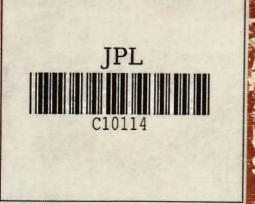
PROBLEMS OF DEMOCRACY
CONSTITUTION ALISM AND
POLITICAL VIOLENCE

Edited by Ulrich Everating

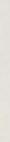


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PROBLEMS OF DEMOCRACY, CONSTITUTIONALISM AND POLITICAL VIOLENCE



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Edited by Ulrich Everding

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Acknowledgements .

The present publication has grown out of a fruitful international cooperation between the Goethe-Institut Colombo, the Law and Society Trust and the University of Colombo.

I wish to record my sincere thanks for the overall support and dedication of Dr. Neelan Thiruchelvam, Director of the Law and Society Trust, and Prof. G. L. Peiris, Vice Chancellor of the University of Colombo. With their help and collaboration various seminars, lectures and discussions relating to the subjects of democracy and constitutionalism could be held at the Sri Lanka Foundation Institute and the University of Colombo.

These events were the basis for the present publication.

Many individuals attached to the above mentioned institutions contributed their time and energy towards the holding of the seminars and the preparation of the publication. I wish to thank them all.

Last, but not least, I wish to thank all those Sri Lankan and German Scholars who contributed to the topical field of the present volume, and who have helped to inspire and encourage constructive dialogue and fruitful consultations between scholars and experts from Germany and Sri Lanka.

Ulrich Everding, Director, Goethe-Institut Colombo, Sri Lanka.

September 1st, 1993.

Foreword -

The present publication is the sequel to a meeting of German and Sri Lankan specialists that was organized jointly by the Goethe-Institut Colombo, the Law and Society Trust and the University of Colombo. The aim of the meeting was a basic exchange of views and information on subject areas such as Democracy, Constitution and Political Violence.

The lectures, seminars and discussions all dealt with the crucial questions of legislative power, state, nation and - against this backdrop in that context - with the burning questions of our time, e.g. the constitutional revolution in Eastern Europe, the discussion on constitutional reform in Sri Lanka, the question of Youth and Violence, problems of ethnic conflicts in Sri Lanka and South Asia, the problem of hostility towards foreigners in Germany and Europe.

The objective of the discussions was to help the forum of specialists, researchers and the interested public, identify the concrete problems confronting the country concerned in a wider, more general context and so to pave the way for a process of inter-cultural learning through contrastive treatment of comparable phenomena of the other country.

Doubtless, the following combination of case-studies, type-studies (representative studies) and theoretical confrontations, can only be seen as a modest beginning of a dialogue that can be continued. Differing methods of presentation, understanding and definition of concepts which surfaced would perhaps have required an even more intensive process of mutual understanding. This aspect, however, received relatively little attention during the seminar proceedings. Yet, the value of a joint publication lies just in these differing approaches to a given subject. Indeed, it is most probably here that interesting insights are possible in each other's positions.

A number of open questions confronting state and society originating in the discussion on "Constitutionalism" have been taken up by experts.

There is no doubt that constitutionalism is an achievement of very great significance in political life since the bourgeois revolutions of the 17th and 18th centuries in England, France, and America. In the history of it's origin,

the constitutional state has been practically geared to the making of new institutions. Behind this process lay the expectation of having found a civilized way of mastering the social, economical and political fields of life. But the meaning of 'constitution' can not only be understood in terms of a codification of the results of successful revolutions. It is also a legal and rationalized form of political and social self-reflection on the distribution of power, the fight for power, the discussion of political alternatives and on the controversy of the meaning of progress and development.

Ulrich Preuss infers from a study of the history of European constitutional states that a minimum of stability if necessary before a constitutional state can exist. The minimal pre-requisites can be the ethnic homogeneity of the population (as it is implied in the German constitution or in the constitutional reforms in Eastern Europe). They could also add up to the existence of a common will that welds individuals together, as in other European nation-states, for example, in France. Ulrich Preuss argues that a kind of institutional integrity of the state, including it's monopoly of legal coercion, and an integrity of the nation state had to be established before the institutions of the constitutional state gained stability.

The observation that the constitutional state is dependent on certain preconditions in order to be functionable, serves as a key argument for the discussion of the question, whether constitutionalism can contribute to the solution of problems of countries which are torn by ethnic, religious or lingual conflicts.

Dr. Thiruchelvam differentiates - from a Sri Lankan perspective - between an intense faith in the triumph of constitutionalism and the equally intense scepticism mainly about the efficacy of constitutional arrangements to cope with ethnic and religious conflict, political violence and electoral manipulation.

Whereas these doubts certainly reflect the huge gap that exists in all South Asian nations between an elite discourse and those who remain outside the discourse, they also challenge the notion of the hegemony of constitutional ideas as an extension of the colonial past, a notion that lacks concepts and categories capable of understanding the present experiences of the South

Asian societies. The protection of ethnic, religious and linguistic groups has to be actively addressed and put in a context of reconciliation of individual rights and group rights. Taking up this fundamental criticism but also reflecting on shortcomings of the constitutional state in the western world, Dr. Thiruchelvam argues convincingly for an enrichment of the discourse on constitutionalism. He suggests the extension of fundamental rights to include fundamental belief systems which are at the core of specific religious traditions and respective social value systems of the people within South Asia.

Roland Eckert, a member of the "Commission on Violence", that had advised the German government on the prevention and control of violence (and had been asked to develop concepts, that should be practically oriented so that they could be implemented in jurisdiction, administration and law) tries to make out the underlying reasons for varied phenomena of political violence typical for the European industrial societies and the implications of this type of violence on constitutional issues. Riots, youth protest, squatter conflicts and new social movements point to social and other long termed virulent problems of society that are not resolved - even under the rule of law in modern states, in which relations amongst citizens, democratic formation of opinion and the administration of justice is supposed to be guaranteed by procedural channels of the constitutional conflict regulation. The often reported hostilities against foreigners in Germany for example point to the issue of immigration, that had been misused in electoral campaigns by political parties and thereby contributed to a legitimization of xenophobic violence, although this was certainly not desired. One reason to resort to violence obviously seems to be the subjective experience that unsolved problems may be solved by violent means. Another point of interest to the Sri Lankan researcher may also lie in Eckert's observation that the problems emerging out of south-north and east-west immigration may generate ethnic conflict in industrial societies. So far ethnic conflict was often referred to as inherent in South Asian and recently in East European societies, but had long been thought to have been overcome in Western Europe.

Jani de Silva's study on political violence in contemporary Sri Lanka gives

an important insight into the specific ideological discourses of the JVP, an organization that since 1971 has had a specific role in organizing youth uprisings and revolts. Although somewhat different in approach, methodology and language, the prime relevance of her research work, which was made possible by the International Centre for Ethnic Studies, lies in the evaluation of authentic source material that was secured from in-depth interviews, dialogues and discussions with students aged between 16 - 19 in 1991 and 1992. For the uprising between July 1987 and December 1989 the JVP had recruited the majority of its members mainly from deprived and frustrated rural youth.

The individual resort to violence in the JVP set-up - in many cases enforced by group pressure, indirect threats and direct force - may have originally grown out of the widespread perception on injustice and other disparities attributed by the concerned to the effects of liberal capitalism but it also becomes clear from the interviews that large parts of rural school going youths had become victims of power struggles, which left them without shelter between the JVP violence on one hand and the persecution of the state on the other.

The ethnic problem - most virulent in the war in North-East Sri Lanka - is finally taken up again by Sunil Bastian. With special reference to the introduction of the system of provincial councils in Sri Lanka. Sunil Bastian discusses the problems of the evolution of a political structure that could be the foundation of a multi-ethnic society. One of the major political debates in Sri Lanka since Independence has been the safeguarding of minority rights in constitutional arrangements. How these attempts have been dealt with by constitutional amendments, legislative bodies and the state executive and how they have been reacted to by the Tamil minority and the Sinhala majority is seen as determining the prospects for regional autonomy and for an integrated multi-ethnic society in Sri Lanka.

The problems presented and analysed by the experts and researchers may not have been solved for good. It seems to be certain that in all the topics there remain questions for debate and controversial discussion within the constitutional and political discourses in the societies of modern states. I am convinced that the chances for a peaceful conflict resolution, the prospect of further democratization and the reduction of political violence will be higher in both of our countries, if through mutual consultations experts and scholars can freely exchange the results of their research works and their views on specific issues like the development of the modern state and society and if these views would be more often considered by those who bear political responsibilities.

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Introduction .

The seminar on "Problems of Constitutionalism, Democracy and Political Violence", organised by the Goethe-Institut, the Law and Society Trust and the University of Colombo a few months ago, was indeed most topical and opportune. It brought together several scholars who had reflected deeply on these themes. Their insights and perceptions are of great value in arriving at a balanced appraisal of many of the volatile issues which are part of the continuing discourse on this issue.

The contemporary Sri Lankan experience indicates the urgency of addressing these problems in an objective and dispassionate manner. The fundamental premise of the social contract which regulates the relationship between the State and the people presupposes, as an essential element of its viability, some degree of recognition of dissent and respect for opposing points of view. This consideration has heightened importance and relevance because of the basic realities of community life in South Asia. Our societies are, typically, multi-ethnic and multi-cultural, so that values predicated upon pluralism have the effect of reducing tension in public life, and in the final analysis, ensuring the very survival of the social fabric.

Constitutionalism is a basic value which is explicitly acknowledged in our political culture. The constitution represents the most sacred form of enacted law. The constitution regulates, in a basic sense, the relationship between government and being governed. It provides a framework within which the organs of government set about their essential tasks, and it defines the nature and scope of interaction among different instrumentalities of government. The most important element of the constitution is that it supplies the framework controlling the parameters within which different institutions of government may exercise their authority. It defines the vires of institutions of government.

This is a matter of basic importance in regard to the objectives of public law. One of the irreducible axioms of public law is that governmental discretion must necessarily be circumscribed. The notion of unfettered discretionary power is altogether repugnant to the foundations of our system of public law and administration. The most important purpose of

the values which underpin constitutionalism is to ensure that public power is exercised only in pursuit of objectives which have a direct relationship to the well-being of the community at large. These values are intended to mitigate against the arbitrary and capricious use of governmental power. However, it needs to be recognised that none of the contradictions of our societies is the evident dichotomy between constitutional values in the abstract and many aspects of empirical experience which are manifestly at variance with the values which are professed. One of our most compelling social needs, therefore, is to identify ways and means of reducing the gap between aspiration and reality and achieving an adequate degree of conformity in practice with the values on which the constitutional structure is based.

Democracy connotes a form of representative government which underscores the paramount nature of the concepts of legitimacy and accountability. The authority of the modern state has unavoidably grown because of the diversity of functions which the state has, of necessity, to undertake in order to satisfy the complex needs of the community. The greater the volume of power which is at the disposal of the modern state, the more important it becomes to devise effective modalities for controlling and containing the exercise of power. A sophisticated system of checks and balances is therefore perceived in modern society as sine qua non for the achievement of the goals of the democratic way of life.

In most Asian political cultures this also entails the viability of mechanisms for devolution of power. Indeed, the greatest challenge, perhaps, which a considerable part of the Asian community will have to face during the next decade concerns the extent to which the concept of unified nationhood is capable of being reconciled realistically with the intensity of aspirations entertained by linguistic, religious and cultural minorities. Some of the burning issues in this area were addressed most perceptively and imaginatively by the contributions made at the seminar.

Political violence, regrettably, is a fact of life in many of our societies. Corrective action has to consist, in the long run, of properly structured initiatives directed towards the strengthening of political and social institutions. A great deal of thought has to be given to methods of fortifying

such democratic institutions as the press, the legislature, the courts, the ombudsman and non-governmental organisations. Appropriate mechanisms which ensure that the elected government remains responsive to the priorities and aspirations of the people also call for greater attention than they have received.

A feature of political violence is that it does not generally manifest itself overnight. It is a gradual and incremental phenomenon. When problems are not addressed and resolved at the incipient stage, polarization rapidly occurs. There is erosion of middle ground; the willingness to compromise, the spirit of give and take, cease to exist. Issues tend to become so tarnished with emotion that objective, dispassionate thought becomes virtually impossible.

A spur to political violence is the impression of alienation. When the belief becomes entrenched that no dialogue or rational intervention is likely to make a substantial impact on the decision making process, when a generation comes to believe that the existing social order holds out no hope or promise to them, the impetus towards launching a frontal attack on the established social order is significantly strengthened. The need of the hour is perception and sensitivity characterising consultive mechanisms and procedures. This same spirit of pragmatism is called for in the formulation and implementation of policy.

If these issues received recognition and emphasis in the course of the workshop - as, indeed, they did - the organizers have reason to be well content.

Professor G. L. Peiris, Vice-Chancellor, University of Colombo, Sri Lanka.

September 1st, 1993.

THE STATE'S MONOPOLY OF LEGITIMATE COERCION, ETHNIC HOMOGENEITY AND THE CONSTITUTIONAL STATE

Ulrich K. Preuss

A comparative view on the present political world system reveals some significant correlations between the political systems of states and their economic conditions. Although there are exceptions, in general we may say that constitutional democracies enjoy a relatively stable economic growth, a more or less satisfactory level of mass employment, a balanced foreign trade rate, and a relatively stable currency which in most cases is freely convertible. It is also worth mentioning that in the last fifty years in some democratic countries, particularly in the West European industrial societies, the extremely unequal distribution of wealth, life chances, education, and health has been mitigated to a respectable extent. Moreover, despite the tendency of the industrial societies to over use scarce natural resources and to pursue the principle of efficient resource allocation, i.e., of profit maximization at the expense of the integrity of natural assets, the standard of environmental protection has increased considerably in the last decade or so.

