

# **Federalism: Cause and/or remedy for separation**

SHANTHA K. HENNAYAKE

*Department of Geography, University of Peradeniya, Peradeniya, Sri Lanka*

**ABSTRACT.** The purpose of this paper is to assess the potential of federalism to resolve the ethnonationalist crisis in Sri Lanka. The rationale for this paper arises from the present political context in Sri Lanka in which federalism is proposed as a solution to the twenty year old ethnonationalist war waged by the Liberation Tigers of Tamil Eelam (LTTE) demanding a separate state for the Tamil minority. This has sparked a debate in the country on the potential for federalism to resolve ethnonationalist crises in general and the Tamil ethnonationalist crisis in particular. The paper attempts to answer two key questions; Is federalism as a constitutional option adequate for the constructive management of ethnonationalist conflicts? What are the inadequacies of the narrowly constitutionalist model of federalism?”. The paper explains both the argument pro and against federalism as a solution to ethnonationalist crises around the world. According to the emerging consensus, federalism can at best provide only a temporary solution to ethnonationalist crises; lasting solution depends on many other factors outside the political and constitutional structure of federalism. The paper concludes that Sri Lanka has a long way to go in fulfilling these conditions which will make federalism effective as a solution to the ongoing ethnonationalist crisis in Sri Lanka.

**KEY WORDS.** nationalism, federalism, ethnonationalism, ethnic crisis, devolution, theories of federalism, separatism,

## **Introduction**

*“In Nigeria Constitutional federalism has been imposed from above, yet overwhelming transparency and accountability problems persist because civil society is unprepared and lacks the socio-economic tools necessary to take an active part in it” (Hueglin,2003:318).*

The purpose of this paper is to assess the potential of federalism to resolve the ethnonationalist<sup>1</sup> crisis in Sri Lanka. The rationale for this paper arises from the present political context in Sri Lanka for which federalism is proposed as a solution to the nearly twenty year old ethnonationalist war waged

by the Liberation Tigers of Tamil Eelam (LTTE) demanding a separate state for the Tamil minority. The war characterized primarily by LTTE terrorism against the Sri Lankan state and the majority Sinhalese has led to devastating effects on all aspects of the entire Sri Lankan society. This has sparked a debate in the country on the potential for federalism to resolve ethnonationalist crises in general and the Tamil ethnonationalist crisis in particular. The present paper hopes to contribute to this discussion by integrating and bringing insights from wider theoretical writings on federalism available in political science. The paper attempts to answer a two key questions; Is federalism as a constitutional option adequate for the constructive management of ethnonationalist conflicts? What are the inadequacies of the narrowly constitutionalist model of federalism?”.

The paper explains both the arguments for and against federalism as a solution to ethnonationalist crises around the world. According to the emerging consensus, federalism can at best provide only a temporary solution to ethnonationalist crises; a lasting solution depends on many other factors outside the political and constitutional structure of federalism.

Although there are other models such as consociationalism (Lipjhart, 1980), and multiculturalism (Gutman,1994) which have been proposed as potential solutions to the problems of multi-ethnic societies, the present paper is deliberately silent on these as the discussions on these are still confined to academic circles without much grounding in Sri Lankan national politics. Recent Sri Lankan political debates have been primarily concerned with the devolution of power as the primary and perhaps only potential solution to the Tamil ethnonationalist problem.

Ethnonationalist politics is an ubiquitous and yet a powerful phenomenon (Forsyth,1989) which rose rapidly during the last three decades disappointing the predictions of two dominant theoretical stipulations – liberal modernization and Marxism. The former preached that in a liberal democratic state, functional and rational identities will replace ‘traditional’ ethnic identities. Marxism simply assumed that class will replace all other “false consciousness”,

ethnicity being one of them. Kiernan pointed out that “nationality in itself was not a theme that greatly interested them (Marx and Engles); they looked forward to its speedy demise...” (1983: 344). He further argues that “nationalism is a subject on which Marx and Engles have commonly been felt to have gone astray, most markedly in their earlier years by greatly underestimating a force which was about to grow explosively (1983: 346). The empirical reality of world politics has proven the diametrically opposite results; modernization and Marxism in fact have been contributing to the escalation of ethnonationalism as intensively as colonialism had in the previous century.

A large number of new states were added to the world map as the socialist regimes began to capitulate during the last years of the cold war in the late 1980s and early 1990s. Ethnonationalist movements in the non-communist third world that predated the cold war found renewed enthusiasm from the rising successful ethnonationalist movements in the former communist countries. The majority of these ethnonationalist movements have been seeking secession from the existing state and the establishment of a new state defined primarily along ethnic lines.

Ethnonationalist movements which were not successful in establishing their own states continue to challenge the sovereignty of the states in which they found themselves as minorities. Some of these ethnonationalist movements have resorted to violence and even terrorism as a strategy in their continuing struggle to win political autonomy. Some ethnonationalist movements have even acquired substantial military capabilities and some have been successful in bringing areas of the territory of the existing state under their own control. Yet, few ethnonationalist movements have been able to establish a de facto state of their own with separate military and administrative structures, thus turning the larger, legitimate state into a ‘failed-state’.

## **Past attempts towards decentralization and devolution**

An obvious question that arises at this point is what is the problem in Sri Lanka for which federalism is proposed as a solution. The problem has been variously identified with adjectives that reflect the various political needs and aspirations of the protagonists. I prefer to describe the problem as an ethnonationalist problem as I believe that after removing the rhetorical justifications, the core problem is fundamentally political, characterized by the demand of the Tamils for political autonomy over an area defined as the "Tamil homeland".

The question as to what led the Tamils to demand political autonomy has been extensively discussed in Sri Lankan political science and historical writings<sup>2</sup>. The arguments cover a wide range of issues such as state discrimination, uneven development, ethnic riots, centralization of the state, self-isolation of Tamils, the demand for parity by Tamils and even geopolitical interests of India. It is now well established that Tamil ethnonationalism has multiple roots for which the Sri Lankan state along with both Tamil and Sinhalese political parties are responsible.

