own people and punishing the members of other identity groups.

Eventually, with luck, even the members of minority groups will come to feel loyal to the constitution. Because the minorities have become loyal to the constitution in general, they are likely to have become loyal to the constitution’s norms respecting political violence in particular. At that point, all the significant groups will have formed a single constitutional people of the relevant sort: they may still have different languages, cultures, religions, and so forth, but they agree on when it is time to pull out the guns. As a result, they will be much less likely to kill each other. Even following the guidelines laid down in this section will not guarantee success, but failing to follow them will almost certainly guarantee failure.

#### **e. Political Violence and Sri Lanka’s 1972 Constitution**

The events surrounding the adoption of Sri Lanka’s first republican constitution are familiar and extensively surveyed in other essays in this volume. For that reason, rather than offering a lengthy analysis of those events, I will confine myself to a consideration of why the constitution so signally failed to domesticate political violence.

At the time of the adoption of the constitution, Sri Lankans did not constitute a people in the relevant sense, so the constitution could not be the expression of a pre-existing solidarity. The Tamil claim for autonomy on a ‘traditional homeland’ went back at least

to the 1940s and 1950s.<sup>21</sup> As a response to the ‘Sinhala Only’ policy adopted in 1956, riots broke out between Sinhalese and Tamils in that year and then again in 1958 – mild by the standards of later years but a clear sign that Sri Lankans disagreed among themselves on the legitimate uses of political violence.<sup>22</sup> In 1971, shortly before the adoption of the constitution, a group of unemployed or under-employed Sinhala youth formed the Janatha Vimukthi Peramuna (JVP) to push the government towards ultra-left and Sinhala nationalist policies. The old left parties had never taken recourse to political violence, but the JVP showed no such reticence. Though the insurrection was speedily crushed, it was yet another sign that the cauldron of ethnic animosity was boiling just below the surface in Sri Lanka.<sup>23</sup> The framers of the 1972 Constitution could not assume that Sri Lankans were already a people; they would need to use the constitution to build one.

Unfortunately, not only did they not succeed at that task; it would appear that they did not even try, violating every one of the guidelines laid out in the last section. The May 1970 elections had swept the United Front into power. The UF was dominated by the SLFP, which had always been committed to Sinhala-Buddhist nationalism. It also included a range of left-wing parties, but they were completely ineffective in checking such nationalism, if indeed they tried.<sup>24</sup>

In the 1960s, many had advocated extensive revision of the Soulbury Constitution so as to guarantee the rights of minorities, including the Tamils. During the same period, the SLFP itself had advocated amending, rather than replacing, the constitution so as

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<sup>21</sup> A.J. Wilson (2000) *Sri Lankan Tamil Nationalism: Its Origins and Development in the 19<sup>th</sup> and 20<sup>th</sup> Centuries* (New Delhi: Penguin): Ch.6; De Silva (1998): pp.151-55.

<sup>22</sup> Ibid: pp. 46-52, 121-23; Richardson (2007): pp.160-61.

<sup>23</sup> De Silva (1998): pp.33-34, 136-38; Richardson (2007): pp.274-78. Cf. in this volume, L. Bopage, ‘*Insurrection amidst Constitutional Revolution: The Janatha Vimukthi Peramuna (JVP) and the 1970-72 Constitution-making Process*’.

<sup>24</sup> De Silva (1998): pp.124-25; Richardson (2007): pp.243-50. See also, in this volume, N. Jayawickrama, ‘*Reflections on the Making and Content of the 1972 Constitution: An Insider’s Perspective*’ and K. David, ‘*The Left and the 1972 Constitution: Marxism and State Power*’.

to make clear that Sri Lanka was a democratic republic.<sup>25</sup> By the late 1960s, however, the SLFP had changed its view, calling for a constituent assembly to draft a wholly new constitution, on the grounds that the people of Sri Lanka should author their own primary law. At least part of the reason for this changed strategy, however, may have been that Section 29 of the Soulbury Constitution, which guaranteed equal treatment for all of Sri Lanka's communal groups, was thought to be un-amendable.<sup>26</sup> Turning the constitution into an expression of Sinhala-Buddhist nationalism would therefore require jettisoning the old constitution and writing a new one.<sup>27</sup> Seeing the handwriting on the wall, the (Tamil) Federal Party walked out – the worst possible development for building a shared sense of peoplehood around the constitution.<sup>28</sup>