On the other hand, there is much evidence for the assumption that countries with an authoritarian political system, particularly countries in which we find neither free and secret elections, nor a pluralist party system and party competition, nor a sphere of civil society that is independent of the state, are mostly characterized by mass poverty and mass unemployment, an extremely unbalanced foreign trade exchange, the non-convertibility of their currency due to the economic inferiority of the respective country, an extremely unequal distribution of wealth and life chances, and, last but not least, by an excessive magnitude of ecological damages. As I said, these are correlations, not necessarily causal explanations, and there are exceptions. However, in order to understand our world it might be useful to generate some hypotheses about the causal relations between the two kinds of information about

different groups of countries. More precisely: is the political organization of a society as a constitutional democracy a necessary pre-condition for the thriving of a national economy?

Of course, it is no less appropriate to hypothesize the other way round: is a sane and stable economy the necessary pre-condition for the emergence and endurance of a constitutional democracy? Much has been written about the economic, cultural, and religious conditions which are regarded as supportive of democracy. I do not intend to give an account of the different findings. Rather, I want to turn your attention to some distinct conditions of democracy which have been mostly neglected in the last decades of the Cold War and which have recently gained new relevance in Europe. Here I refer particularly to the processes in which after the revolutions of 1989 the post-communist countries of East and Central Europe are trying to establish constitutional democracies. But the difficulties which West Europe faces in these weeks in its quest for the formation of a European Political Union reflect some deep structural problems which are inherently connected with the notion and the presuppositions of the constitutional state.

1

If we analyze the history of the West European constitutional states, -starting with their formation as states in the modern sense of the term in
the 17th century, evolving to nation states in the 18th and 19th century,
arriving at the present stage where they are about to transform themselves
into an unprecedented political organization, namely to integrate into a
supranational state, whatever this may be --, we get the impression that
the constitutional state itself is based on presuppositions which might be
even more relevant for the political and economic development of a
society than the very structures and practices of the constitutional state
themselves. Even if a particular society has established the structures of
the constitutional state this may prove to be totally pointless if the

¹ See, e.g. H. Eckstein

requirements which precede the constitutional state are not satisfied.

If we look, for instance, at the post-communist societies of East and Central Europe, including Russia, we clearly realize that the institutional devices of a modern constitutional state have been established more or less perfectly. However, what is prevailing in these countries is a deep disappointment of large portions of the population with the capacity of the new political system to cope with the economic and social problems of an order which they had passionately yearned for under communist rule. Indeed, in these countries the life situations of many ordinary people have dramatically deteriorated under the auspices of the new political order. What is even more serious, the new political structures of the constitutional state rarely generated the degree of political stability for alluring foreign investors. Evidently, the formal installation of the institutions of the constitutional state as such is certainly a necessary, but not a sufficient condition for their satisfactory functioning. If this holds true, the question arises which, additional preconditions are required for the smooth operation of the constitutional state.

There is first, one requirement which is to the best of my knowledge undisputed, namely: the constitutional state must be a state in the modern sense of this term, i.e., it must be a political organization which monopolizes the authority to wield legitimate coercion, including violence, thus placing all individuals in the equal status of subjection to its power, outlawing any kind of self-help and self-justice, and prohibiting any kind of intermediary force, which could either claim loyalty from its members incompatible with the obligations and duties vis-a-vis the state, or which would be able to accumulate so much power that it could become a competitor to the state. The classical definition of the state which Max Weber established reads, as you may remember, as follows: The modern state is "a compulsory organization with a territorial basis. Furthermore, today the use of force is regarded as legitimate only so far as it is either permitted by the state or prescribed by it"2, and, elsewhere: "Today legal

² M. Weber Economy and Society (eds. Guenther Roth and Claus Wittich). Berkeley/Los Angeles London 1978 (University of California Press), p. 56.

coercion by violence is the monopoly of the state"3.

At first glance it may appear strange to invoke the state's monopoly of legal coercion as one of the most important preconditions for the stability and smooth operation of the constitutional state, because this is accepted everywhere as the very essence of the modern state. There is a theoretical and a practical reason why I emphasize this pre-supposition of the constitutional state. The theoretical reason is that the modern concept of citizenship is founded on the state monopoly of legal coercion. Since this concept undergoes considerable changes in Europe and hence has become problematic in different aspects it is necessary to reconstruct its very fundaments. I will briefly touch upon this point at the end of this paper.

The practical reason why I highlight the state's monopoly of legal coercion is the experience of a serious malfunction of the institutions of the constitutional state whenever this requirement is not satisfied. These experiences are not at all confined to the past. We can discriminate different categories of cases: the first category includes one of the leitmotifs of European history, namely the struggle between the state and the churches (here I mean only the catholic and the protestant churches which together embody about 90% of the population). Both the church and the state claim obedience and loyalty from their members, and whenever these demands collide, the conflict of loyalties of the individual is only a disguised form of struggle about the supreme power in the polity. I should briefly mention here that the formation of the modern state in the Weberian sense -- its territorial basis, its monopoly of legal coercion, its compulsory jurisdiction about all actions taking place in the boundaries of its territory, its continuous operation -- was the result of long and cruel religious and civil wars in the 16th and 17th century in which the different religious denominations, churches, and sects not only struggled for the right religious doctrine, but for the imposition of their respective religious truths on all members of the society. The connection of religious -- and consequently also of epistemologic -- truth with political authority was one of the inexhaustible sources for civil war in 16th- and 17th-century-Europe.

³ loc. cit., p. 314.

As you know, in the history of political ideas it was primarily Thomas Hobbes' concept of a political order which is legitimized only and exclusively by its capacity to preserve peace and to prevent civil war, rather than by any claim to embody the truth, which provided a way out of the never-ending struggle for religious truth and metaphysical certainty. Also the French group of the so-called 'politiques', one of whom was Jean Bodin -- mostly professional jurists -- which taught that the state power should be neutral vis-a-vis the different and competing religious claims to truth, had a considerable influence on a new justification of the state. Their advice to exercise tolerance which eventually generated the freedom of religion about two hundred years later, pre-supposed that the basis of the policy was its capacity to preserve peace and order, to protect the individuals' property (in the Lockean sense of life, liberty, and estates) rather than to provide salvation goods.

The concept of sovereign state power and of the state's monopoly of legitimate coercion then, is the immediate result of a secular justification of the polity. It reacted to the emergence of a world which had lost its common religious fundaments and the economic basis of the feudal communal life as well. The European world of the 17th century had fallen apart, the universalism of the catholic world had been replaced by the plurality of subjective world views, of individuals, groups, sects, new social entities etc. How could one conceive of an order which was able to bind the individuals together, i.e., which was able to prevent civil war among them, without imposing on them a common social and cultural form of life which had lost its cohesive force?

As you know, this predicament of the European world of the 17th century was the starting point for the career of a completely new theoretical paradigm, namely the paradigm of interest. As Albert O. Hirschman has thoroughly analyzed⁴, the rationality, calculability and hence predictability of the interest—as opposed to the irrationality and unpredictability of the passions—became the key concept for the understanding of the world and the legitimization of individuals' actions since the 17th

⁴ A.O. Hirschman The Passions and the Interests

century. To struggle for wealth, e.g., which had been disqualified as a sin by the catholic church for centuries, now received a more and more positive coloring, until finally, it was praised as a virtue. The most drastic theorist of the interest as the basis of all social actions was of course Thomas Hobbes for whom the interest of the individual in his or her self-preservation was the only valid criterion for the legitimacy of his or her actions. Consequently, he became the most radical advocate of the sovereignty of the state and its monopoly of legitimate coercion. For him the undisputed authority of the state to keep peace and order was the only means to satisfy the individuals' interest in their self-preservation. In order to fulfill this task the sovereign had even the right to determine the religious and the episemological truth which his subjects had to believe in, because in Hobbes' view, it was primarily the quarrel about the right religion which had lead the people to argue and to fight with each other, and finally to violate peace and order and to engage in civil war.

In a nutshell, the genesis of the modern state, its monopoly of legitimate coercion, and its legitimization as an order which is specialized in the maintenance of peace and order in the external world is due to a process of secularization. Perhaps it is more correct to speak of a process of continuous domestication of the religious energies of the European societies since the 17th century. In the perspective of political and constitutional theory, the relations between state and churches were of course particularly important. There have been different answers to this problem -- reaching from the concept of a state church, predominant in Germany until the 19th century and still valid in contemporary England, up to the most radical separation of church and state in the nonestablishment clause of the first Amendment of the U.S. constitution -all of which are anxious to safeguard the integrity of a sphere of politics, civil liberty and political obligation where the commands of the church have no legally binding character. Given the plurality of religious and value orientations in modern societies it is not surprising that the injection of particularly religious commands into the secular legal order -- like, e.g., the prohibition of divorce, the unconditional prohibition of abortion, or the denial of equal rights to women -- normally tends to weaken the binding character of the legal order. Its strength and

legitimacy rests in the strict separation of morality and legality, and this implies that it does not make any claim on the moral or religious beliefs of its citizens.

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But there is not only the church. The other so-called intermediary forces can acquire an amount of power and a degree of loyalty which could determine the authority of the political institutions of the constitutional state. In the twenties of this century the German constitutional doctrine was particularly suspicious of the political parties which were thought to weaken the allegiance of the citizens to the state, to distort the universalistic orientation of its constitutional institutions, and to serve as instruments for the usurpation of the state power by particularistic forces of society. To be sure, this argument dates back to the French Revolution. Its main theorist, Jean-Jacques Rousseau, contended that any kind of intermediary force between the single citizens and the state would prevent the emergence of a truly general will. It is this particular Rousseauist concept of democracy which requires that the sovereign power of the people be undivided and securely harbored in the state power - the state monopoly of legal coercion then, is a necessary consequence of the democratic principle, i.e., of the united will of the people. This principle prevails of course, in France. In Germany however, where the democratic revolution took place 130 years after the French Revolution and where the idea of a monarchical-authoritarian self-rule was deeply rooted in the country's history, the anti-pluralist attitude of many Germans, including the intellectuals, is certainly more due to this tradition of a homogeneous authoritarian state power than to the Rousseauist democratic notion of the undivided will of the nation. But both traditions -- the radical-democratic and the statist-authoritarian -- equally entail a critical attitude vis-a-vis the pluralist concept of democracy.

Having referred both to the state-church conflict and to the pluralismproblem I should mention a third category of cases where the doctrine of the state's monopoly of legal coercion is important. This is the more or less open coexistence of legal and illegal, i.e., criminal structures and their parallel exercise of power. Here I refer, of course, to the well-known situation in Italy which so far unsuccessfully has struggled against the Mafia. But if recent informations are trustworthy, then the interpenetration of legal and illegal structures is proceeding in other European states as well, not to speak of some Latin and Central American countries. Organized white-collar crime, particularly in the field of drug-trafficking, has been pervading many businesses and is suspected to have already undermined parts of the banking-system. The Italian case displays that the incapacity of the constitutional institutions to maintain the principle of legality and to enforce it in all spheres of the society has weakened their credibility and pushed Italy to the verge of a constitutional crisis. Moreover, the recent turbulences in the international monetary system also show that this crisis has serious repercussions on the economic standing of this country.

Finally, I mention a fourth category of cases which pertains to circumstances which may turn out to have the most dangerous consequences. I refer to the erosion of a unified state power in some of the post-communist countries of East and Central Europe. A view at Czechoslovakia, Hungary, Roumania, Bulgaria, Russia, not to speak of Yugoslavia conveys us the identical message: in these countries the "compulsory organization with a territorial basis", as Max Weber termed it⁵ does not exist. To be more precise, we must say that it does not exist undisputed. Two cases must be discerned: (1) considerable parts of the population do not accept the legitimacy of the state power, refuse obedience to it and aspire a state nation of their own: this has been the case with Slovakia, and with Slovenia and Croatia and may turn out to be the case with the ethnic Albanians who live in the boundaries of the territory of former Yugoslavia. Other secessionist movements in this area have acquired considerable strength. (2) the state claims some kind of political, ultimately also legal responsibility for parts of the population of a neighboring country. This latter case means that the territorial boundaries are no longer acknowledged as boundaries of political and legal

⁵ ibid., p. 56

responsibility for the members of a state. Examples of this latter case, is the claim of the Hungarian government, to be responsible for the Hungarians in Slovakia and Roumania and the analogous claim of the Roumanian government, to have duties vis-a-vis the Roumanians in Moldavia (which is a part of Russia). The two cases merge in the Serbian claim not to acknowledge any government over the Serbs which is not Serbian. It is evident that constitutional institutions cannot operate if the territorial boundaries and the reach of the state power are disputed and if the political struggle acquires the intensity of civil war.

While this conclusion is, of course rather trivial, this truism leads us to the theoretically more interesting and practically extremely important question of whether there are conditions of the monopoly of legal coercion of the modern state which are by no means trivial and which cannot be presumed to be given in any society.