Tamil ethnonationalist politics has two distinctive phases; the democratic phase extending from 1948 to 1975 led by Tamil ethnonationalist political parties and the violent phase from 1975 to date led primarily by the Liberation Tigers of Tamil Eelam (LTTE)<sup>3</sup>. During the early stages of Tamil ethnonationalist politics, the Sri Lankan governments entered into agreements with the Tamil ethnonationalist parties but they were not implemented by the then governments<sup>4</sup>. When new constitutions were adopted in 1972 and 1978, Sri Lanka had two fresh opportunities to find a political solution to Tamil ethnonationalism. However, instead, both constitutions contributed to the intensification of Tamil ethnonationalism as they further centralized the power of the government.

The only attempt towards devolution of power was the establishment of Provincial Councils under the 13<sup>th</sup> Amendment to the 1978 Constitution



introduced as a by product of the Indo-Sri Lanka Peace Agreement signed between India and Sri Lanka in 1987. However, as Tamil ethnonationalist politics had transformed into a violent movement against the Sri Lankan state by then,, this political experiment too failed to bring about the desired outcome. The failure of the Sri Lankan state to realistically resolve the problem of Tamil ethnonationalism in the past, has intensified it to a level that has come to threaten the very survival of the Sri Lankan state requiring a solution that fundamentally alters the structure of the Sri Lankan state.

### **Present status of Tamil ethnonationalism**

The ground reality in Sri Lanka closely resembles this last scenario with the Liberation Tigers of Tamil Eelam (LTTE) running a de facto state of its own in certain areas of the Northern and Eastern Provinces. The twenty year long civil war characterized primarily by LTTE violence which has escalated into terrorism against the state and the anti-terrorist war by the government has led to immense human suffering and massive economic and infrastructural destruction with little likelihood of either party winning. By early 2000 both the LTTE and the Sri Lankan government, suffering from severe war fatigue with no certainty of the outcome, were looking for alternatives. The international sympathy shown towards the LTTE also began to decline in the 2000s and the 9/11 incident exerted heavy pressure on the LTTE to desist from terrorism. Public opinion among the majority Sinhalese who had to face LTTE terrorism on a daily basis, has moved largely in favor of a peaceful resolution and it came to be reflected in both the last two national elections. Although there are no formal democratic channels available for the Tamils living under LTTE- controlled areas to express their opinion, the jubilant reaction by the Tamils to previous peace initiatives clearly signals their rejection of terrorism and war.

The most recent attempt at a peaceful resolution of the conflict started with a ceasefire agreement popularly known as the Memorandum of

Understanding (MoU) between the LTTE and the government in early 2002 and it continued towards political negotiations aimed at seeking a permanent solution. Peace negotiations received active international support with Norway playing the role of the facilitator.

The most fundamental political outcome of the peace negotiations is the general agreement by the two parties to consider federalism as a long term solution to the ethnonationalist problem in Sri Lanka. It is a radical departure from the LTTE's non-negotiable demand for a separate state of Tamil Eelam on the one hand, and on the other, the continuing reluctance of the Government and the majority Sinhalese to concede political autonomy to the Tamils in the territories of the Northern and Eastern Provinces. With this and the ceasing of all hostilities between the LTTE and the government, Sri Lanka has certainly arrived at a cross roads. The LTTE, after unilaterally withdrawing from the peace negotiation process in 2003, has once again agreed to come back to the negotiation table in early 2005 indicating that the federal solution is still alive.

Since May 2003, when the federal idea was first proposed, both the LTTE and the Government have been studying various federal models, especially in Europe. However, their attention seems to have been directed only at the constitutions, more particularly at the allocation of powers between the federal government and the regional units. While the constitutional arrangements of federalism are important and may even be very critical at the beginning, as Cairns argued "federalism is not enough" to resolve longstanding ethnonationalist problems and "federalism needs to be reinforced by societal and institutional factors" (1995: 15).

Significant transformations and adjustments have to take place both in the civil society and the political society to receive federalism and implement it smoothly. Unfortunately, the two main protagonists, the LTTE and the Government and their international underwriters do not seem to pay attention to the non-constitutional requirements of federalism - an act of serious omission that could have far reaching negative consequences in the attempt to seek a

sustainable solution to the ethnonationalist crisis. The significance of non-constitutional aspects of federalism becomes clearly evident from past failures and continuing challenges and successes of federalism around the world. The lesson from these federal states is that while constitution is but one aspect of federalism many non-constitutional processes have a direct bearing on the successful implementation of federalism. Sri Lanka is unlikely to be an exception to this reality.

A debate has already begun on the potential of federalism to resolve the ethnonationalist problem in Sri Lanka. The UNF government, its sympathizers and a section of the liberal intellectuals support federalism. Political parties in the opposition and the Sinhalese organizations have questioned both the real intention of the LTTE in agreeing to consider federalism on the one hand and the appropriateness of federalism as a solution to the ‘Tamil problem’ in Sri Lanka on the other. It is clear that the road to federalism in Sri Lanka is long and rough. The confusions and disagreements have risen largely because of lack of understanding of what federalism really is and what it can and cannot deliver to conflict-ridden multiethnic societies such as Sri Lanka.

It is here that the Hugelín’s statement above becomes relevant. The current attempt by the peace negotiators from both the Government and the LTTE and their foreign facilitators and/or mediators resembles nothing but the Nigerian experience of imposing federalism from above. As in Nigeria, politico-cultural traditions in the Sri Lankan civil society contradicts those expected for a smooth operation of a federal system of government in Sri Lanka. Hence, the objective of this paper is to study the preparedness of the Sri Lankan civil society to accept federalism as a solution to the ethnonationalist problem.

**Federalism: A definitional introduction.**

Federalism has been defined and explained from the angle of every possible discipline. Perhaps the simplest yet comprehensive statement on federalism came from one of its most prominent students, Elazar (1987) who summarized it as a political system combining “self rule with shared rule”. The constituent territorial states or provinces enjoy self rule while they also share ruling with the larger national/federal state<sup>5</sup>. The most significant feature of federalism is therefore the simultaneous existence of two levels of government- federal government having jurisdiction over the entire state and regional governments having jurisdiction over the respective region. Citizens of a democratic federal state elect both levels of government and are subject to the rule of both levels<sup>6</sup>. With respect to the two levels of government Heywood highlighted that “neither of ... is legally or politically subordinated to each other” (2000:240). The constituent states are structurally immune from federal interference as they enjoy power derived directly from the constitution.