### **1. Guideline Number One: the Constitution must be seen to belong to every significant group.**

Symbolically, the new constitution openly cast itself as the special expression of Sinhala-Buddhist identity. Section 18(1)(d) guaranteed freedom of religion, but Section 6 gave Buddhism a 'foremost place': "The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster Buddhism while assuring to all religions the rights [to the free exercise of religion] granted by section 18(1)(d)."<sup>29</sup> Similarly, Section 7 made Sinhalese the official language: "The official language of Sri Lanka shall be Sinhala as provided by the Official

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<sup>25</sup> De Silva (1998): pp.127-28.

<sup>26</sup> Richardson (2007): p.286. See also, in this volume, N. Jayawickrama, 'Reflections on the Making and Content of the 1972 Constitution: An Insider's Perspective', A. Welikala, 'The Failure of Jennings' Constitutional Experiment in Ceylon: How 'Procedural Entrenchment' led to Constitutional Revolution' and C. Saunders & A. Dziedzic, 'Parliamentary Sovereignty and Written Constitutions in Comparative Perspective'.

<sup>27</sup> De Silva (1998): pp.128-29.

<sup>28</sup> Ibid: p.130.

<sup>29</sup> The Constitution of Sri Lanka (1972): Section 6. See also, in this volume, B. Schonthal, 'Buddhism and the Constitution: The Historiography and Postcolonial Politics of Section 6'.

Language Act, No. 33 of 1956.”<sup>30</sup> By 1972, Sinhala had been the official language of Sri Lanka for a decade and a half, but only because of a statutory mandate.<sup>31</sup> When the 1972 Constitution made that statute part of Sri Lanka’s fundamental law, it implicitly conveyed that ‘Sinhala Only’ was fundamental to the country itself. Taken together, these two provisions clearly expressed the idea that while Tamils might be welcome in Sri Lanka, the country belonged first and foremost to Sinhalese Buddhists. The meaning was not lost on the Tamils. At a time when the country needed to be building peoplehood so as to reach agreement on the legitimate uses of political violence, the 1972 Constitution did exactly the opposite, and the armed struggle that ensued was dreadfully predictable.

The constitution’s religious and linguistic provisions are well known, and they have been much commented on, often with significant ire. The constitution’s political provisions are less well known but equally important, if less highly symbolic. Practically, the Tamils were left with no meaningful share of political power under the governing electoral laws. At the time, the Parliament was elected through the first-past-the-post (FPTP) voting system.<sup>32</sup> The essence of FPTP is ‘winner-take-all’: the candidate with the most votes takes office, and the others all go home, with no share of power. But the majority party or parties often constitute the majority of voters in almost all constituencies: a party with sixty per cent of the electorate nation-wide might command sixty per cent of the electorate in one hundred per cent of the districts, thus sweeping the legislature. For that reason, FPTP almost always allows the majority to control more than its proportionate share of constituencies. This effect is called the ‘majority

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<sup>30</sup> The Constitution of Sri Lanka (1972): Section 7.

<sup>31</sup> See De Silva (1998): pp.55-56; N. DeVotta (2004) *Blowback: Linguistic Nationalism, Institutional Decay and Ethnic Conflict in Sri Lanka* (Stanford: Stanford UP).

<sup>32</sup> C.A. Gunawardena (2006) *Encyclopaedia of Sri Lanka* (New Delhi: Sterling Publishers): p.205; A. Welikala, ‘Representative Democracy, Proportional Representation and Plural Society in Sri Lanka’ in R. Edrisinha & A. Welikala (Eds.) (2008) *The Electoral Reform Debate in Sri Lanka* (Colombo: CPA): Ch.II.

premium' because the majority tends to win a premium of seats, beyond proportionality. And indeed that is what happened in Sri Lanka in the 1970s, leaving the Tamil parties side-lined and powerless:

“The trend in the 1970s...was to give the winning party a lopsided parliamentary majority, far in excess of the percentage of votes it gathered at the electoral level... These lopsided majorities had an unexpected result in that they exacerbated ethnic rivalry; the minority Tamils could no longer serve as a swing vote as they had done in the early 1960s. Indeed elections could now be won and lost on the strength of votes polled in the Sinhalese areas alone. As a result, the alienation of the Tamils of the north was aggravated in the early and mid-1970s.”<sup>33</sup>