III

This question leads to the **second** of the two preconditions of the modern state about which I spoke above. This one is much more controversial than the first one. I am talking about the claim that a minimum degree of homogeneity is the indispensable basis of the modern state.

The formation of the modern state in Western Europe is a rather complex process which advanced in a period of about one century. To tell the story of the modern European state would require to tell a plurality of stories about the different state which emerged in the 17th century. Limited time does not allow to do this here. However, it is possible to enumerate a few common elements of all continental European states which are commonly regarded as constitutive of the modern state: (1) the establishment of a bureaucracy which covered the entire territory of a prince or king, (2) a more or less general tax system, and (3) a permanent army. All individuals, previously integrated in particularistic feudal life contexts, were transformed into subjects of the supreme power of the sovereign prince which gradually changed into the impersonal rule of "the state".

The result of this process leads to what we call the age of absolutism -the concentration of social power in the hands of the state, a power which was not checked or supervised by what we today call, an independent sphere of civil society, much less by any kind of legal structure. The cohesion of this entirely statist society -- which, to repeat it, did not yet know a sphere of public reasoning and critique, which could have functioned as a checking force vis-a-vis the absolutist power -- was mainly sustained by the abstract power of the absolutist state. This does not necessarily mean that it was thoroughly cruel and oppressive. In some countries, e.g. in 18th-century Prussia, absolutist power was sometimes benevolent and even enlightened. It practised tolerance vis-a-vis the plurality of Christian beliefs, because, in a truly Hobbesian spirit, it was only interested in the external actions of the individuals and in the fulfillment of their duty to keep peace, whereas the ruler did not care about their religious faiths and their 'internal forum', i.e., their conscience, as long as its imperatives did not collide with his orders. To cut a long story short, the cohesion of the absolutist state was not dependent on any kind of homogeneity, be it economic, religious, cultural, lingual, or ethnic. This is not very surprising, since the power of the absolutist state did not rest on any kind of consent of the subjects, nor on a legitimizing feed-back of a civil society which as I said, did not exist at that time. Absolutism was autocratic self-rule which took the resources which it needed from its subjects without seeking their consent, i.e., by mere force: material resources -- money or natural goods --, and young men as soldiers for the army.

This situation changed radically with the emergence of an independent sphere of a civil society in the different countries of West Europe. This, too, is a complex and also diverse process, which I cannot describe here on grounds of time. What is important in our context is the conclusion that the existence of a civil society generated the claim that the state power be dependent on and legitimized by the consent of the citizenry. The mediating institution between the political will of the citizenry and the state power was the law, the most fundamental law being the constitution. The constitutional state, more precisely: constitutional democracy is the concept in which absolutist power is transformed into

democratic self-determination. This concept was the solution of the problem that the absolutist state had no inherent guarantee that its power would serve only the interests of its subjects. Contrary to Hobbes' premise, it had turned out that the individuals' interests were not all limited to the goal of self-preservation. They were far more complex and hence required a structure of state power which was structurally able and willing to be responsive to societial needs.

But what was the solution of a problem in one respect turned out to be the problem of this very solution in another. If the exercise of power, or, for that matter, of legitimate coercion of the state depends on the democratic consent of civil society, then the problem arises that civil society is not a single macro-subject which has and expresses one homogeneous will -- as Rousseau claimed -- but that it consists of a plurality of diverse, frequently even antagonistic social forces, religious creeds, cultural orientations, value convictions, and last, but not least, economic interests which will rarely converge on a consensual directive to the state as to how and for which objectives the state power has to be employed. Or, to put it slightly different: in order to realize the dependency of the state power from the inputs of civil society the theory of constitutional democracy must find a conceptual instrument which is able to make the "will of civil society" operative.

As we all know, the principle of majority rule is the answer to this question: in the area where political decisions apply every member of the polity has the same say, i.e., one person has one vote, and all votes have equal weight. Under this condition the will of the majority is taken for the will of the entire citizenry. The defeated minority has to yield to the majority even if it had passionately objected to the proposal of the majority and voted against it. The presumption is that the majority and minority form one united body politic, and that the members of the polity are so much alike that the decision of the majority will never touch upon, much less violate the essential interests of the minority because these interests are much the same for both the majority and the minority. The majority rule pre-supposes a substantive commonness of all individuals engaged in the process of collective decision-making. In other words,

majority and minority are supposed to form one homogeneous community which encompasses the community of the essential interests of its members and which is based on some more or less vague meaning of sameness. In contrast to the absolutist regime power alone it is no longer able to safeguard the cohesion of the society. The price for the necessity to legitimize the exercise of state power through the consent of civil society is the heavy burden to bestow on this amorphous entity torn by so many heterogeneous and centrifugal forces the capacity to form a political will which is able to obligate all its members in the same manner and to the same degree.

The very idea of democracy and its practice as well pre-suppose a concept of social solidarity, and this in turn has always been thought to be rooted in some kind of homogeneity. We may also call it equality or commonness, or sameness. In the historical development of the last two hundred years, nationality or nationhood has turned out to be the most vigorous concept of commonness. Here again Max Weber's observations on the constitutive character of nationality and ethnicity for the self-understanding of political communities are surprisingly up-to-date. But he too fails to fully explain the predominant "connotation that whatever is felt to be distinctively common must derive from common descent", although, as he notes, in reality "persons who consider themselves members of the same nationality are often much less related by common descent than are persons belonging to different and hostile nationalities"6. Be that as it may, evidently nationhood or nationality constitute an antecedent community which is supposed to create that kind of commonness which in turn generates the pre-political social solidarity required for the functioning of democracy.

In order to understand the role of nationhood for the working of democracy it is necessary to understand that since the end of the 18th century two different concepts of nation have been competing for recognition. On the one hand, there is the French concept of nation, according to which, in the famous words of the Abbe Sieyes, a nation is

⁶ M. Weber Economy and Society, loc. cit., p. 395

"a body whose members live under a common law and are represented by the same legislative assembly"7. In this understanding the nation is constituted by the entirety of the denizens of a particular territory who, by the very act of forming a political entity and of being subject to common laws, acquire the status of citizenship. The nation consists of the totality of citizenry8. This concept of nation diverges significantly from a concept that has been prevailing in Germany and in Eastern Europe: according to this understanding the nation is a pre-political community which is constituted by the commonness of such ascriptive properties as origin, race, language, religion, culture, history, and the like. A nation in this sense has to be distinguished from a nation-state which is a political organization that incorporates a nation. Originally, a nation in this latter sense is a genuinely political entity which does not necessarily need the state for its existence. Pursuant the terminology established by the German historian Friedrich Meinecke9 at the beginning of this century, the French concept of nation, based on the idea of citizenship, is a concept of a 'state nation'. In contrast, the German perception includes the idea of a 'culture nation'. Whereas in the French concept the nation is the entirety of the demos, in the German and East European concept the nation is a group defined in terms of ethnicity. Here the nation is the ethnos¹⁰.

It is easily conceivable that the response to the question whether the functioning of democracy requires homogeneity and if so, which kind of homogeneity that might be, depends on the underlying concept of nation. Note that both concepts claim not only to be compatible with the democratic tenets, but to fulfill its promises, namely popular self-determination. In the ethnicist understanding of democracy the ultimate goal is to reach a common self-understanding of a concrete community, something which one could call identity or authenticity. As a prominent

7 Ibid., ch. 1, p.

F. Meinecke Weltbuergertum und Nationalstaat. München/Berlin: R. Oldenbourg, 1908, pp. 2 ff.

See also E.J. Hobsbawm Nations and Nationalism since 1780. Cambridge, New York etc.: Cambridge University Press 1990, p.14-45.

See E.K. Francis Interethnic Relations. An Essay in Sociological Theory. New York/Amsterdam: Elsvier, 1976, pp. 43-115.

German legal theorist expressed it in his new book, discourses in this ethnically defined framework of democracy aim at what is good "for us", as opposed to what is good "for all". In the latter case evidently universalistic claims for justice lie at the heart of discourses where democracy is an institutional framework for the realization of human rights. Here the well-being of humankind is the ultimate goal of democracy. In order to give you a concrete example of the implications of this distinction I want to refer to the processes of democratic transformation in the post-communist societies of East and Central Europe. The Estonians, e.g., have passed an election law according to which only those who were citizens of Estonia in 1940, or their direct descendants are entitled to vote. As a consequence, 42% of Estonia's population are excluded from the suffrage, mostly Russians, Ukrainians and Byelorussians who settled in Estonia during the Soviet occupation and want to remain there. The Estonians have offered the Russians to gain Estonian citizenship by fulfilling residency requirements and passing an Estonian language test. But most Russians do not want to give up Russian citizenship11.

History bears sufficient evidence that there have always been attempts to define democracy as a political device incarnating the self-assertion and self-determination of a particular group with a particular collective identity. Therefore these consequences are not all that surprising and strange as they may appear at first glance. But among Max Weber's observations on nationality and ethnicity there is one which if it were still valid today, would be even more disquieting. Weber writes that:

"the concept 'nation' directs us to political power. Hence, the concept seems to refer...to a specific kind of pathos which is linked to the idea of a powerful political community of people who share a common language, or religion, or common customs, or political memories; such a state may already exist or it may be desired. The more power is emphasized, the closer appears to be the link between nation and state. This pathetic pride in the power of one's own community, or

¹¹ See New York Times, edition of Sept. 23, 1992, p. A 17, column 5.

this longing for it, may be more, much more widespread in relatively small language groups such as the Hungarians, Czechs or Greeks than in a similar but much larger community such as the Germans 150 years ago..."¹².

There is some evidence that indeed the pride of the power of one's own community feeds the idea of an ethnic understanding of the nation. But this does by no means exclude an equally close association of power with a concept of nation which is based on a demotic meaning of the people. As I already mentioned, the idea of one single and indivisible supreme power of the republic, emanating from the will-power of the united people, was the cardinal slogan of the French Revolution -- the power and glory of the nation and the stronghold of democratic self-determination merged and inspired the idea of a strong democratic French Republic, an ideal which seemingly is today as vigorous as it was 200 years ago. In other words, a "demotic" (as opposed to an ethnicist) concept of democracy and nationhood are not only not mutually exclusive, but may even reinforce each other. Both share the devotion to the power of collectivity, and both pre-suppose some kind of social solidarity. But while the concept of nationality relies on the antecedent existence of a pre-political community and declares this to be the very fundament of democracy, the concept of democracy in the universalist sense of the French Revolution makes the assumption that it is the commonness of the political will which binds individuals together and creates the social solidarity necessary for the functioning of democratic rule. Remember that the Soviet Union -- the Union of Socialist Soviet Republics -- was the only state in the world which made neither a reference to the geographical location of its territory nor to the national character of its people. This state was based on the assumption that it was the commonness of the political will of the proletariat and other suppressed classes affiliated with the proletariat which constituted the political body. Hence the Soviet Union was the first nation state which claimed to be truly universalistic and international. Not surprisingly, when it broke asunder this was also due to this inherent contradiction. Evidently, there is a theoretical weakness in the assumption that it is only a common political

¹² Weber, op. cit., p. 398.

will (a social contract) which constitutes a political community. The intention of isolated individuals to constitute a community already presupposes the antecedent existence of some kind of community. The discourse-theoretic political philosophy assumes that it is the community of language and the ensuing exchange of speech acts which constitute this community. Be this as it may, we cannot maintain that a political community can be based on the mere will of a multitude of isolated individuals to form a community. This is one of the reasons why in the last 200 years nationhood has become the seemingly most attractive category of political communities -- it could refer to a quasi-natural fundament of the polity. In the 19th and 20th centuries the socialist theory tried to develop an alternative: it proclaimed the quasi-natural solidarity of the suppressed classes, of the poor and miserables. Consequently, the socialist theory claimed that democracy was impossible as long as the class cleavages persisted and economic and social equality was not attained. I do not want to go into the details of this discussion but rather underscore the point which is relevant for our topic. It is the conclusion, that even a non-ethnicist concept of democracy requires a non-political fundament for social solidarity. But in contrast to the ethnicist concept of democracy it does not refer to the idea of common descent, but to the idea of economic and social homogeneity, i.e., to conditions which are not simply given and outside the influence of men, but subject to active human development.

I should add that the claim that democracy requires some kind of prepolitical homogeneity is by no means only made by militant nationalists as they now emerge everywhere in East, Central and South-East Europe. John Stuart Mill for instance maintained that the governed should decide over their government, but that the governors and the governed should belong to the same nation (which he defines as a union constituted by common sympathies, mostly generated by the commonness of language, religion, origin etc.).

"Free institutions are next to impossible in a country made up of different nationalities. Among a people without fellow-feeling, especially if they read and speak different languages, the united public opinion, necessary to the working of representative government, cannot exist...The same books, newspapers, pamphlets, speeches do not reach (the different sections of the country)...The same incidents, the same acts, the same system of government, affect them in different ways..."13.

If Mill is right, multi-national states like Switzerland or the United States could not exist. On the other hand the dissolution of the Soviet Union and of Yugoslavia, or the ethnic tensions in Bulgaria, Czechoslovakia or Roumania carry sufficient evidence that a constitution whose creator cannot refer to a pre-political collective identity -- the most important being nationhood -- might not be able to generate the coherence which the constitutional state needs for its functioning. It is open to question if this observation applies to all constitutional states. But wherever it holds true, this would be a strong indication that the domestication of the irrational forces of politics has not yet been fully successful.