In the operational sphere the two levels of government are not mutually exclusive. This is why Elazar argued that “federal union as a partnership” implying ‘the distribution of real power among several centers that must negotiate, cooperative arrangement with one another in order to achieve a common goal” (1984:2). Common goal is the key point here. In spite of having a number of states defined either territorially or ethnically or ethno-territorially, a federated state must have a goal common to all of them. Lack of a common goal could prevent the formation of a federal state in the first place and second it could lead to the disintegration of an existing federal state. Elazar elaborated that the federal matrix constitutes of “multiple centers but not separate unto themselves, bound together within a network of distributed powers, with lines of communication and decision making that force them to interact” (1984: 8). Gritel (1986) argued that this interdependent character provides federalism with its vitality; most correctly its existence, I might add.

Simultaneously, the people are citizens of both the constituent states/provinces as well as the larger national state. Thus neither the government nor the citizens are mutually exclusive. Arguing that US federalism “was a practical response to the problem of nation building” Elazar elaborated that it is a matrix with “multiple centers but not separate unto themselves, bound together within a network of distributed powers, with lines of communication and decision making that force them to interact” (1984:8). As Schleicher and Swedlow argued federalism “requires mutuality not command, multiple rather than single causations, a sharing instead of monopoly of power” (1998: 17). The mutual acceptance and respect towards the federal as well as regional governments both in the sphere of constitutions as well as outside of it i.e. in the areas of politics, administration and even personal relationships are essential requirements for the successful implementation of federalism.

Federalism is also credited with being the most reflective of the politico-territorial diversities of society. Diksit (1975) argued that federalism is the most geographical of all forms of government. What he meant was that politico-geographical ground realities (i.e. territorially segregated multi-ethnicity), are better represented under federal systems than in national centric single power centered systems such as unitary states. Referring to Tip O’ Neil’s famous statement that ‘all politics is local’, Westwood and Radcliffe (1996) agree with Diksit on the geographical friendliness of federalism. Haysom (2003) affirming that federalism is geographically based stresses the point that it allows expression of different identities within the same state and that the losers at national level could become winners at regional levels. Federalism simultaneously turns ethnic groups, into minorities as well as majorities; national minorities becoming regional majorities and national majorities becoming regional minorities. Blindenbacher and Watts (2003) summarized the most significant characteristics of the federal process to include a strong disposition to democracy, non-centralization, open political bargaining in arriving at decisions, the operation of checks and balances and finally the respect for constitutionalism

and the rule of law. Simply, federalism is nothing but good practice of democracy.

Ehrenzeller et.al. elaborating on the republicanism. intrinsic to federalism, states that “federalist systems aim to ensure a closer relationship with their citizens by promoting decision making processes that are equitable and transparent, involves less bureaucracy, and grants citizens more political responsibility and participation....” (2003:55). The Prime Minister of Belgium, Verhofstadt affirmed that federalism is “... flexible and adaptable and better suited to organizing fragmented societies than the old nation state” (2003:572). Ehrenzeller et.al. (2003) explained that “what federalism really means and where its significance lies, is in the pursuit of a particular system of values, in particular the preservation of numerous regional and local identities and the integration of heterogeneous societies” (2003:55). What all these arguments lead to is simply to an assertion that federalism better reflects social realities, especially the multi-ethnicity of modern states and further the democratic representation of these ethnic and national groups.

### *Three politico-legal features*

Whatever the formal definitions and characterizations are, three politico-legal features are fundamental to federalism. The first is the obvious yet least emphasized fact - the existence of a single state and a single citizenry. The fact that a federal state is a single state is so obvious it is taken for granted and removed from academic and political scrutiny. We still talk in terms of federal states (e.g. India, Canada, Belgium, and Switzerland) notwithstanding the divisive political tendencies in some of them and the expanding power of the constituent states in others. The fact remains that a federal state is a single state among the community of states. Internationally it behaves and projects itself as a single state. It is the federal state and not the constituent states that has the membership of the United Nation.

There is no legal room for constituent states in a federal system to transcend the larger federal state in the international arena. The national supremacy of the federal government is an intrinsic feature of federalism. Metzler-Arnold while arguing that "... the most crucial aspect of federalism is proximity to the people...." warns that, "... we must not allow it to prevent us from acknowledging federal supremacy in complex matters such as foreign policy" (2003: 588). We can only talk of federal states only so long as they remain single states.

Thus, when a constituent province tries to demand greater power than that are accorded to them by the existing constitution, it is not seen as a healthy development but a threat to the sovereignty of the federal state. The very language of federalism is based on the fact that there is only one sovereign state. This is evident in the language of even a strong supporter of federalism such as Metzler-Arnold. He argues for example that "the problem of minorities is a further threat: even federative states with a long history to look back on are familiar with persistent minority problems, some of them actually entailing the threat of secession" (2003: 4). Ehrenzeller, et.al. by referring to Alfred Escher's statement that federalism is a system reflecting "external unity and internal diversity" argued that "in essence, federalism is a principle that structures and orders complex national entities by spreading state power among several levels of government" (2003: 53-54). Federalism survives only when a sovereign federal state survives: when the sovereignty of federal states collapses so does federalism. A collapsed federal state is not a federal state.

The second feature is the division of power between the federal government and the regional governments. As a general rule, foreign policy, national security, defense and monetary policy have been vested in the federal government and those activities pertaining to the general welfare of the people are vested in the regional governments<sup>7</sup>. Oats clarified this by pointing out that "the central government should provide national public goods that are consumed collectively by everyone in the country, while provincial (or state) and local

governments should provide outputs of those public services whose consumption is specific to their own circumstances” (2003:41). The powers of the two levels of government are defined by the constitution and neither the federal nor the state government can legally infringe into or seize the powers of the other level as stated earlier. As Ehrenzeller, et.al. pointed out “ While different levels are related hierarchically with constituent states as subordinates, they exercise their respective powers independently as allocated to them by the constitution” (2003: 54)

The third fundamental feature is the supremacy of the constitution. Amato argues that “the purpose of federation is to work together, recognizing common objectives, in the knowledge that no one can achieve these common objectives by acting alone and in achieving them, the members accept the primacy of the law that expresses them” (2003:579). It is the constitution that expresses the common objectives. The power and the authority of the two levels of governments are derived only from the constitution and, not from any other source including the ‘peoples’ will’ of ethnic groups represented by the regional government. Thus, in a federal state, it is not acceptable for a constituent regional government at a later date to invoke the people’s will and/or mandate and override the constitution. In a situation of disagreement on the powers between the two levels, the constitution and the interpretation of the constitution given by the judiciary prevails. However, as Haysom pointed out in societies where there is no strong legal tradition, “resolution of conflict will rely increasingly on institutional composition, and on balances of power rather than guarantees on the constitution” (2003: 229). This however, is not a healthy development from the point of view of the smooth operation and sustainability of federalism as the balance of power could sway between the center and regions. Disrespecting the rule of law and constitutional supremacy could culminate in complete collapse of the federal system.