The 1972 constitution itself mandated this type of electoral system, ensuring that the UF majority would continue to win its premium. The constitution created a Delimitation Commission,<sup>34</sup> whose principal task was the drawing of constituency lines.<sup>35</sup> Those constituencies were to be small, roughly seventy-five thousand voters,<sup>36</sup> and equipopulational:<sup>37</sup> clear signs that the constitution contemplated FPTP voting in mainly single member constituencies. The constitution did provide that in exceptional circumstances, the commission could create a multi-member constituency,<sup>38</sup> still much too small for any kind of proportional representation. In short, the constitution entrenched a voting system that assured that the Tamils would remain an electoral irrelevancy, unless the system was changed.

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<sup>33</sup> De Silva (1998): p.34.

<sup>34</sup> The Constitution of Sri Lanka (1972): Section 77(1).

<sup>35</sup> Ibid: Section 78(1).

<sup>36</sup> Ibid: Section 78(2).

<sup>37</sup> Ibid: Section 78(3).

<sup>38</sup> Ibid: Section 78(4).

## **2. Guideline Number Two: the government must deliver tangible benefits to all segments of society.**

The SLFP had always been a left-leaning party. Although it managed to crush the JVP insurrection, it still felt pressure to move even further left to forestall further leftist agitation, and of course in 1970-75, the other partners of the UF coalition were the traditional 'old left' parties. Indeed, the 1972 Constitution itself describes Sri Lanka as a "republic pledged to realize the objectives of a socialist democracy."<sup>39</sup> The result was an economic disaster: "[S]tate control was extended to every sector of the economy, from trade to industry, and to the island's efficiently-run plantations, foreign-owned and locally owned (which provided over two-thirds of the island's foreign currency earnings annually)."<sup>40</sup> In practice, these reforms did nothing to help the poor; instead, they led to a stagnant economy and high inflation levels. Most importantly, unemployment reached all-time highs.<sup>41</sup>

As we have seen, unemployment and under-employment were frequently the causes of intense ethnic conflict. In the Jaffna peninsula, employment prospects were especially dire, and many young Tamil people came to feel the government was discriminating against them. Those feelings made them eager to embrace the drive for separation:

"The frustration and anger this gave rise to turned to a profound alienation because of their perception of themselves as victims of deliberately devised policies of discrimination, and above all alienation from a political system which appeared to symbolize not merely class privileges but...also the dominance of an unsympathetic majority community...It was this alienation that made them so responsive to separatist sentiment."<sup>42</sup>

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<sup>39</sup> Ibid: Preamble.

<sup>40</sup> De Silva (1998): p.137; see also Richardson (2007): pp. 287-88.

<sup>41</sup> De Silva (1998): p.137-38.

<sup>42</sup> Ibid: p.138; see also Richardson (2007): pp. 294-300; Loganathan (1996): Ch.3; Wilson (2000): Ch.7.

In other words, Tamil militancy grew directly out of the failure of the government to deliver tangible benefits. Instead of helping to build the citizenry into a people, the government was helping to widen the fissures further. If the government had taken steps to assure the Tamils that it was not discriminating against them, that they were facing only the same unemployment that was plaguing the whole country, it might have been able to minimise separatist fervour. But in fact, the government did the reverse, taking deliberately provocative action.

### **3. Guideline Number Three: the government must avoid provocative action.**

In the Sri Lanka of the 1970s, access to university education became a key political battleground. A university degree brought with it social mobility and the possibility of a government job.<sup>43</sup> As secondary schools expanded, the universities began to admit more students, but they could expand only so far. As there were more applicants than spots, the question became who would be admitted and how would they be chosen.<sup>44</sup>

Traditionally, admission to Sri Lankan universities had been based on rigorous entrance exams: those who secured the highest scores were admitted. Tamils did especially well by this system, especially at the prestigious science-based faculties. In part because of the superior secondary schools in the Jaffna peninsula, the percentage of Tamil students in some schools was several times their percentage of the population. Sinhala-Buddhist nationalists, the UF's core supporters, began to clamour for a change in the admissions policy so as to reduce the number of Tamils and increase the number of Sinhalese and Muslims.<sup>45</sup>

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<sup>43</sup> De Silva (1998): p.132-33.