IV

Which conclusions can we draw from the results which I reached so far? Not surprisingly, the question of whether the constitutional state is dependent upon pre-conditions which have to be fulfilled before it can exercise its beneficial effects on both the political and the economic life of a society has to be answered in the affirmative. Both conditions which are crucial -- the state's monopoly of legitimate coercion, including violence, and a minimum (which minimum?) of pre-political homogeneity -- seem to be indispensable for the smooth functioning of a constitutional state. But they are not easily available in all countries which struggle for constitutional democracy. Admittedly, there are not only examples for the incompatibility of constitutional democracy and ethnic heterogeneity, like the former Soviet Union and Yugoslavia. Switzerland, which I already mentioned, Belgium, or Canada are examples to the contrary -- although it cannot be concealed that even in these countries

¹³ J.St. Mill Considerations on representative Government, ch. 16.

lingual and ethnic tensions have been emerging in the last three years. The question, then, if constitutionalism can serve as a saviour which could safeguard the peaceful co-existence and cooperation of societies which are characterized by painful ethnic, religious, lingual, but also economic and social cleavages, can hardly be answered affirmatively. The history of the European constitutional states shows that the institutional integrity of the state and its monopoly of legitimate coercion, and, second, the integrity of the nation state had to be secured before the institutions of the constitutional state could be introduced and acquire a certain stability.

In these years Europe is on its way to overstep the boundaries of this historical experience and to establish a European Political Union. It is a truly unique enterprise that a plurality of at least 12 entrenched nation states venture to form a new and unprecedented political entity, i.e., a political formation which is neither a polis, nor a 'Reich', nor a (national) state with one single power center. Not accidently the European Political Union can only be described in negative terms, because its positive characteristics are still widely unknown. The resistance against the ratification and implementation of the Maastricht Treaty in many member states of the EEC can be regarded as another piece of evidence for the unbroken force both of the idea of the nation state and its intrinsic connection with modern constitutionalism. There is a strong feeling of the citizens that their rights are better protected by the nation state than by some kind of supranational entity whose relation to their live worlds remain unclear.

This statement seems to be a further argument against the confidence that constitutionalism could contribute to the solution of the problems of those countries which are torn by ethnic, religious, lingual, cultural etc. cleavages. A famous, though somewhat notorious, in the eyes of many even nefarious German jurist, Carl Schmitt, once contended that the term 'legal order' (Rechtsordnung) had the implication that the law could only function if there was order beforehand. According to this view, the law (which includes the constitution) could not have the force to create a political order. The foundation of a political order could only happen in

a pre- and extra-legal deed of a powerful and strong-willed political actor. In the context of German Constitutional history this argument served the justification of the abolition of the Weimar constitution and its replacement by the pure will-power of a dictator and his totalitarian party. Do we have to conclude that constitutionalism presupposes the pre- and extra-constitutional creation of the polity? Must we assume that only a dictator or a winning party of a civil war is able to create the fundaments on which the constitutional state can be erected? Do we have to yield to the pessimistic assumption that constitutionalism is not able to mitigate deep-seated social and cultural cleavages and to prevent civil war?

It is certainly true that the constitutional state is based on pre-suppositions which cannot be safeguarded by its own operation: constitutionalism is not a self-creative institutional device. However, the relations between the constitutional state and its pre-conditions should not be regarded as static. We should seriously ponder the chance that to a certain degree the constitution itself can determine the level of potential frustration about and, as a consequence, the degree of compliance with its political outcomes. Among others, the constitution is a set of rules for (political) competition: hence, the stakes for the political actors can be high or low. For instance, the constitutional guarantee of inalienable human and civil rights makes it easier for individuals to accept political outcomes which have detrimental effects on them, because they are not in the position that they lose everything if they are defeated in the political competition.

The constitution can either ignore the unequal distribution of resources among the competitors or, quite to the contrary, take it into account and provide some kind of compensation for the most disadvantaged competitors. Moreover, it can remove from the political agenda issues which are particularly vital for some groups (e.g., the military, or the farmers, or the civil service) and which therefore should not be exposed to majoritarian rule, or which are extremely divisive and hence should be politically neutralized¹⁴. With these options I do not mean to suggest that constitutions are self-enforcing institutions. What I do believe is that

HOLMES, STEPHEN (1988) "Gag rules or the politics of omission" in Constitutionalism and Democracy, eds. J. Elster R. Slagstad, 19-58. Cambridge: Cambridge University Press.

constitutions can by their very structure contribute to their durability and to their demise as well, and that they can shape the conditions upon which their functioning depends. To a certain degree constitutions can create, as it were, their own constituency with vested interests in the perpetuation of the constitution. The German party system which provides a considerable amount of public financing and extensive opportunities to access to public power, but at the same time establishes the control of the parties' loyalty to the constitution by the Constitutional Court may serve as an example.

Finally, in the world of politics, legality itself is a weapon and sometimes a fortification. Constitutions define who is the legal ruler, and in a world where there is no undisputed source of legitimacy, it is legality itself which embodies the society's pursuit of a civilised order. In a Hobbesian state of nature the invocation of legality is of course meaningless. Fortunately there are only a few countries in the world which we must consider to be closer to the abyss of a state of nature, that is, to civil war than to the idea of constitutionalism and legality. However, there is no ultimate guarantee for the fortitude and endurance of any constitution. All a constitution can do is to make its annulment a costly undertaking. Whoever gains control over a society by extra- and anti-constitutional means can rely on the continuance of his rule only as long as the circumstances persist which allowed him to take over. An ever increasing part of his energies and resources must be devoted to the preservation. of these circumstances. This is a waste of resources which in the longrange no country can afford. Although, of course, this account will hardly ever convince a dictator to abstain from his anti-constitutional intentions and purposes, it might provide those who believe in constitutionalism with additional argument that the positive correlation between constitutionalism and economic stability mentioned at the very outset of this paper could be explained by the fact that to maintain constitutionalized power is far less costly and resource-consuming than any other system of political authority.

CRISIS OF CONSTITUTIONALISM IN SOUTH ASIA

Neelan Tiruchelvam

At no other moment in recent history have the questions of constitution making and constitutional reform been of such importance to central focus in political discourse. The dramatic transitions in Eastern Europe compelled all of these nations to reconstitute the state and the institutions of the state. The critical elements in this reconstruction were the institutionalisation of a multi-party system, a competitive electoral process, an enforceable bill of rights and an independent judiciary as the custodian of the new constitutional values. In Hungary almost the entirety of the Constitution was rewritten before the transfer of political power to a popularly elected government. In the Czechoslovakian federation the task of constitutional change became more complex, and reopened the wounds of Slovakian resentment against the decades of Czech dominance. In Yugoslavia even a bold attempt to transcend the conventional federal model through sovereignty-associations came too late to save the federation from disintegration. The dissolution of the Soviet Union has caused a myriad of problems to the framers of the constitutions of the individual Republics, and the loose association, the Commonwealth of Independent States. In Southern Africa we have the most complex and daring effort to reconcile Black nationalism and Afrikaan nationalism which have been in opposition to each other for centuries. South Africa faces the awesome challenge of facilitating black-majority rule, while establishing political institutions which uphold the rule of law, racial equality, and respect for the universal principles of human rights.

Even in the more established democracies like Canada the future of the nation state rests on questions of constitutional reform. With the collapse of the Meech Lake Accord, Canada was engaged in a widespread process of public consultation, with a view to accommodating Quebec's aspiration to be recognised as a distinct society, and the increasingly strident

group rights. In the United Kingdom, until the middle of this century scholars firmly believed that the British constitution was a glorious achievement, worthy of emulation by less fortunate nations. But this complacency has given way to the realisation that the unitary and centralised Parliamentary system of government has alienated Northern Ireland, failed to accommodate the autonomy demands of Scottish nationalists, and has failed to adequately secure individual human rights. There is, therefore, pressure in Britain to break out of its constitutional isolation and to adopt arrangements including a bill of rights which are more consistent with its membership of the European Community.

These examples point to two contradictory trends. The first trend is characterised by an intense faith in the capacity of modern constitutions to enthrone popular sovereignty, to empower disadvantaged groups and individuals and to fashion institutions of democratic accountability. This intense faith in the triumph of constitutionalism, is accompanied by an equally intense skepticism about the efficacy of constitutional arrangements to deal with the horrors of ethnic fratricide, political violence, religious bigotry, and the crude and cynical manipulation of electoral and political processes. It is this scepticism which leads to the view that the constitutional arrangements are impermanent and indeterminate, often needing to be reconstituted and reconstructed to cope with new complexities and realities. The crisis of constitutionalism is to reconcile this passionate faith in the normative power of constitutionalism, with intense scepticism and even cynicism arising from the failure of constitutions in many societies to uphold human rights or democratic values, and the appalling disparity between constitutional theory and constitutional practices.

Comparative constitutionalism is a hazardous enterprise. Baxi has somewhat contemptuously described it as 'hazardous occupation of the upwardly mobile Asian academic, all too keen to share the high table with the Master'. What I hope to do in this presentation is to disaggregate the concept of constitutionalism and to focus on the need for constitutional theory and thought to respond more imaginatively to some of pressing

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social and political issues of our time. I will then endeavour to highlight some commonalities which distinguish constitutionalism of South Asia, from that of East Asia, Latin America and Africa.

We may now proceed to contrast three distinct ways in which the idea of constitutionalism has been perceived.

Firstly Constitutionalism is viewed as a form of discourse, as a means by which issues relating to the construction of the institutions of the state, questions relating to legal and political legitimacy, democratic accountability, and the limits of political freedom, are conceptualised and articulated within a society. Baxi has in a recent essay emphasised that the dominant mode of constitutionalism is Euro-centric. He adds 'the dominant mode, overall insists that Asian constitutions be assimilated to Euro-centric discourse and its languages. For, after all is not constitutionalism and aren't constitutions either gifts of colonial history or marks of modernity, lying outside the historical grasp of Asian societies.' No doubt Asian constitutional theorists firmly reject this approach and contend that Asian constitutional theory and practice richly antedates by millennia the western tradition.

However the discourse of constitutionalism raises several issues which are central to the present crisis. Is constitutionalism a project of an elite minority, and is it morally legitimate for this small elite to impose ideals and values on those who do not share them? In any event is it realistic to expect those who remain outside this discourse to work political and institutional forms which are otherwise unintelligible after them?

Several Indian scholars including Nandy, Kothari, Madan and more recently Kaviraj have grappled with these issues. In this regard although the constitutional experience of India, Pakistan, Bangladesh and Sri Lanka were shaped by a common colonial experience, the impact of the nationalist movement in the Indian sub-continent on this experience was different from our own. Throughout the Indian colonial experience there was a difference between the modernist discourse of the Indian elite and the more traditional discourse of the lower orders of society. One of the crucial contributions of Mahatma Gandhi was to bridge the gulf between

these two sides, and to keep the values, objectives, and conceptions of the political world of each side intelligible to the other. Kaviraj also makes the point that the process of political mobilisation during the nationalist movement was such as to create an implicit trust by the masses in the initiatives of their political leaders. There was therefore no dialogue between these conflicting discourses on equal terms. Nonetheless the Constituent Assembly was able to enact a Constitution which was not seriously contested. Kaviraj sees this as a consensus of discourse rather than of ideological positions. The constitutional frame and the institutional pattern that had been put into place came up for serious ideological criticism from the left, but there were commonalities at a different level. Looked at from the outside there were underlying unities based on common ways of arguing about structures, purposes, and ideals.

In the second phase of constitutional development, we see the falling apart of the Gandhian language, and a growing gap between elite discourse and popular consciousness. One of the glaring failures of this period was the inability to take the conceptual vocabulary of rights, institutions and impersonal power into the everyday vernacular discourse of village or small town India. As a result the ideals of modern nationalism, industrial modernity, democracy, and minority rights came to be regarded not as achievements of a common nationalist movement, but as ideals intelligible and to pursued by a modern elite which inherited powers from the British. The expansion of the state resulted in the recruitment of personnel from groups who speak and interpret the world in terms of the other discourse. At the point of implementation this personnel reinterpret government programs beyond recognition, and there is a slide into a style of power which is irresponsible and unaccountable. Institutional forms come under more pressure as more common people enter party politics. There is a conflict between the institutional logic of democratic forms and the logic of popular mobilisation. The more one part of the democratic ideal is realised, the more the other part in terms of a secular polity, protection of minority rights, is undermined. This leads to the loss of the moral and legal legitimacy of the constitutional frame that was put into place by the modernising post independent elite.

A similar conclusion is reached with regard to the erosion of the legitimacy of political institutions in Sri Lanka by the Youth Commission in March 1990. The Youth Commission reached this conclusion through a process of political diagnosis which emphasised ideology as opposed to the structure of discourse. I shall however deal with this analysis here, as it would facilitate an assessment of the constitutional and institutional prescriptions which flow from such a diagnosis.

According to the Commission the erosion of Youth confidence in existing political and social institutions is due to two broad reasons. Firstly the institutions have been so eroded or reduced to atrophy due to excessive politicisation or institutional paralysis that they do not seem to perform any significant societal function. Secondly, youth grievances are not accorded any importance in these institutions and they remain unresponsive to the changing nuances and priorities in youth aspirations. These two explanations give rise to somewhat contradictory responses. The first is said to have given rise to ideologies with a strong anti-institutional bias, while the second gives rise to the demand for larger youth representation within the very institutions which have been so repudiated.