However, federalism is not simply a legalistic entity revolving around the constitution and structures and institutions created by the constitution. As



Elazar pointed out federalism “is more than an arrangement of government structures; it is a mode of political authority that requires the extension of certain kinds of cooperative relationships throughout any political system it animates” (1984:2). Most federal states have over the years developed systems and procedures of cooperation between the two levels of government<sup>8</sup>. Some federal states have incorporated them into the constitutions and ordinary law of the country while in some federal states they remain as elements of good practice and/or traditions. Elazar argued that the constitutional base in federalism transcends the formal document of the constitution and includes “... the bundle of basic texts and statutes, court decisions, accepted constitutional interpretations, maintained customs and institutional traditions...”(1984:41). Certainly, federalism is larger than the federal constitution.

Another important point having direct relevance to the political geography of federalism is simply the fact that it varies considerably from one state to another. No two federal systems are alike (Diksit, 1975). The variation is a product of a number of factors such as the physical geography of the country (e.g. size), the socio-cultural composition, the internal political history including conflicts and finally, the commitment to democracy by both political and civil society. From the point of view of resolution of multi-ethnic problems, Gagnon (2001) differentiated between mono-national federations (e.g. USA and Australia) and multi-national federation (e.g. Canada) on the basis of the internal political organizations of society. Multi-ethnicity in mono-national federations is non-territorial and therefore it does not lead to destabilization of federalism as a system whereas, in multinational states where multi-ethnicity is organized essentially along territorial lines federalism is under constant threat. Also the difference between symmetrical federalism (where all regional states have similar powers) and asymmetrical federalism (where one regional state enjoys more powers than other provinces e.g. Quebec in Canada) has been highlighted (King, 1982). Asymmetry had emerged in federal states primarily as a means to cater to the increasing demands from powerful regional ethnic groups which

threaten the federal state with secession if their demands are not satisfied.

### **Some salient features of the federal experience**

The federal experience around the world during the last two centuries leads to the following generalizations regarding its relationship with multi-ethnicity.

1. There is no single universally accepted federal system in the world.
2. There is no 'perfect federalism' which can be emulated by others to solve their problems.
3. Federal systems are evolving; some in the direction of strong national government (e.g. USA) and others in the direction of strong provincial governments (e.g. Canada).
4. Ethnonationalist demands prevail in varying intensity even within federal systems which were introduced as a solution to rising ethnonationalism (e.g. Canada, India, Spain).
5. Some federal states have disintegrated (e.g. USSR, Yugoslavia) precisely along ethnonationalist lines.
6. Some unitary states are moving towards federalism (e.g. UK) on the assumption that it can accommodate rising ethnonationalist demands.
7. There are disagreements over the role of federalism in resolving ethnonationalist conflicts in society: some (Diamond and Plattner, 1994) argue that it helps resolve conflicts and others (Agnew, 1995; Maynes, 1993) argue that it leads to secession and yet others (Simeon and Conway, 2001) argue that it is 'Janus-faced'.
8. Success or failure of federalism depends on the larger political culture.

#### *Can federalism resolve secession?*

At this point it is pertinent to ask the all important question whether federalism can resolve ethnonationalist secession. Traditionally federalism was not seen as a conflict resolution strategy at the state level. Instead it was studied

primarily as a better liberal democratic mode of governance. This led Gagnon to observe that “the dominant image of federalism in comparative politics has been to define it in territorial terms making the United State the main referent” (2001:322). Scholars of US federalism have enjoyed the luxury of not having to write about either socio-political violence created by federalism or the challenge to the very existence of the state and its sovereignty.

However, the reference to U.S. federalism seems to have diminished significantly when issues having contemporary political significance such as ethnonationalism and multinationalism assumed the center of analysis of both theoretical and empirical writings in political science precisely because of the non-ethnic nature of US federalism. Instead, attention has been diverted to federal states such as Canada, Spain, Belgium, India and Switzerland where federalism is intrinsically linked to ethnicity. Out of numerous studies in this tradition of different aspects of the link between ethnonationalism and federalism two distinct strands of thought have emerged<sup>9</sup>. The first views federalism as a remedial prescription for emerging ethnonationalism which has threatened to decapitate many of the existing multinational states. The second, taking a diametrically opposed position argues that federalism in fact further intensifies ethnonationalism eventually leading to the dismantling of the state.

### *Arguments for federalism*

That federalism can successfully resolve ethno-secessionist forces is an argument often advanced by both political leaders of federal states as well as scholars celebrating the positive role of federalism. Based on the twin concept of “self-rule and shared-rule” as stated by one of the prominent scholars on federalism, D.J Elazar in 1987, it has been stressed that federalism has the potential to satisfy the political autonomy demanded by the ethnonationalist movement while remaining within a larger polity. As Fleiner et. al pointed out federalism is one the main options to be taken into account in determining systems of government for multicultural societies (2003:198) Empirical evidence

of some states such as Switzerland, Belgium, Canada and Spain where the ethnonationalist issues have been either resolved or contained is presented in support of this argument. Ironically, the same states are presented as evidence of the inability of federal systems to resolve ethnonationalist problems. Gahi (2000) has recently pointed out that autonomy has been used to solve the problems of some multi-ethnic societies (e.g. Sri Lanka) while it has also led to the collapse of some multi-ethnic societies (e.g. Yugoslavia)

The International Conference on Federalism held in St. Gallen in Switzerland in 2002 brought together a number of students of federalism and political practitioners from federal states arguing in favor of federalism. George Fernandez, the Defense Minister of India pointed out that “federalism is a glue to hold together a country with diversities” (2003: 583) and elaborated in relation to Indian experience as follows: “as the Indian policy and government began to function as a unitary state, it was realized that only under a federal structure could the unique socio-cultural diversities of the country as a whole and the states in particular be held together as a nation” (2003:584). Fernandez further argued that “As far as Indian cultural and linguistic diversities are concerned, we have managed them well by the creation of linguistic states. Besides meeting the aspirations of the people, such a step has reinforced Indian federalism” (2003:585). However, the fact that India also has the largest number of ethnonationalist movements for any state in the world today and also the fact that the Indian government had to use armed force to suppress some of the ethnonationalist uprisings create some doubt as to the ability of Indian federalism to resolve ethnonationalist demands.