<sup>44</sup> Ibid: p.133; Loganathan (1996): pp.47-51.

<sup>45</sup> Ibid: pp.133-34.

The government proved obliging. First, for Sinhalese students, it lowered the scores necessary for admission, so that Sinhalese would be admitted in proportions closer to the proportion of Sinhalese who sat for the exam. Later, the government moved to a district quota system to ensure that a minimum number of students would be admitted from each and every district. The effect was to eliminate the Tamil's advantage in securing higher test scores. The change could be defended as a kind of affirmative action, since the Tamils had traditionally enjoyed better schooling, though it is different from most affirmative action plans in seeking to help a dominant majority rather than a vulnerable minority.<sup>46</sup> But whether the change could be defended as affirmative action in the abstract, the Tamils generally saw it as a sign of the government's hostility toward them. In the short-term, the Tamil's share of university spaces fell only slightly, but they took it as a sign of things to come: "They regarded this change in university entrance policy as patently and deliberately discriminatory...Nothing has caused more frustration and bitterness among Tamil youths than this, for they regarded it as an iniquitous system deliberately devised to place obstacles before them."<sup>47</sup> Because the Tamils relied especially heavily on government employment, the new admissions policy was especially threatening to their academic future.

At the same time that the government was restricting Tamil access to university, it was increasingly treating the Jaffna peninsula as occupied territory. In the early years, especially during the 1956 and 1958 riots, the Tamils had welcomed the police and security forces as impartial agents of order. But by the 1970s, as youth unrest flared, the perception changed. On the one hand, the local population refused to co-operate with the security forces. On the other hand, the government increasingly filled the security forces with Sinhalese Buddhists, and promotion had more to do with communal or political allegiance than with merit. Because Tamil officers were perceived as unreliable, the army increasingly sent Sinhalese

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<sup>46</sup> Ibid: pp.131-36; see also Richardson (2007): pp. 296-98.

<sup>47</sup> De Silva (1998): p.132; see also Richardson (2007): pp.298.

officers – few of whom could speak Tamil – to command the northern units.<sup>48</sup> As a result, the

“security forces were now perceived as a Sinhalese army of occupation, and in their frustration at their inability to bear down effectively on the perpetrators of these robberies and acts of violence they often turned violent themselves. A force perceived as an army of occupation was driven by the inexorable logic of their ambiguous position in Jaffna to behaving like one. And that in truth was a factor of great importance in the late 1970s and 1980s in the breakdown in communications and understanding between the Sinhalese and Tamils not merely in Jaffna but in all parts of the island.”<sup>49</sup>

The point is not that as a matter of policy, the new admission policy and the Sinhalese command were wholly and patently without justification. There may have been arguments on both sides. The point is that in the context of Sri Lanka at the time, these actions were ethnically incendiary – violating the third guideline toward building a people. If the government felt that it was forced to undertake these actions, it should have also taken extraordinary measures to reassure the Tamils of its good will. It did not do so because it did not have to do so, because the 1972 Constitution created virtually no checks and balances to limit the UF parliamentary majority.

#### **4. Guideline Number Four: the constitution must call for checks and balances.**

The government failed to follow the first three guidelines because it did not have to, and it did not have to because the constitution concentrated power in a small set of hands. Critically, the 1972 Constitution failed to provide for any meaningful checks and balances. We have already seen that the electoral scheme ensured that the UF coalition would enjoy lopsided parliamentary majorities. As important, the

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<sup>48</sup> De Silva (1998): p.140-43.

<sup>49</sup> Ibid: pp.141-42.

constitution made the parliament supreme in all dimensions of governmental power, so holding a parliamentary majority allowed the UF to dominate the government as a whole.

Section 2 of the constitution provides that Sri Lanka “is a unitary state.”<sup>50</sup> As a result, there were no constitutionally protected provincial or local governments to check the central government.