The agenda for constitutional and institutional reform include strengthening of the Public Accounts Committee, the Consultative Committee system and its extension to the district level, and the provision of legislative interns. Similarly with regard to youth disenchantment with regard to the legal processes, the Commission recommended procedural reforms to strengthen individual and group access to the Supreme Court, including the provision of judicial interns to strengthen the technical and institutional capacity of the apex court. One of the more ambitious proposals with regard to reform of representative institutions was that relating to the creation of separate constituencies to ensure that youth constitute 40% of the representation in Provincial Councils and local bodies. However fearing a range of constitutional and more pragmatic objections to such a proposal the Commission proposed more modestly that political parties be mandated to nominate 40% of candidates from within the age group of 18-30. The Commission also urged political

parties to engage in a process of self reflection on the lack of active involvement of youth in their organisational structure.

The Commission also made several other recommendations for institutional reform. These included a Nominations Commission to screen appointments to public institutions; a Media Commission to oversee both the print and the electronic media; a National Commission on Education to address long-term educational needs; and a Task Force on caste and caste related issues. With regard to Youth grievances the Commission recommended the creation of a Youth Ombudsman with powers to address grievances both at the national and village level.

The Commission's agenda for re-democratisation is a remarkable example of pragmatic empiricism or procedural constitutionalism of the British constitutional tradition. It is grounded on an intense faith in the normative power of constitutions, and in the capacity of reformers to revitalise democratic institutions through procedural and representational changes. The Commission's faith was unshaken by youth alienation, 'the intensity and ramifications of which are without parallel in regard to any other problem which besets society.' It is an approach grounded in the dominant mode of constitutional discourse, and presumes without critical examination that the ideological critique is located within that discourse. The loss of institutional legitimacy could be recovered if youth could be actively engaged in the formal institutions of democratic governance and of adjudication. No doubt the Commission had to evolve pragmatic solutions, and was handicapped by the lack of an institutional agenda which was explicit or implicit in the youth's ideological critique.

The Commission's report was by and large very well received, and it appeared that a national consensus could evolve around its principal recommendations. An All Party Conference was convened and mandated to implement one of the most ambitious programs of constitutional and political reform envisaged for decades. The objectives of this exercise included a fundamental reappraisal of all the institutions of governance including the legislature, the executive and the judiciary,

and the induction of forces who remained outside the political mainstream. At one stage all the major political formations were represented within the Conference including the principal opposition in the South, the Sri Lanka Freedom Party, and the political-military formation dominant in the North-East, the LTTE. But with the collapse of the Southern insurgency, the Conference soon lost its sense of urgency, and part of its legifimacy, as both the SLFP and the LTTE progressively withdrew from this exercise. The remaining political parties plodded along with diminishing enthusiasm. The only significant legislative reform was the requirement relating to a youth quota in nominations to local bodies, A National Education Commission was established, but its deliberations have yet to elicit any serious public interest. The Media Commission ran into serious opposition within the journalist community who remain unconvinced that it is a progressive measure. Nonetheless concerns relating to the liberalisation of the media have partly contributed towards the relaxation of the rigid state monopoly of the electronic media. The centre piece in the Youth Commission's reform package was the Nominations Commission. A truncated Nominations Commission Bill was not pursued due to rèservations by the Supreme Court relating to its constitutionality. However, there is an acknowledgment by the state that recruitment to the public service should be free of interference by the political party in power. Credit for this significant shift in policy must go to the Youth Commission.

The All Party Conference also devoted enormous time and effort to the revision of the chapter on Fundamental Rights and to the establishment of a Human Rights Commission. The government assured both the U.N.Human Rights Committee last year, and the Human Rights Commission in February that the enactment of these laws would be part of its new resolve to protect human rights. But the prospect of an early passage of the 17th Amendment seems unlikely given the growing polarisation within Parliament. As we review these events we must sadly conclude that despite some modest gains the program of constitutional reform envisaged by the Youth Commission is largely in a state of disarray. The All Party Conference continues to drift without clear political direction. To some elements within the ruling party the very process seems more

important than the substantive outcome, as it serves the immediate need of improving the human rights profile of the government. Some recent studies seem to confirm that disillusionment of the youth in universities, and the higher forms within secondary schools remains intense.

We must now move on to an equally complex issue how did the dominant mode of constitutional discourse respond to the crisis of ethnicity and of nationalism. In exploring this issue I must initially emphasise the fluidity of the concepts and ideas which form the core of this discourse. As we have emphasised in this lecture most countries in South Asia share a common colonial experience. The colonial constitutional discourse dealt with questions of 'limited government', and the struggle for progressive transfer of power to hybrid legislatures with nominated and popular representatives. With the advent of political independence, this discourse shifted to questions of legislative supremacy and the distribution of power between the different organs of government. Such a discourse presupposed that the post-colonial constitutional arrangements were primarily intended to give effect to the majoritarian principle.

A politically and culturally resurgent majority deployed legislative and executive power to deny equal treatment to ethnic and cultural minorities. A vote in the hands of an intolerant majority was soon viewed as 'an instrument of oppression'. The focus of constitutional discourses began to shift to the need for restraints on the majoritarian principle and limitations on the exercise of state power.

More recently, the discourse has more sharply focussed on the constitutional arrangements necessary to preserve the multi-ethnic character of the polity. These issues relate to power sharing arrangements, pluralism, secularism and equalisation of opportunities, through the removal of historic and regional disparities. Within this discourse there are those who challenge the hegemony of the constitutional ideas associated with the modern state and inherited political institutions. The argument is that this form of discourse is no more than an extension of the colonial discourse, and does not offer any concepts, or categories of analysis which are capable of comprehending the experience of South Asian

societies. They contend that this discourse must be extended to accommodate the forces of ethnicity and of nationalism. These concerns further point to the need for new concepts and principles designed to protect ethnic, linguistic and religious minorities. The protection of such minorities must form a fundamental component of any bill of rights. Such protection should primarily be directed towards insulating minorities from any activity capable of threatening their very identity or existence. Such activities range from genocidal violence or pogroms directed against specific minorities, to policies of assimilation including state aided settlement schemes intended to alter the demographic profile of regions where a minority predominates. States need also to be mandated to actively foster and protect the linguistic, cultural and educational rights of minorities.

At the centre of this exercise is the effort to reconcile the protection of individual rights with the protection of group rights. Important and preliminary work in this direction is being undertaken both within the CSCE (Conference on Security and Cooperation in Europe) process and within the European Community. Constitutional theorists in South Asia need to be more attentive to these developments.

The discourse of constitutionalism and international human rights jurisprudence have yet to imaginatively respond to challenges which place in
jeopardy not merely the nation state but the very foundations of a
constitutional order. These concerns compel reappraisal of the very
nature of the nation state and the concept of national sovereignty. The
entrenchment of the unitary state in constitutional texts often leads to the
absurd contradiction of imposing a mono-ethnic state on a multi-ethnic
polity. The very definition of the state must increasingly reflect the
ethnic diversity of the polity, and acknowledge that the state is an
aggregation of ethnically and linguistically distinct regions and sometimes several distinct nationalities.

Colvin R.de Silva who played a part in the introduction of the concept of a unitary state into the first Republican Constitution (but not its subsequent entrenchment in the Second Republican Constitution) viewed

it as no more than an intellectual construct. In later years he feared that the idea might become so embedded in legal consciousness as to inhibit innovative constitutional experimentation. Dr. de Silva argued that there was no ideal type unitary constitution locked up in some mythical vault. He believed that unitary and federal constitutional arrangements formed part of a continuum, with the former being compatible with the most extensive forms of devolutionary and quasi-federal arrangements. Recent judicial practice in the interpretation of this clause point to some of the difficulties of constitutional adjudication. The apex judiciary's self perception in constitutional adjudication is not that of a neutral arbiter between the centre and the province, but more of the custodian of the authority and power of the centralized state. This approach has contributed to the progressive erosion of the devolutionary arrangements. But there is even more serious danger to the very integrity of constitutional discourse and to constitutional adjudication.

The dissenting judgements in the 13th amendment case, (and some subsequent legal commentary) point to the danger of deep popular prejudices being elevated and rearticulated in the form of rational constitutional discourse. The transparency of this process, seems to undermine the very rationale of constitutional adjudication as a process with techniques of reasoning, recourse to neutral principles and in the very style of argumentation, which is distinct and independent of the discourse of the political arena.

Another area in which the discourse of constitutionalism needs to be enriched is in the enforcement of fundamental rights. The rhetoric of basic rights and freedoms is based on statist and individualistic conceptions. The base of support for fundamental rights can be expanded if it is linked to belief systems which have given content and meaning to the social and religious experiences of the people within South Asia. These indigenous, cultural and religious traditions emphasise communitarian conceptions of justice, and conciliatory and consensual approaches to the resolution of conflict.

Obligations of reciprocity within a family facilitate attitudes and values

supportive of the rights of the child and the needs of the elderly. Such an approach leads to more effective protection of social rights, than what could be available in a legal culture which views these issues exclusively in terms of an individual's claim against the state.

There are other ideas such as 'dharma' which are central to the Hindu-Buddhist theory of justice and define the moral limits which rulers may not transgress if they are to command the allegiance of their subjects. Very little effort has been made to imaginatively build on such concepts to articulate principles of governance and democratic accountability which draw on the language and idioms which form part of the Hindu-Buddhist tradition. Similar attempts need to be made to draw the linkages between constitutional values and the rhetoric of rights on the one hand, and the concepts, ideas and institutions which are central to the belief systems and the world view of Islam, on the other.

This point is perhaps illustrated by the recent intercession of the Thai monarch in the constitutional confrontation between pro-democracy forces and the military. It is significant that most comparative constitutional lawyers have often commented on the transient and evanescent nature of Thai constitutions. Between June 27, 1932 and January 29, 1959, Thailand had as many as seven constitutions of which two were described as provisional, (1932, 1947) and one as interim (1950). One scholar described this process as the practice of factional constitutionalism, which is the "process of drafting a new constitution to match and protect each major shift in factional dominance". But the more perceptive observation is that Thailand had 'two constitutions, the written constitution which is ephemeral and the more enduring substantial structure of law and custom which have remained as the foundation upon which government rests'. Tambiah points to the Theravada doctrine of Kingship (the king as Boddhisatva - the cosmic liberator - and as Chakkravarti the terrestrial emperor) as being resilient throughout Thai history, and legitimating changing forms of state power.

Tambiah refers to a remarkable myth which leads to the assimilation of Manu's Dharmasastra and indigenous customs in the Theravada Buddhist

countries of Burma and Thailand. This process of reincorporation required the creation of a new Manu to legitimise his code. The myth described him as a cow herd who, because of his flair for adjudicating disputes, was made the King's minister, while he was a child. Dissatisfied with one of the decisions involving the ownership of cucumber, he decided to retreat, practise meditation and to endure severe austerities. Eventually, he ascended to heaven, where he found the "dhammathat laws engraved on the boundary wall of the solar system". He brought these laws back to the King, who is reconstructed as 'the embryo Buddha and an embodiment of justice'. In the Thai tradition of kingship, this leads directly to the "amalgamation of rajastham (the individual acts and applications of law by the king) with dhammastham (absolute moral law).

The second meaning that is accorded to constitutionalism is to view it as an ideal of liberal democratic governance, accountable and answerable to popular will. It is in this symbolic and idealistic meaning that constitutionalism has been invoked as a rallying flag in the struggle against authoritarianism. During the Emergency in India and the struggle for the restoration of democracy in Pakistan, Bangladesh and Nepal and in the movements against constitutional authoritarianism in Sri Lanka, it is this conception of constitutionalism which gained ascendancy.

Mick Moore in a recent essay has expressed optimism that strong forces in Sri Lanka would remain supportive of the democratic ideal. Firstly, he refers to the norms of democracy and constitutionality having long commanded a following amongst the Sri Lankan electorate, even though the self-interest of politicians have led to their routine violation. He sees no weakening in that commitment despite the political violence, and chaos of recent years.

Similarly, he believes that the associational life of the Colombo bound middle classes provides a strong reservoir of resistance against authoritarianism. He sees that middle class as being ethnically heterogeneous and having overseas links and providing for a base for political dissent and for a more dispersed civil rights movement. He also sees the changing international environment leading to the more direct articulation

of international concern about democratic and human rights abuses; through an emphasis on a link between aid and developmental assistance. Critical to this analysis is state-civil society relations, and the relative autonomy of private business, professional, welfare and developmental organisations. Although there has been no explicit articulation of an ideology of comprehensive state control of private associational life, recent developments cause concern with regard to the continuity of the existing legal, and policy framework on state-civil society relations. The third meaning accorded to constitutionalism is related to the realisation that constitutionalism requires much more than a constitution. Constitutionalism requires a legal and political culture on which durable institutions could be firmly grounded. We have already noted that constitutional concepts are fluid, with old meanings giving way to new interpretations and even new concepts assuming the centre stage. In addition to the fluidity of concepts, constitutional arrangements are also of a transient nature. It was Ivor Jennings - the framer of many defunct constitutions - who cautioned us that "constitutions come like water, and if they don't go like the wind, strange things happen to them which were beyond the contemplation of their framers." It is in this sense that the equation of constitutionalism with the process of value formation assumes importance. This is where our failure seems to be so glaring, and no imaginative project has as yet been designed to build democratic values, civic virtues, and communitarian attitudes. The Italian social theorist Bobbio has argued that the democratisation project must go beyond the state and even make the institutions of civil society democratically accountable. This does not necessarily mean constitutions must always be based on a shared culture between the rulers and ruled. Bolivar Lamounier has argued that a Constitution must evolve out of a process of self reflection, rather than appear to emerge organically from social roots. A constitution ought to be more enlightened than the prejudices of the population at large. It is accordingly argued that constitutionalism can remain the project of a minority - a middle class elite which acquires legitimacy because of either its role in bringing about political transformation, or by subsequently acquiring legitimacy through electoral politics.