Ruth Metzler-Arnold (2003), Federal Councilor, Head of the Federal Department of Justice and Police, Switzerland identified six basic points about federalism. They are:

1. Combining unity in diversity is the basic nucleus of federalism
2. Federalism should be implemented with great openness
3. More countries will adopt federalism in the future

4. Federalism in itself is not a magic formula for the problem of local regional autonomy.
5. Federalism requires responsibility at all levels
6. Federalism is constantly renewing itself by centralizing some functions and regionalizing others.

He, however, cautions that there could be two threats to federalism. The first is the tendency for centralization when the functions of the state become more complex. Second is the problem caused by minorities. Metzler-Arnold points out that “the problem of minorities is a further threat: even federalist states with a long history to look back on are familiar with persistent minority problems, some of them actually entailing the threat of secession” (2003: 589).

Blindenbacher and Watts, referring to the increasing popularity of federalism as a conflict resolution strategy points out that “...federalism has become increasingly important as a way of peacefully reconciling unity and diversity within a political system” (2003: 7). He further argues that a federal solution has had an increasing appeal in the context of two powerful yet opposing motives found in modern states: first the desire to build dynamic and efficient national or even supra-national modern identities based on states and second, the search for distinctive ethno-cultural identities. Schussel too argues that federalism allows for plurality in unity. He values federalism as a “precious asset even in cases where a federal structure does not have to bridge a huge cultural gap” (2003:569)<sup>10</sup>

Fleiner et.al (2003) detailed the benefits of federalism to a diverse society as a system which promotes diversity, limits state power, enables diverse communities to participate in government, seeks justice, promotes peace and protects liberty (206-207). Forsyth (1989) a strong proponent of federalism's ability to resolve societal problems points out that “... federal structures can and have grown out of deep ethnic differences within a state and can help manage these differences” (1989: 6). Nakarada also argues that “Federalism has a peace-building capacity in a conflict situation where a stalemate has evolved, i.e. where

neither side can win and where civil societies are fragmented. In such cases, a federal arrangement can accommodate an etiolated compromise between the secessionist demands of a minority and the demand of the government to re-establish complete control" (2003: 273). However, Nakarada cautions that the conflict prevention capacity of federalism depends not only on its institutional and political arrangements, and practical implementation of the dialectics of balance but also on the "will to federate being rooted, upheld and promoted in civil societies, as well as on strong external (global) incentives to stay together" (Elazer, 1984: 272). Simeon and Conway (2001) argued that the logic of federalism is that "conflicts will be reduced by a measure of disengagement, of separation" and "federalism provides protection against domination by the majority, an opportunity for self fulfillment and self-development for the minority, through institutions that it controls, while maintaining the ability of both groups to pursue common goals." (339-340).

Perhaps one of the strongest and relevant contemporary arguments for federalism in resolving the problems of multiethnic societies was made by McGary and O'Leary (1993) who pointed out that federalism is one answer to the question 'whether multi-ethnic states can be stabilized in ways which are compatible with liberal democratic values and institutions'. This is most relevant in countries such as Sri Lanka where ethnonationalism has taken a violent turn.

Saunders (1999), one of the strong proponents of federalism as an alternative to multicultural societies provided a long list of the potential benefits of federalism which include creating unity in diversity, making minorities (at national level) majorities at regional level), provision of means of recognition and acceptance of different languages, religions and culture, embracing diversity and positively valuing, promoting and capturing the benefits of diversity. Saunders then argues that federalism "increases the legitimacy of the state in the eyes and hearts of its entire population and not merely of a dominant majority" (1999: 34). He goes on to make the next forecast extremely relevant to states such as Sri Lanka by arguing that "in societies in conflict or potential conflict,

this (federalism) has the further advantage of increasing the likelihood that a real peace will be made and will hold” (1999: 34).

The main arguments in support of the potential of federalism to resolve ethnonationalism can be summarized as follows.

1. Federalism is more flexible than unitary government in resolving issues of multi-ethnicity
2. Federalism allows for the expression of cultures in a multi-ethnic society.
3. Federalism is flexible and can accommodate many grievances of the aggrieved.
4. Federalism allows extensive powers for the regions.
5. Federalism can accommodate socio-economic-cultural variations better and more effectively.
6. Federalism has emerged as a solution to resolve multi-ethnic problems within single states.

#### *Arguments against federalism*

An equally powerful set of arguments has been proposed against federalism as a solution to the secessionist problem. A large number of prominent scholars and practitioners have not been as optimistic about federalism’s ability to resolve ethnonationalist problems in modern societies. Fleiner and Basta (2003) in fact argue that “in academic discourse, federalism has been predominantly discussed as a reluctantly adopted solution for multi-ethnic societies instead of being viewed as an opportunity to reflect on the advantages of federal solutions in terms of good governance.”(312). On the other hand, as Gagaon correctly argues “the ability of federal systems to accommodate differences within states and between nations is under scrutiny around the world” (2001:320) as the empirical evidence from federal states do not support its theoretical claims.

The arguments against federalism are three fold. First, that federalism intensifies, if not perpetuates ethnonationalism, as federalism provides political institutions and a structure conducive to its continuation in the modern state. For

example, Nakarada a senior fellow at the Institute of European Studies, addressing the above conference pointed out that “Federal arrangements themselves can create an appetite for the successive creation of new states within states, which becomes a barrier to the formation of a stronger civil society” (2003:264). Arguing further, Nakarada highlights that “The paradox of federalism in a fragmented civil society is that the development of autonomy and collective rights are unavailable, while at the same time greater collective rights do not stabilize the community since collective rights are perceived only as steps toward the final aim- the independent state- thus leading to secession” (2003: 265). Maynes (1993) argues that scholars on ethnic conflict are wary of federal solutions because they tend to promote secession.

This mirrors the view traditionally held by the majority Sinhalese and the government of Sri Lanka. This is because, Tamil ethnonationalists have maintained that as Nakarada points out “... the state per se is perceived as a gain worth all the sacrifices” (2003:266). For example, A.J. Wilson, a well known Tamil writer who has become increasingly sympathetic towards Tamil secession argued recently in writing on Tamil ethnonationalism that “if its sense of deprivation goes beyond a certain limit, the minority will seek a way out of the impasse by agitation and in the last resort by a demand for separation, even if this will result in a lower standard of living (2000: 12).