Within the central government, the constitution specifically provides that there will be no separation of powers; instead, all power lay with the parliament. Thus, Section 5 provides that the National State Assembly “is the supreme instrument of State power of the Republic.” It exercises “the legislative power of the people,”<sup>51</sup> as well as the “executive power of the People...through the President and the Cabinet of Ministers,”<sup>52</sup> and even “the judicial power of the People through courts and other institutions created by law except in the case of matters relating to its powers and privileges, wherein the judicial power of the People may be exercised directly by the National State Assembly according to law.”<sup>53</sup>

All constitutional systems have advantages and disadvantages; none is perfect for all times and places. But in some times and places, the disadvantages of some systems are especially acute. Certain countries function quite well with the kind of parliamentary system mandated by the 1972 Constitution. But for Sri Lanka in the 1970s, such a system could only be damaging. For the Tamils to become part of a new Sri Lankan people, the constitution needed to de-concentrate power, so that different parts of the government could check each other. When the UF commanded large majorities in parliament, and the parliament was the only meaningful power base, the UF had the whip-hand, allowing it to drive

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<sup>50</sup> The Constitution of Sri Lanka (1972): Section 2. For the provenance of this provision see, in this volume, N. Jayawickrama, ‘*Reflections on the Making and Content of the 1972 Constitution: An Insider’s Perspective*’; J. Wickramaratne, ‘*Fundamental Rights and the 1972 Constitution*’.

<sup>51</sup> Ibid: Section 5(a).

<sup>52</sup> Ibid: Section 5(b).

<sup>53</sup> Ibid: Section 92(1).

forward Sinhala-Buddhist nationalism. The consequences in the years to come were, of course, tragic.

## Conclusion

As the decades have passed, much has changed in Sri Lanka. When the constitution was passed in 1972, the government failed to follow any of the four guidelines for building a people in a troubled country. But gradually, the government came to realise the necessity of at least some of these guidelines. In particular, the introduction of proportional representation gave the Tamil parties a greater say in parliament,<sup>54</sup> and changes to the linguistic provisions and a measure of devolution under the Thirteenth Amendment to the Constitution (1987) sought to address Tamil concerns and aspirations (although the implementation of these provisions has continued to be half-hearted). But by then, the damage had been done: Sri Lanka had been plunged into a vicious civil war, from which it has only recently emerged. Eventually, the government would offer quite expansive peace deals to the LTTE – the sort of deal that the Burmese resistance armies, for example, would jump at. But by then, the LTTE had clearly decided that it did not want peace.<sup>55</sup>

The war is over for now, but the problems remain. Because the Tigers refused the good deals on offer, the Tamil people received no peace deal. It is not at all clear that Sri Lanka has fused its various groups into a single civic people based on shared norms regarding the legitimate uses of political violence. As a result, the four guidelines to building a people still obtain, even under these

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<sup>54</sup> See S. Bastian, 'The Political Economy of Electoral Reform in Sri Lanka' in S. Bastian & R. Luckham (Eds.) (2008) *Can Democracy Be Designed? The Politics of Institutional Choice in Conflict-Torn Societies* (London: Zed Books): pp. 196-219.

<sup>55</sup> See, e.g., BBC, 'Tamil Tigers Urged to End Unrest' 20<sup>th</sup> December 2005, available at: [http://news.bbc.co.uk/2/hi/south\\_asia/4544360.stm](http://news.bbc.co.uk/2/hi/south_asia/4544360.stm). (last accessed, 15<sup>th</sup> September 2012); more generally, see K. Stokke & J. Uyangoda (Eds.) (2011) *Liberal Peace in Question: Politics of State and Market Reform in Sri Lanka* (London: Anthem); J. Goodhand, J. Spencer & B. Korf (Eds.) (2011) *Conflict and Peacebuilding in Sri Lanka: Caught in the Peace Trap?* (London: Routledge).

very different circumstances, and the government should consider them, both in governing the country and in reforming the constitution. The fourth guideline – entrenching a system of checks and balances – seems especially relevant, because recent constitutional amendments have actually concentrated power further in the President.<sup>56</sup>

Frequently, a country emerges from civil war, and the victors assume that the war will not resume. Too often, those predictions prove false. As a plural society, Sri Lanka will never be entirely free of the risk of civil war, but unless and until it builds a people, the risk will remain severe. Sri Lanka has an opportunity to do now what it did not do in 1972.

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<sup>56</sup> See R. Edrisinha & A. Jayakody (Eds.) (2011) *The Eighteenth Amendment to the Constitution: Substance and Process* (Colombo: CPA).