While being sensitive to the specifities of the national context within which constitutional experiences must be assessed, some general perspectives may be offered which distinguish the South Asian experience with constitutionalism.

First in South Asian the strength and vibrancy of institutions such as the party system, the bureaucracy, the judiciary and the press is partly the result of long experiences with universal adult franchise and competitive political processes. This tradition of political democracy enabled the legal constitutional order to withstand periodic challenges from insurrectionary movements, coup d'etats, or subversion of constitutional values and institutions by the ruling elite. This is probably less true of Pakistan and Bangladesh where there had been a break in constitutional continuity with forcible seizure of power by the military. However, even in these countries the institutional legacy and the legal and bureaucratic culture of the pre-authoritarian years retained some resilience and helped mediate the recent transition from authoritarian rule. In comparison the enterprise of constitutionalism has been more fragile and vulnerable in Africa, South-East Asia and even in parts of Latin America.

Secondly, despite the apparent resilience of political institutions and processes, South Asia is in the process of a major upheaval where there is a continuing effort towards redefining the nature of the polity, and the relationship between the different religious, ethnic communities, tribal and caste groups. The political compact which followed the transfer of political power provided a framework for the resolution of inter group tensions. This framework no longer seems to hold and the concepts which were at the centre of the compact are being rejected. In India, the balance between different communities differentiated by religion, ethnicity and caste were sustained by concepts such as federalism, secularism, and affirmative equality. The political consensus on these issues soon became eroded, with the inability to agree on alternative arrangements causing social upheaval. Revivalist and fundamentalist forces have also called into question the state's commitments to secular principles. The state is no longer viewed as the neutral arbiter between competing religious claims, and is being increasingly called upon to preferentially support the religious beliefs, institutions, and places of worship of a resurgent majority. There is a growing realization that there can be no finality in the resolution of these questions and that there would be constant need to renew and reconstruct societal arrangements for the resolution of interethnic and inter-group conflicts. In South-East Asia, Africa and Latin America there is less agonising reappraisal of the basic relationship between groups and the very nature of the polity. The question of intergroup conflict seems less central to the process of constitutional reconstruction in Latin America, East Asia and (with the exception of South Africa), even possibly Africa.

Thirdly, there is to a much greater extent the element of civic participation, through human rights groups, and social action organizations engaged in creative interactions with journalists and lawyers towards redefining the constitutional agenda and the nature of the discourse. In India the emphasis on socio-economic rights in the enforcement of fundamental rights was partly the result of this process. It is thus clear that constitutional imagination and innovation is no longer the sole monopoly of law professionals or party leaders, and that all elements within civil society can play a part in expanding the frontiers of fundamental rights. It is not clear whether such civic involvement in expanding the base of legitimacy of constitutionalism is as pronounced in other Asian, African or Latin American experiences.

South Asia faces the dazzling and yet daunting prospect of expanding the frontiers of constitutionalism to reconcile the challenges of a reawakened civil society and the disintegrative process of ethnic and religious fratricide with the imperatives of modern nation states. This is an opportunity which needs to be grasped.

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CONFLICTS AND POLITICALLY MOTIVATED VIOLENCE IN EUROPEAN INDUSTRIAL SOCIETY

Roland Eckerth

The Paradigm Conflict in Violence Research

The social unrests of the last few years have brought the issues of causes, prevention and control of violence to the center of public discussion. In this process, conflict among the various scientific paradigms quickly resulted: biologists assume that violence, especially of male man, in conflicts about ranks and status and in territorial conflicts are results of evolutionary adaptation and can, therefore, be channeled but not overcome; psychologists, in contrast, assume that violence is learned and, therefore, that non-violence can be learned in the process of socialization, too. Jurists believe that a lack of legal awareness and absence of the risk of sanction are the cause of increasing violence. Sociologists point to "structural tensions" (SMELSER 1963); in the Marxist tradition, to "social inconsistencies'; to "relative deprivation" (GURR 1970) provided they do not fundamentally reject the ethiological question and solely take the reaction of ruling control instances and the resulting developments as their single theme. Youth investigators, such as HEITMEYER (1992), take up conservative positions from Emile DURKHEIM (1977) and Arnold GEHLEN (1957) and make individualization and disintegration responsible for the readiness of youths to resort to violence.

In the debate with biologists, psychologists, jurists and sociologists, I have reached the conclusion that the suggested decisions on general principles are not very fruitful. Ethologists are right in that violence stimulates: a visit to the local video store will confirm this. Psychologists are right in that affect control can be practiced and learned and that violence also exists as cool, non-stimulated professional or

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strategic behavior. Jurists are not incorrect when they emphasize legal awareness: but how is it engendered, how does it maintain itself, and how will it survive in the face of perceived injustice or even the threatening of humanity (for example, by environmental destruction)? To the jurists it must also be conceded that risk of sanction and renunciation of violence are connected. But difficulties arise, since, as symbolic interactionists (TURNER & KILIAN 1972; FIREMAN et al. 1979) have established, sanctions that are perceived as illegitimate lead to reactive violence. And what about structural tensions? Their disadvantage is that we usually diagnose them when it has already come to violent conflicts; as explanans they often only represent a tautological rephrasing of the explanandum. The 'inconsistencies' of Marxist theory, in contrast, tend to be ubiquitous and require the concept of 'relative deprivation' to capture the 'subjective factor'. But this also has its perils. Certainly the sense of deprivation can be found in all protest groups, concerning either themselves or the clientele they want to represent. Often, however, this awareness arises during the actions - demonstrable with the new social movements - and is, therefore, more a consequence than a reason of mobilization. Disintegration can be understood as the reduction of corporate, neighborly and relationship controlled environments which has taken place for the last two hundred years in continually new thrusts. Even traditional, highly integrated societies, however, frequently demonstrate (particularly in economic crises) a high degree of xenophobic violence even to the point of pogroms. In this respect it is difficult to see why it should be the reduction of these environments that suggest corresponding behavior.

For this reason, I believe it meaningful to depart from a macrosociological perspective. Violence is influenced in the individual case by the personal, physical, and psychological states. The extent to which such states are generated or used depends, however, on the conflicts and the forms of regulation which exist in or between societies. Typically we assume that violence must be seen as an exception to the rule of legal and democratic conflict resolution and, therefore, requires explanation. For our current legal and democratic

awareness, the view is appropriate; from a macro-sociological perspective just the opposite appears to be true. Historical and ethnological evidence suggests that non-violence, not violence, is the most improbable and demanding solution in conflict regulation. From a historical and ethnological perspective it is necessary, therefore, to address the issue of the requirements and mechanisms of non-violent conflict regulation. The deficiencies of conflict regulation, then, mark the places where violence breaks through.

Using an admittedly simplified typology I intend to make clear what point we have reached in Kant's "history of mankind with cosmopolitan intentions" and the steps the still lie before us.

At an initial "anarchic" stage in society, there are, roughly spoken, two possibilities: if the mutual dependence within the society is very strong then various formal and informal options for sanctions exist. Especially the group as a whole has many opportunities to maintain conformity, to force conflicting individuals into an agreement or exclude deviant individuals (ROBERTS 1984, 30-103). In the other case, when different lineages do not depend on each other, selfprotection is achieved by the threat of revenge and in consequence, of revenge. 'Honor' of the man or the family as a supreme virtue is part of this special system of deterrence (LUHMANN 1972, 150). This is particularly the case in societies lacking a central ruling power which can lay claim to the dispensation and execution of justice based on religious or political authority ("vengeance in mine"). Such circumstances and the consequent vendettas are typical of segmentary societies based solely of kinship relations. The present international system of states, though, is also characteristic of this stage.

At the second stage, intermediaries and arbitrators are active, but cannot enforce their rulings (EVANS-PRITCHARD 1940; RATTRAY 1929). Thus, the "leopard skin man", among the Nuer of southern Sudan, has a sacral authority sufficient to force a hearing but not the acceptance of his verdict. Lacking powers of sanction, the ancient Icelandic system of justice also belongs to this stage. In many

societies, local or supra-local, above all, religious authorities can exercise considerable pressure to achieve reconciliation between those involved - as during the European Middle Ages. Presently, UN resolutions on Kuwait reproduced ancient Icelandic legal practice exactly: The culprit was ostracized, no one may help him, but the victim himself and his friends must exert his right.

At the third stage, a ruler of state lay claim to a monopoly on the administration of justice and the use of physical force. For subjects or citizens this produces a definite advantage (BUCHANAN 1975; VANBERG 1978): they no longer need to protect themselves by deterrence (the Hobbesian solution). The problem of the use of force, however, shifts to the level of the ruler or state; monopolization of the use of force is still not the control or reduction of it. In contrary, twentieth century's history tells us that a previously unimaginable excess of violence has been carried out by the state, especially the German one. At the same time, earlier forms of arbitration and reconciliation are dismantled; payment of compensation to the victim is forbidden and is replaced by the draconian penalties of the state. Victims lose their former rights.

At a **fourth** stage, social conflicts are decided in well-ordered proceedings: in elections and parliamentary decisions in conflicts over basic principles; wage bargaining, for example, in group conflicts, and agreements and court rulings in individual conflicts. This stage characterizes the constitutional democratic state. Monopolization of the legitimate use of force, which took place at the third stage, is a pre-requisite to the constitutional state: even in democratic proceedings, decisions are only meaningful if state and, if necessary, police can guarantee their implementation (ECKERT/KAASE/NEIDHARDT 1990).

A constitutional democracy, however, can only develop its peacekeeping and violence-limiting function by successfully redirecting significant conflicts into the channels of well-ordered proceedings.

Typical present day conflicts, like those:

- between local interests in healthy living conditions and supralocal, global economic interests in transport, supply and waste disposal, as well as
- for the ecological interest of future generations versus present prosperity, are seldom handled currently at a parliamentary level, i.e., by the political parties. Finally,
- the presumably increasing conflicts of an ethnic background resulting from South-North and East-West migrations

require international mechanisms of conflict regulation not yet available. The German Commission on Violence singled out the opposing effects of socially generated propensity to violence (aggravating, on the one hand) and respect for the law (moderating, on the other). These may well come out to play; but truly decisive in limiting the extent of politically motivated violence in our society is the success in finding institutionalized forms of conflict regulation (ECKERT 1990).

At the political level, democratic proceedings not bound to individual parties, such as referendums, come to mind. But even in the administration of justice, the limits of conflict regulation through state-imposed penalties are becoming clearer. In family and juvenile courts, judges endeavor to reach communicative settlements; in the United States arbitration plays an increasingly important role not only in planning and environmental projects, but also in ethnic conflicts. Such processes, from an evolutionary standpoint, can be seen as a reversion to the methods of conflict regulation before the state (from the second stage). To date, international conflict regulation is still in the initial stage of development.

At a fifth stage of conflict regulation, is a constitutional state able to minimize its own use of force and open procedural channels against

itself or its officials. This is not a self-evident aspect of the constitutional democracy: regarding relations amongst citizens, democratic formation of opinion and the administration of justice can definitely function even without reliably guaranteed procedural channels against state authority. This step is of decisive importance, however, in the restriction of violence, since the legitimation of the state's monopoly on the use of force depends not on it ensuring peace but by being controllable and justifiable as well. The latter is still precarious, even in the Federal Republic of Germany (SACK 1982; BRUSTEN 1988, 1992; KÜHNE 1988; CILIP 1990; AMELUNG 1991; ECKERT 1992).

The Reduction in Primary Controls

Along with the development of the state monopoly on the use of force, emerge laws intended to replace private retaliation. The aggrieved cannot simply strike back; he must take legal action. The state has reserved the right of retaliation, protection and - most recently resocialization. Universal norms - valid without consideration of person, specific family loyalties, or friendship - are now supposed to ensure peace under the law. To the degree in which the ruling power was able to impose its monopoly, it will have become too risky for people to act on aggressions in the face of the many legal, professional and social sanctions. Affect control, selbstzwang (ELIAS 1969, Vol. 2, 312-341), has become a condition of social, economic and political success. Our professional organizational structures demand a high degree of self-discipline and affect control as well. Historically seen, the use of force within society has never been more strongly tabooed than it is today. Admittedly, the basis for this process is that "revenge" can be handed over to a system of justice and thereby be depersonized.

If this is the current state of affairs, why is it that in a generally 'civilized society', violence is resorted to repeatedly in so many areas of life? Why are there particular areas where aggressions can be realized and conflicts dealt with violently?