Here, a prominent Political Scientist specializing on federalism Kimlicka’s (1998) observations deserves our attention. Summarizing the basic arguments on the inability of federalism to resolve the ethnonationalist problems Kymlicka points out that “there are limits on the ways that boundaries can be drawn in a federal system, and on the way that powers can be distributed – limits which seriously reduce federalism’s ability to accommodate the aspirations of national minorities. Moreover, even when federalism is working well to satisfy these aspirations, it is likely to reinforce the belief that the group is able and rightfully entitled to secede and exercise full sovereignty. This indeed is the paradox of multinational federalism: while it provides national minorities with a



workable alternative of secession, it also helps to make secession a more realistic alternative to federalism" (1998:142).

Second, federalism has not led to the disappearance of ethnonationalism in any state; ethnonationalism is only contained and may be passing a dormant state only to erupt at a later date as in the case of Yugoslavia and the former Soviet Union. Nakarada, argued that "in principle, the federalist formula provides the most accommodating framework for multi-ethnic societies, it is not a pre packaged panacea" (2003: 261). In fact most of the recent writing on ethnonationalism and federalism around the world, specially in countries like Canada and Spain have highlighted the continuation and even intensification of minority ethnonationalism and secessionism in these countries.

Third, one of the strong arguments against federalism's ability resolve ethnonationalism is the intensity of pre-federal ethno-political sentiment; the higher the intensity, the lesser the ability to resolve it through federalism. A prominent scholar on federalism, Gilbert (1998), elaborated that the pre-federal stage politics of minority ethnic groups claiming ethnonationalist sovereignty could jeopardize the federal solution. He argues that. "Nationalist cases based either upon alleged will of the people or upon supposed cultural distinctness are both to be mistrusted" (220). The ability of federalism to resolve ethnonationalism "led by heresthetic politicians attempting to change political institutions for their own self interests" will also not be successful as pointed out by a political scientist, Dowding (1989: 77). Agnew (1995), a prominent political geographer has pointed out that recently federalism is facing high incidence (e.g. USSR and Yugoslavia) of failures or to be in perpetual crisis (e.g. Canada and Spain). Another political geographer, Smith (1995), also questioning the ability of federalism to resolve ethnonationalist crisis, argues that "federal systems that have continued to prosper, such as Switzerland, may owe their good fortune less to federalism than to the fact that divisions are overlapping rather than territorial. Spencer and Williams (2002), two political scientists argue that federalism "reinforces the very divisions it seeks to manage and ... for elites to

use local power bases, constructed and articulated in nationalist terms, to press for more and more power, even at the risk of pulling the system apart". The pessimism towards federalism's ability to solve ethnonationalist crisis emanates from, according to Spencer and Williams, the fact that "most fundamentally, even the most diverse forms of federalism are after all grounded in a recognition of the temporal and logical priority of the national.

Federalism, because of its territorial nature, can resolve ethnonationalist problems so long as ethnic groups are territorially concentrated. As Simeon and Conway (2001) coherently point out federalism is not "a plausible solution when minorities are spread widely throughout the majority population ...." (338). Cairns (1977) argues that federalism by its very nature privileges some groups and undercuts others. True, there is an ironic logic to federalism. The politically organized and territorially concentrated groups who pose a challenge to the existing state are privileged and those groups who are less organized, peaceful and living scattered, even if they are discriminated against are marginalized. What is most ironic is that the very minority ethnic groups that enjoy the fruits of federalism often deny the same to the other minority groups living among them. Snyder (1990) described this as the ABC paradox of nationalism.

The main argument against federalism as a solution to the ethnonationalist problem in the modern state can be summarized as follows.

1. Some of the most successful federal states (US and Australia) did not emerge to cater to ethno-territorial secessionist demands of minority ethnic groups.
2. Minority ethno-secessionism has not been resolved by introducing a federal form of government in some states such as (India, Canada, and Spain)
3. Having a federal system per se will not resolve secessionist problems. It is the political commitment of all parties to uphold federalism that is essential.
4. Democracy and rule of law in both the political and the civil society must accompany federalism, if it is to be successful.
5. Federalism should not be sought for vested interests but for its intrinsic

objective of maintaining uniqueness within the larger state.

6. Defining federal units can create entirely new and perhaps more substantial problems and conflicts than earlier.

One of the prominent scholars on federalism –Kimlicka in answering the question “Is federalism a viable solution to secession” concludes as follows:

However, we shouldn't be overly optimistic about the extent to which federalism provides a viable long-term alternative to secession. It is wrong I think to suppose that federalism provides a tried and true formula for the successful and enduring accommodation of national differences. It provides at best a hope for such an accommodation, but to make it work requires an enormous degree of ingenuity and good will and indeed good luck. ... A well-designed federal system may defer secession- perhaps into the indefinite future. But secession will remain a live option in the hearts and minds of national minorities. Indeed, it is likely to form the benchmark against which federal systems are measured (1998: 142).

Pointing out the potential of federalism to resolve ethnonationalist problems, Kimlicka argues that while there are some circumstances where federalism is relevant, these very same circumstances make it likely that federalism will simply be a stepping-stone to either secession or a much looser form of confederation. In general, it seems to me unlikely that federalism can provide an enduring solution to the challenges of ethno-cultural pluralism. It may restrain these challenges for a period of time, but federal systems which are designed to accommodate self-governing ethno-cultural groups are likely to be plagued by deadlock and instability. ...where federalism is needed to keep a country together, the odds that country will remain together over the long-term are not great. Federalism may be the best available response to ethno-cultural pluralism, but the best may not be good enough” (1998:113). What then? This is the question I will try to answer in the next section of the paper as the political preparedness of the Sri Lankan society to accept federalism will directly depend on these factors.

## **Socio-political requirements of federalism**

My initial reading of the federal systems around the world revealed to me a wide variety of non-constitutional factors cross cutting culture, politics, law and even simple common sense. The argument that federalism, once established will create the conditions necessary for its own sustainability is nothing but wishful thinking by apologists as clearly shown from the experience of failed federal states.

One of the foremost authorities on federalism, Livingston, very lucidly pointed out that “the essence of federalism lies not in the constitutional or institutional structure but in the society itself. Federal government is a devise by which the federal qualities of the society are articulated and protected” (1956:1-2). Forsyth (1989), another scholar on federalism pointed out that federalism will not be successful on its own but is contingent upon a wide range of conditions such as “the depth of ethnic passion; the number of competing groups in question; their relative size and strength; the depth of economic and education disparities between them; the presence of a will to unity; the reality of concrete benefits to be derived from unity; the readiness to distribute the benefits of union equitably; the political tradition of people concerned; the presence or absence of democracy at local level; the links between the groups within and beyond the borders of the state; the external situation in general” (6-7). It becomes obvious that many socio-political issues beyond the purview of a constitution have to be tackled to make federalism successful.

Sri Lanka has a long way to go in these areas before the introduction of a federal constitution. For example, the depth of ethnic passion among the major communities prevents them from openly sharing power and there does not appear to have the will to unite especially among the LTTE-led Tamil ethnonationalists. LTTE-led Tamil ethnonationalism seems to interpret the Sinhalese and Tamil politics within the Sri Lankan state as a zero sum game in which the Tamils are the eternal losers. Therefore, a fundamental change in the

political ideologies of both Tamils and Sinhalese is needed as a precondition for federalism. Further, Sri Lankan society needs to be committed to democracy at all levels. Respect for human rights and democratic rights are sine-quo- non for successful federalism. Federalism cannot be imposed if it is to be successful. Federalism has to be accepted and adopted voluntarily by the groups involved.

Another set of requirements for federalism to succeed is cooperation and collaboration between the center and the regional units. Bednar (2001), an authority on federalism pointed out that federalism will be successful only if two political conditions are met. They are first, the national forces must be structurally restrained from infringing on regions and second, regional temptations to renege on the federal state should be curbed and an independent judiciary. These two socio-political tendencies, which in effect are anti-federal qualities, are the very reasons for the failure of the unitary yet multiethnic states. Mr. Vojislav Kostunica (2003), the President of the Federal Republic of Yugoslavia stressed the importance of commitment and cohabitation of the two conflicting parties to make federalism successful. Fernandez cautioned that “for federalism to prosper, a climate of tolerance and a political culture of accommodation and consensus is a necessary condition” (2003:583). Metzler-Arnold pointing out that federalism means responsibility at all levels argued that if it is to succeed “there must be a device for dialogue and cooperation – both between the central state and the member states and between one member state and another” (2003: 587). Amato, referring to Elazar argues that “... for a federation to function it is essential that its component parts be intent on collaborating with one another and not working against one another” (2003:579).

Here again Sri Lanka needs fundamental changes in both political and civil society. The LTTE has adopted an extremist ethnonationalist ideology and strategy which is generally rejected by modern democratic societies. The anti-Sri Lankan and anti-Sinhalese ideology has prevented any collaborative arrangements between them and the center as shown by recent developments and the refusal to attend the latest round of negotiations. The LTTE has to re-

evaluate and change both its ideology and strategy from separation and violence into power sharing and democracy before the introduction of a federal structure. The Sri Lankan government and the majority Sinhalese similarly should in all sincerity demonstrate its willingness to accommodate Tamil politics as an integral component of the Sri Lankan polity. The Sri Lankan government should be willing to re-evaluate and change its centralizing ideology and practice and allow the provincial units to function independently and with all the powers devolved to them. This demonstration is needed to convince the Tamils that federalism might offer a meaningful solution to their political problem.

Stressing the point that civil society is a crucial determinant of the success or failure of the federal formula, Nakarada argues “success in resolving ethnic conflicts requires a double operation. Firstly, there should be intervention into the social infrastructure and civil society. The second operation is to establish the decisive balance between individual and collective rights, freedom and self-determination...” (2003:265). Fox, a scholar on federalism also pointed out the role of civil society accountability as an important requirement in successful governance and federalism and Saunders underscores this by arguing that in federal states civil society is “critical for effective democracy (1999: 36). Another scholar, Roy pointed out with respect to the Indian federal experience that “the success of federalism also depends on civil society and the political culture” and thus “for a federal system to succeed, a climate of tolerance, compromise, and the recognition and respect for diversities is imperative” (2003:325).

The Sri Lankan civil society has been very largely undermined by the political society both among the Sinhalese and more so among the Tamils. This process which started in the early 1970s has now reached at its highest level. Thus, there is hardly any effective checks by the civil society on the political system in general and Tamil society in particular and not much of inter-ethnic interactions taking place at the level of civil society. Ethno-political polarization is more visible in the civil society preventing the “climate of tolerance,

compromise, and the recognition and respect for diversity” which are essential imperatives for federalism.

Nakarada elaborating on the wider processes pointed out that “in addition to such factors as federal arrangement and institutions the character of civil society and the effects of globalization as an overriding processes of transforming the nation state, local settings and actors are decisive in determining the conflict resolution capacities of federalism” (2003: 261). This is crucial as it highlights two factors – local setting and actors - that have been contentious in Sri Lanka. The local setting is characterized by an existence of a de facto state in LTTE controlled areas and the threat of terrorism, and the bona fide of actors – the leaders of the LTTE, the UNF leaders and the opposition politicians are viewed by each other with apprehension and suspicion.

Nakarada also highlighted that federalism will not succeed in a violent society. The problems that are likely to arise in a federal system need to be resolved in a non-violent manner. Otherwise, the whole rationale for moving into federalism is undermined. Elaborating further, Nakarada makes one of the most pertinent observations that “ creating ethnically clean states and resolving the minority problem by ethnic cleansing is currently the most dangerous tendency hindering the affirmation of federal principle” (2003: 265). The point is extremely valid for Sri Lanka, as the LTTE has been engaged in ethnic cleansing of the so-called Tamil homeland purging it of the Muslims and Sinhalese in the most brutal manner.

Amidst all these scholarly pronouncements and predictions, I was fascinated by the simple yet paramount concept of “enduring principle proposed by Gitelson, Dudley and Dubnick (1988). They have basically summarized the fundamental non-constitutional requirements of federalism which are found scattered in other writings as the rule of law, republicanism, separation of powers, checks and balances and national supremacy. Gitelson’s simple but powerful argument is that the US political system, characterized primarily by federalism is maintained through these enduring principles. These principles are

universal requirements of a democratic society, irrespective of the form of government. Empirical evidence from around the world shows that if some or all of these principles fall apart, so do the federal structures based on them. The failure of federal states such as the Soviet Union and Yugoslavia can be directly attributed to the collapse of the above principles. In Sri Lanka too the future of federalism will undoubtedly depend on the degree of adherence to these principles.