State monopolization on the legitimate use of physical force has not taken hold everywhere, nor with reliable coverage. State and judiciary are not the only ones able to define what constitutes legitimate use of force, nor can they enforce their right to sanction completely. People live together in social groups, each of which can develop its own definition of legitimate and illegitimate use of force (FETSCHER/ROHRMOSER 1981). The object which caused the aggression or that we can define, relatively free of aggression, as an object which force must be used against is dependent on these intersubjectively conveyed definitions. Due to its constitutionally protected privacy, the family has traditionally been, to a certain degree, an unlegislated area in which the stronger are able to determine when

force is used (HONIG 1986). In kindergartens and school classes, children develop their own rules of fair and unfair struggle as long as the teacher does not intervene. In slums, formed in the transitional zone of modern cities and where neighborly and police controls do not take effect (HERLYN 1980; KUBE 1982, 12-13), youth gangs fall back on particularistic patterns of dealing with conflicts (VON TROTHA 1974, 90-97). Sport, in many areas, can be regarded as a regulating staging of violence (GOLDSTEIN 1983, 2-3): In the boxing ring other rules apply than in the street. Terrorists and/or freedom-fighters develop their own definitions of legitimate use of force. We can summarize by saying that the state's ability to define legitimate use of force, and the regulations of written law are eliminated continuously by definitions which are taken up by individual social groups and, thus, often reach people more immediately than the judicial system. Neither with moral demands nor with police and legal controls is the state able to get through to all areas of society. This power to define the legitimate reasons for violence brings ethnic, religious, and ideological communities into a process of mutual escalation of violence.

The increasing significance of the state as an instrument of social control is also accompanied by a loss of the former importance of kinship and neighborhood. Today, kinship exerts less influence on its relations than previously. Children's opportunities in life are no longer as directly dependent on their parent's means of production as before; parents, generally, also no longer have to rely on old-age care from their offspring. Under these conditions, the obligation to conform is already lower within the family unit. What is more, the family and its members can remove themselves from the extended family networks (ECKERT 1989).

Neighborhood, too has become a much looser affair. Physical and occupational mobility reduces its binding nature: individuals can now remove themselves beyond the controlling influence of their neighbors. In villages or small towns people know that they can always be seen, and behave accordingly. This guarantees a higher degree of

good behavior than occasional patrol cars in a large city. Physical and occupational mobility limit the controlling power of the neighborhood (HAMM 1973); trained affect control can be relaxed.

Compared historically, we can refer to a reduction of "primary" social controls. Taking their place, to a certain extent, are controls by specific authorities: police, social workers, teachers, and, increasingly, security guards as well (FOUCALT 1973, 220-229). Precisely this transition from primary to secondary social controls also leads quite automatically to an increase in the much discussed rate of crime. While primary social controls attempt to settle conflicts largely without resorting to police and courts, legal proceedings seem to be natural today and are often the only way for the victim to receive compensation. The refinement of secondary social controls leads inevitably to a statistical increase in offenses, including crimes of violence.

Media and Violence

Increased portrayal of violence in the media and its availability on video are often cited as evidence of a suspected rise in the propensity to violence. Aggressiveness and propensity to violence, however, are not "generated" by the media; rather, stimulation through violence and the resulting propensity to violence in specific situations are an anthropological fact, particularly amongst men. Typically, media contents are purposely used by consumers to produce emotional states (ECKERT et al. 1991).

Stimulation through combat and violence is partially expressed in earlier cultures by integration in a comprehensive system of interpretation; Saint George or Sebastian appear in a religious context. More important have been hero tales and songs of war. Today, the expansion of the market for culture leads to a specialization of businesses in increasingly specific needs for stimulation. This can be demonstrated equally with pornography and the portrayal of vio-However, it cannot be simply concluded that sexual or aggressive activities would, in general, reach a higher level today; in contrast is the ever stricter taboo on violence, which, together with state monopolization of the legitimate use of force, has expanded. Whether the acts of violence portrayed by media are imitated, depends on whether they make sense within the situation of 'fans'. Thus, unrealistic horror films, even hyper-realistically portrayed, are presumably less dangerous than action films that depict the situation of youths in modern cities (The Warriors). A video clip, "My Name is Prince", in which a rival is kicked while lying on the floor is a disco is more suitable as a model than a western, which takes place in an unrelated world. Apart from stimulation, therefore, the 'subjective sense' which is able to surmount aggressive inhibitions is decisive in the adoption of media models. This sense can be produced in the daily-life of youths through film scripts of jealousy, honor and revenge; in the political context through ideologies that dehumanize the respective opponent and justify the necessity of violence or 'heroism'.

Politically Motivated Violence Mobilization Fields and Protest Themes

Finally, in the industrial societies there is a series of "new" reasons for conflicts and the propensity to violence generated or legitimized in them:

- because of the market in life-styles brought forth by global media, specific subcultures can arise and spread. In some of them violence is especially important and the constraints of civilization are reduced;
- rapid economic and social change due to scientific and technological innovations leads to continuously new experiences of collective or personal deprivation and anomie;
- in concrete political conflicts the use of violence is a resource that can attract a high degree of media attention and put the state under considerable pressure to act.

The following areas of politically motivated violence - disregarding separatist movements (Northern Ireland, the Basque Country, Yugoslavia) - can be discerned in Europe in the last fifteen years (see ECKERT/WILLEMS 1986; 1987):

(1) Conflicts of an ethnic background have so far resulted in violent rioting only in France and Britain. The immigration problem - due to the pronounced colonial history of these countries - has already reached dimensions of which only the first signs are observable in Germany. "Voluntary" segregation based on ethnic-cultural affiliation, reinforced by the experience of stigmatization and economic selection processes in the housing market, has led to the formation of ghettos in Britain and France. This is the background upon which the unrests developed. Protest supporters are, above all, second generation children and youths. Whereas first generation immigrants had only limited intentions and expectations of integration, children born in the country of immigration are often no longer orient themselves according to the social and economic

aspirations of their parents, but to those of local youth of the same age. Expectations are often disappointed by a lack of training vacancies and high unemployment. The often spontaneous, unorganized riots, unrests, and lootings have more of an expressive trait, and direct themselves primarily against police (ECKERT/WILLEMS/WOLF 1990).

- (2) In the narrower sense Youth protests have, unlike ethnic conflicts, a clearly instrumental character along with spontaneous expressive elements: at stake is the achievement of youth specific interests, for example in a self-run youth center. For this reason, their degree of organization is further developed: Particularly at the beginning of conflicts, youth center or cultural initiatives play an important role as a nucleus for organization often lost later on in the conflict. Participants are recruited from youth specific subcultures and networks ("scenes") without a clear pattern of organization (ECKERT/WILLEMS 1986).
- (3) Squatter protests resemble youth protests in their motives. Here the growing demand for inexpensive city housing by a predominantly youth sub-culture was misjudged. In addition, renovation schemes, subsidized speculation, and inflexible urban development policies worsened the resulting bottleneck for inexpensive housing. As in youth protests, supporters are high school students, apprentices, students, and a large number of marginalized groups (dropouts, unemployed) as well as social service workers. Starting out from initiative groups that serve as an organizational nucleus, the conflict interests of squatters are already strongly organized. In this connection, organizational nuclei from revolutionary and anarchistic circles also play a role. During the conflict, however, there is frequently a differentiation of support groups with different strategies, amongst them those in which violence is accepted as a legitimate method (ECKERT/WILLEMS 1986).
- (4) With protests and demonstrations, Social movements like the ecology and peace movements try to mobilize public attention and

support for concerns which they see as not being perceived or acted on by political associations and parties. Their organizational structure is characterized by local initiative groups as well as supra-local coordinating committees - Neidhardt's "network of networks" (NEIDHARDT 1985). Since 1965 a "social movement sector" in the development of political opinion has increasingly established itself (ZALD/McCARTHY 1981), and already shows clear tendencies of institutionalization and professionalization (DONATI 1984, 839f; MELUCCI 1984, 819-835; ECKERT et al. 1990). The result of this organizational reinforcement is an increased strategic planning of protests that frequently cover a longer period of time. Demonstrations and blockades are often preceded by discussions, hearings, collecting signatures, and lawsuits.

(5) Violence against foreigners: In view of the increasing immigration from Eastern Europe, North Africa, and the southern hemisphere, radical right-wing movements are beginning to form in Europe, and, in past years, have lead to more and more attacks on homes for political refugees. Already in the eighties, British skinheads displayed aggressions against minorities especially Pakistanis. At the time, this aggression was explained by the living conditions and deprivations of a lower class which had less and less significance due to technological and economical change. With the transfer of the skinhead model to former West Germany, groups have already been set up that can no longer be traced back to a marginal social background (HEITMEYER 1988). A recent research showed that male young people with low qualification are the main actors of violence against aliens. In former East Germany, the general uncertainty resulting from the change in political systems appears to make the participation in the unrests subjectively meaningful.

Conflict Development²

The outbreak of conflicts and their development are principally determined by the interests of the group involved. With riots no organized interest in conflict and escalation is ascertainable; with youth protests, squatting, and social movements, efforts to enter into conflicts and organize the achievement of interests - even through a planned escalation of the means and forms of action - can definitely be detected. The same transition from spontaneous to planned actions coordinated nation-wide cannot yet be detected in acts of violence against foreigners. The more strongly the movements are organized and the more they are able to plan protest actions, the more likely the differentiation and development of sub-strategies persuable by different groups is. Here, forms of action with a very limited expressive character appear next to others with a high degree of opportunity for self-portrayal and expression particularly attractive to young people. A complex mixture of motives is involved (WILLEMS et al. 1988).

As with the interest in escalation to broaden and intensify the conflict, so too with the interest in violence. In riots, the development is spontaneous and mostly a reaction to an occurrence felt to be a direct provocation. Apart from revolutionary sub-groups interested principally in violence, in the disputes of youth protests, squatters, and the ecology movement - interest in violence developed only during the conflict itself. Violence is also used instrumentally, as a method of exerting pressure - shown clearly in the case of squatting actions in Berlin. The peace movement differs in this regard from the otherwise structurally similar ecology movement, since violence is more clearly negatively rated.

Generally, interest in escalation and violence seems to depend on the resources available. Protest groups which cannot fall back on institutionalized opportunities for participation, or do not have the structural and financial means to use them effectively, are highly dependent on attracting public attention. Media selection awards spectacular

² See Willems 1989, 1994

events, particularly violence, by increased coverage. This explains the strategies of some protest groups not to make use of violence themselves, but to force the police to use it (for instance by linking arms at sit-ins) to "unmask the violent nature of the system". According to the extent which protest movements may be established and their views heard without the necessity of resorting to spectacular acts, violence seems to reduce itself to individual fringe groups. The behavior of the "established" social institutions of police, state and political parties plays a significant role here as well.

Riots develop from clashes with police that spread into street battles; looting and destruction of stores accompany. Most of the British riots started with isolated incidents interpreted as provocation and responded to with counter-provocation (ECKERT et al. 1990b, 2-4). The Toxteth Riots provide a concrete example: youths responded to what seemed the unwarranted and harassing arrest of one of their group by throwing stones at a patrol car they had called on a false pretext. A refined form of police provocation is the "rodeos" of immigrant youths in France. In the clashes between young immigrants and police, the confrontation usually escalates into street battles of a short time - hours, or at most, one day - after the provoking incident. In areas where police temporarily lost control, looting and arson took place. This sequence of events would be repeated for several days or nights until the rioting finally subsided.

Rioters unanimously mentioned police practice in districts inhabited predominantly by blacks as the cause for conflict. The origin of this phenomenon can be described as the consequence of a labeling process: First, police detected a higher rate of petty offences amongst colored youths (frequently drug abuse or illegal consumption of alcohol). They react by increasing police presence in these areas which, amongst other things, lead to an increase in the number of offences detected. In turn, this led to even greater police presence, numerous arrests, and above all, special surveillance practices (raids, "stop-and-search") hardly implemented elsewhere. As a consequence, inhabitants of the predominantly black district felt themselves to be

systematically discriminated and persecuted by police. Infringements by individual policemen reinforced the impression. At the outbreak of the riots, police behavior had a detrimental effect: existing institutionalized channels of communication (community liaison officers) were not used to inform the "Black Community" of police intentions and the planned scope of its actions. Police deployment, therefore, was seen as a global attack on the inhabitants of the area; friend-enemy polarization increased.

In youth protests a phases of cultural demonstrations, in which the rudimentary organizational structures of the protest movement also form, usually preceeds actions leading to a clash with the police. At first, the protest is often expressed in demonstrative actions not directly intended as a violent escalation. Confrontation mostly only results when these demonstrations are suppressed or concommitant violence triggers police intervention. As with riots, rapidly escalating disturbances and street battles follow. In the longer course of the disputes, a second level of conflict resolution is frequently initiated in negotiations with local authorities. The revoking of concessions by authorities (often on the grounds of individual rioting incidents) or their inadequacy from the protest group's point of view (as in Zurich, the finances for the youth center's renovation) resulted in renewed, heftier clashes. In the case of youth protests the starting point is the unawareness and non-recognition of youths specific life-styles and their resulting needs. Sub-cultural styles are frequently regarded as deviant. The increased surveillance of these groups increases the polarization of the situation, since it is felt to be a provocation (ECKERT/WILLEMS/WOLF 1990).