Kostunica arguing against secession – the ultimate threat to federalism – points out that “...the prevailing opinion in public law, tradition and practice is that a unilateral right to secession cannot exist.... (2003: 561)<sup>11</sup>. Haysom (2003) pointing out that “federal units do not usually have the right to secede as a matter of conventional practice or even under international law” warns that “whether secession is a real option in a federal system often has little to do with the constitution itself” directly implying that non-constitutional parameters are required to maintain a federal system. He is right, and Sri Lanka can learn from it, when he argues that ... when a nation disintegrates, it may be pedantic to examine the legality of the disintegration” (2003: 228). The implication in Haysom’s argument is that the success of federalism depends not on the dictates of the constitutions but on the dynamics within the social and political realm. This is true for Sri Lanka as well.

In the light of the above discussion, both the political and civil society of the Sinhalese and the Tamils need to seriously re-examine their ideologies and practices and make certain fundamental adjustments and corrections if we are to move towards federalism as a solution to the current ethnonationalist crisis in Sri Lanka. Some adjustments are listed below.

*Sinhala side*

1. Centralization of the governing political organizations and bureaucracy has to be reduced.
2. Symbolic centralizations of the Sri Lankan state have to be minimized.
3. Insincerity and expediency of southern politics has to be curtailed.
4. Democratic practices have to be respected and upheld.
5. A long term vision for a multi-ethnic Sri Lankan state has to be devised by



consensus of all the major political parties.

### *Tamil side*

1. The fact that Tamils are a minority in Sri Lanka should be accepted.
2. The exclusive ethnic interpretation of "Tamil homeland" has to be withdrawn along with its unrealistic boundaries.
3. The anti-Sri Lankan and anti-Sinhalese ideology of Tamils have to be checked and the fact that they are citizens of the Sri Lankan state must be accepted.
4. The geopolitical impossibility of Eelam - the separate state for Tamils must be understood.
5. The fact that a large segment of Tamil population live outside the so-called "Tamil homeland" must be understood as a socio-political ground reality.
6. Ethno-polarization of Tamils
7. Democratic rights of Tamils must be respected.
8. Violence and terror must be renounced totally.

### **Conclusion**

Federalism has been accepted as the best long term alternative to the secessionist demand of the LTTE and the disintegration of the Sri Lankan state. Both the LTTE and the Sri Lankan government appeared at first to be working genuinely toward the federal solution and the Sri Lankan government and the politicians in the south seem to have accepted that federalism will take root in society the moment the federal constitution is introduced. This is a misconception at best and is dangerous as it could create false hope and lead the country on another wrong path. It is important therefore to examine both the positive and negative aspects of federalism's ability to resolve the ethnonationalist crisis. The objective of this paper was to highlight these arguments available in the literature on federalism. It is important that we approach federalism from a broader and realistic point of view taking all socio-political and economic as well as geopolitical realities into account. Policy makers must understand that narrowly constitutionalist construction of federalism is inadequate to address the complex issues in the present crisis in Sri Lanka. Let me conclude with a

quotation from Elazar (1984) that is directly relevant to Sri Lanka today.

Federalism is more than an arrangement of governmental structures; it is a mode of political activity that requires the extension of certain kinds of cooperative relationships through any political system it animates (2).

In this context, the question that demands our attention is 'whether the cooperative relationships necessary for federalism exist in Sri Lanka'. The answer is obviously mixed.

For a long time, southern politics dominated by the Sinhalese has resisted any form of federal arrangement, arguing that it is but the first step toward eventual establishment of a separate state in Sri Lanka. However, during the last two decades southern opinion has matured into accepting devolution of power through some federal arrangement as a permanent solution to the problem although there is no agreement on the unit of devolution and the powers to be devolved. The position of the majority of the Sinhalese electorate and their political leaders have qualitatively and fundamentally changed towards extensive power sharing since the mid 1990s as epitomized by the election manifestos of both major political parties- the United National Party and the Sri Lanka Freedom Party - and their politically mature approach to the problem. However, the position of the LTTE which has become singularly the de facto spokesperson for Tamil ethnonationalism is at best obscure because the actual politics of the LTTE has been to move the Tamil population in the direction of a separate Tamilized state rejecting the Sri Lankan state. In their every day politics as well as on political and other ceremonial occasions every attempt has been made to reject the Sri Lankan state, its writ, suzerainty, sovereignty and symbolism and to inculcate the idea of Tamil Eelam. It is ironic that the Sinhalese who rejected a federal solution are now embracing it while the Tamils who wanted it are now rejecting it.

However, global geopolitics defined by the US- led west and regional

geopolitics defined by India have permanently sealed off the possibility of a separate state of Tamil Eelam ever becoming a reality in Sri Lanka. Given this, the real challenge is for the Tamil ethnonationalists led by the LTTE to re-program its cadres and supporters to accept a federal arrangement within the Sri Lankan state. The embryonic stage of this trend is visible in the LTTE's consent to participate in discussions with the government to seek a long term solution to the problems of the Tamil community.

The success of federalism in Sri Lanka depends not on how well the federal constitutions are formulated and how efficient the federal structures and institutions are organized but primarily on how committed the civil society, bureaucratic society – civil servants and administrators, and the political society – political parties and political elite are to the fundamental federal principle of “self rule with shared rule”. It is important to note that federalism is as much a way of life and of thinking as a constitutional and a governmental arrangement. Federalism will be successful only if these two aspects complement each other.

---

## Notes

1. Nation is defined as an ethnic group which demand or maintain political autonomy over a distinctive territory. Ethnonationalism is defined as the practical politics of making or maintaining an ethnically defined nation.
2. See for example, Farmer, 1963; Kearney, 1967; K. M. de Silva, 1986; Wilson, 1988, 2000; Tambiah, 1986; Dissanayake, 1983; Ponnambalam, 1983. Narayan Swamy, 2006
3. See K. M. de Silva 1986 for the democratic phase and Narayan Swamy and WAPS for the violent phase.
4. See K.M. de Silva (1986) and Wilson (2000) for details.
5. In the rest of the paper the federal government refers to the larger national level government and regional government refers to the smaller constituent governments within the federal state. The regional governments in federal systems are known