A variation of the squatter conflicts also corresponds to the above scheme of conflict progression. If squatters are tolerated at first but then evicted or hindered in similar houses, violence usually results. Immediate eviction of each occupied house, as in Munich, however, reduces the chances of a squatting scene's establishment and any expectations of success of potential movements. Also relatively free of clashes is a third variation practiced at times in Amsterdam: the

toleration and, to a great extent, legalization of occupied houses. According to available information, no major confrontations directly connected with the squatting movement took place during the time this practice was implemented. Lack of political reaction to housing problems (particularly the lack of inexpensive and suitable housing for the alternative need of youth life-style), real-estate speculation, and the social consequences of re-development - all played an important role in the escalation of squatting conflicts. Since - despite admission of mistakes and obvious failings - no state measures to eliminate the housing problems were carried out, squatting seemed acceptable to many as a method of self-help. Unsystematic police and judicial sanctions made state intervention appear arbitrary and unjustifiable. The movement's potential for gaining new sympathizers thereby spread (ECKERT/WILLEMS 1986, 1987).

In many cases, social movements first try to take legal action - particularly when the prevention of a planned project is the objective of the protest. With information sessions, hearings, and petitions they seek to increase their foundation before staging spectacular events to capture media attention with demonstrations or law-breaking actions like blockades or construction site occupation. Escalation to the point of violence is conspicuously evident in battles in fenced-in areas; in the meantime sabotage has increasingly become a part of some groups' repertoire.

Whereas with youth protests and squatting the predominant issue is selective social problems to be resolved within the framework of short-term and limited political measures, the impulse of the peace and ecology movements goes back more - from the perspective of its members - to a general inertia of the political system which does not react to fundamentally new and long-term virulent questions. Thus protest groups regard mobilizing public opinion by spectacular actions - often implying confrontations with state authorities - as a promising method to success. Not until public opinion appears in the polls - as can be shown in the themes of the women's, ecology, and peace movements - do political parties and follow up (WILLEMS/WOLF/ECKERT 1993).

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In the eighties, hostility against foreigners manifested itself in separate, often spontaneous actions. In former East Germany (where foreigners were barely integrated into society, unemployment and housing scarcity), the general state of uncertainty brought applause from inhabitants in some localities during attacks against asylums for political refugees; the weakness of police there, made possible successes, which have given impulse to the anti-foreigner movement in former West Germany.

On the issue of immigration, the political parties in Germany have been debating general principles for years; the aim being to discredit the opposition rather than regulate actual immigration problems and further integration. Particularly in election campaigns, this has led to the apparently undesired, legitimation of xenophobic attitudes. The rigid taboo on radical right-wing positions in Germany seems to be slackening at present.

In acts of violence against foreigners, the weakness of police in the new federal states had a dire effect since they were not often able to protect refugee centers. In some cases, perpetrators were given a definite feeling of success by the closing of asylums (WILLEMS/WÜRTZ/ECKERT 1993).

The Emergence of Right-Wing Potential for Violence

In the empirical studies of the past decade, acceptance and understanding of force used by demonstrators - rather than by government - correlate more strongly with left-wing ideologies and "postmaterialistic" value-orientations. How then, does it come to this apparently slight affinity for violence in the right-wing spectrum? Put briefly: on the right, people did not want to strike out themselves: typically they wanted state or police to do so and maintain law and order. Kaase and Neidhardt (1990) defined this in their investigation as repression tendency. The right-wing spectrum, with no consideration for particular civil rights, demands a strong state which helps itself by force, if necessary. This is the mirror image, so to speak, of the opposing end of the political spectrum where the strong state is especially criticized. This distribution makes it clear that the 'propensity for politically motivated violence' is very closely connected to the proximity to certain political conflicts and with their form of settlement. Thus seen, the distribution of attitudes appear to be a reflex to the specific conflicts of the seventies and eighties, in which chiefly members of the "New Left", youth center and squatters' groups, as well as ecology and peace movements were involved in clashes with the police.

In the investigation by Kaase and Neidhardt the outlines of another potential for violence also became apparent, however. Approximately 8% of those asked found it acceptable when "it is made clear, using one's hands to asylum seekers, that they should go home" (KAASE/NEIDHARDT 1990, 216). Unfortunately, the willingness to take part in such actions was not asked about, so that we are dealing more with the approval of violence, than with a personal propensity thereto. Nevertheless, it is clearly apparent that immigration to Germany is becoming a new area of conflict in which propensities to violence result.

It is true that in our explanatory models we usually assume that what manifests itself as violence must be in existence as willingness before.

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The interpretive model, however, is difficult to verify. Often the propensity to violence is produced for the first time in certain. situations. Quite generally, the importance of "learning by model" must be considered: not only readiness leads potentially to deeds, but deeds, conversely, can potentially generate or reinforce readiness. The moment, namely, that relatively small groups can make clear what can be done (under circumstances, even without danger), they can also generate in others a readiness which was not previously existent. Occurrences such as these are quite familiar from the psychology of pro-social behavior: example behavior creates a readiness to imitate. Violence against foreigners is constituted in a similar process: The experience that foreigners can be driven off, even if only from one town, that police shrink back, that buses take foreigners away again - is a "model" that can lead to (mis) interpretations according to the motto: "The political parties don't solve the problem. We ourselves, however, can solve it by using the appropriate force." The argument of youths in Zurich ten years ago, "They only listen to us when stones fly," gains significance again in this fatal connection. If model deeds generate readiness, then quite different values should presumably be apparent in the surveys: that propensity to violence increased precisely because violence appeared to be 'successful'. In comparison to the violent phenomena in the conflict between new left, new social movements and state, violence against foreigners has reached new dimensions both quantitatively and qualitatively (WILLEMS 1993).

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The Genesis of Ethnic Conflicts in Industrial Society

Since the days of Herodotus we know how people behave when confronted with foreign cultures. In principle, three options are available: one is to rate the foreign culture as higher than our own and assimilate ourselves; two, is to attach a higher value to our own culture, believing it to be threatened by the foreign one (a nativist reaction); or relativize our own tradition with the foreign, and attain a more universal orientation by reflection - a relatively abstract concept of "human rights" is then wedded to a tolerance towards other cultural modes. (This, we hope, is the way global society will go.)

Unfortunately, the third option presupposes cognitive capabilities of no small order: a suspension of valuation - normally taking place constantly - is required, and alternative ways have to be conceded equal claim to considerations. Furthermore, one's own as well as the foreign culture's traditions must ultimately be legitimized before a tribunal of abstract criteria. The course outlined is more likely to be taken by the "educated" than by other sections of the population. Perhaps this helps explain the prevalent hope that making more education available will solve the problem. Nothing against education in itself, but education can also lead to ideological indoctrination in the name of nation, class, religion or faith - just the opposite of tolerance. Against such a simplistic view I urge the following consideration: The experience of the foreign is very much a reality when we encounter members of other cultures, and only longterm learning will overcome it. The successful assimilation of Huguenot refugees in the eighteenth century and of Poles in the nineteenth and twentieth - not to mention Germans expelled from the East in the 1950s - into German society shows this is not impossible; yet the prevalence of ethnic conflicts, of nationalism and racism in both the past and present makes it clear that such successes are not a foregone conclusion.

The point where experience of the foreign becomes politically sensitive, and as a result, a crucial challenge for the democratic

process is reached when such experience advances to the point of becoming the dominant dimension in the way whole population groups define themselves. All self-definition depends on prior or current definitions of what is foreign, or not-self. Typically we define ourselves, our identity, through a myriad of different senses of belonging and not belonging that reciprocally relativize each other. Family, native country, creed, occupation, formative generational experiences, and even hobbies - all contribute in different degrees to our identity. The balance achieved between the different dimensions of identity can easily be tipped out of equilibrium when exposed to additional pressures and sources of insecurity.

Three conditions can generate disequilibrium: The competition or struggle for scarce goods, where exposure to the alien, in the form of a foreigner for example, can rapidly translate into hostile attitudes. Hence, we should beware of overlooking competitive situations with the potential to serve as flash points: competition for housing (the flow of immigrants drives rents up), for jobs, social services, one's language in school, or prestige within a peer group or neighborhood. The second condition leading to resentment of foreigners is not necessarily connected to him haplessly activating it. The concept of an enemy plays an important role in maintaining a positive self-image in the face of existing pressures: If we are unsuccessful competing for a job opening or for a loved one, it helps if we can "take it out" on our successful rival or a his scape goat should the original be beyond our reach. Failure is easier to bear if we can persuade ourselves that our rival's success was due to illegitimate tactics, favoritism, for instance. A third factor motivating anti-foreigner sentiment, and racism in particular, is that many who no longer feel able to hold their own in a meritocracy are tempted to compensate for their deep-seated sense of inadequacy by positively re-evaluating their "inborn" features whether family background or ethnic origins. Invariably, this is achieved by down-grading those who do not possess these prized features. For those who take this direction, radical ideologies now become plausible.

Since co-existence between different ethnic groups is so complicated, it is not surprising to find a perennial tug-of-war between the demands of democracy and ethnic solidarity. This tension is enunciated in the egalitarian principle itself; in multi-cultural societies, the principle is typically undermined by ethnically drawn lines of solidarity. If an ethnic group is in the majority, we speak of hostility to foreigners or racism; if it is in the minority, we more readily accept solidarity in the name of cultural self-affirmation. But precisely here the groundwork is laid for real conflicts: For instance, if the normal majority situation in society looks as if it is being reversed in individual school classes or neighbourhoods, the ethnic solidarity of the threatened majority may quickly take a virulent turn for the worst.

Lines of ethnic solidarity not only undermine the egalitarian principle - they can even overshadow political decisions. Turks living in Germany recently protested against the arms' embargo imposed against their homeland in response to Turkish massacres of Kurds. In the USA and Canada, ethnic clientelism is a widespread phenomenon which re-imports into politics the same type of particularistic loyal-ties thought to have been discarded with the passing of the corporate state. Such clientelism is a potent source of conflict in the struggle for political power and subsidization.

To summarize: If world-wide economic inequality leads to migration, and if migration leads to ethnic conflicts: non-violent conflict regulation will be a very difficult and important issue in the future.

Conclusion

Violence has always been an option of human behavior. With his selfdomestication as a civilized being though, man has developed the ability to resist aggressive impulses. As such, conjectures that violence is an inevitable necessity are as equally unreasonable as those claiming that non-violence is only a problem of upbringing. Rather, it will always be a question of the degree of violence in a man's social life. The prevailing level of violence can be influenced within limits by upbringing. But, in the long term, upbringing in a society is also determined by its objectives in existing conflicts and their possibilities of regulation. In this respect, the question of violence leads back again to the analysis of conflicts and regulation that exist among individuals, groups, and finally, states. The fact that human beings fight not only for "natural" interests, like survival, but also for cultural interests, admittedly complicates this analysis. For thousands of years, man has let himself be gripped by ideas, has spread them with fire and sword and has defended himself against them. Conflicts do not simply exist; they are the results of the intersubjective definition of interests, values, identities and non-identities. Whether human beings contest for food, land, honor, or belief, the consequences for them may be quite the same.

In this context, the level of violence of a society is determined by the intensity of its conflicts and the forms of regulation which can be found for them. Just as the privatisation of religion in the eighteenth century contributed to peace, the supra-national integration of global society in the twenty-first century could also contribute to a reduction in the level of violence. Its occurrence admittedly depends on whether institutional, that is, legal and political procedures for conflict regulation can be developed - for example, whether the administration of justice and monopoly on the use of force can be established at the level of the United Nations. Furthermore, it depends on whether the conflicts between people, groups, interests, classes and states can be brought into the channels of regulated procedures. Democracy and rule of law - that is, votes, elections,

treaties, and legal proceedings - offer the chance. Admittedly, just how far these chances can be used remains open. Typical present day conflicts, like those between local interest in healthy living conditions and supra-local, global economic interests in transport, supply and waste disposal, as well as for the ecological interests of future generations versus present prosperity - all are seldom handled at parliamentary level, i.e., by the political parties. The increasing conflicts due to economic conflicts would also require international mechanisms of conflict regulation, a "new" world order, not yet available. Future dramatic conflicts - for water, energy, or belief for example - are also imaginable. Whether the progressive "ideas of a history of mankind with cosmopolitan intentions" or of an "eternal peace" are anything more than a rainbow in the midst of storms, remains to be seen.

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THE ETHICS OF STRUGGLE:

Changing Political Perceptions Among Secondary School Students in a Southern Sri Lankan Electorate ¹

Jani de Silva

Introduction

The 1980s was perhaps the decade where the concept of political violence re-entered the vocabulary of states traditionally preoccupied with the functioning/disfunction of democratic institutions. In Europe, the collapse of the Soviet Empire raised the threshold of political instability; even to instances of outright military engagement among different national groups. Among post-Colonial polities, even in the mostly quiescent states of the Southasian subcontinent, regimes that have been engaging in diverse parliamentary experiments across the last five decades were suddenly confronted with protracted insurgencies and separatist militancy. And in Sri Lanka, perhaps the most docile of South Asian states, the '80s in particular witnessed both a separatist struggle in the minority Tamil-dominated northeastern regions as well as the July Uprising of the majority Sinhala-led Janatha Vimukthi Peramuna (JVP) in the South. Yet even in a decade where extra-parliamentary disaffection the world over appears to be the norm rather than an exception, the Sri Lankan instance deserves special attention. For it illustrates the abrupt disintegration of an apparently stable two-party parliamentary system

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that had evolved over six decades in the space of less than one. At a time when most nations are struggling to achieve democratic freedoms, the Sri Lankan electorate appears to be impatient of the extent to which parliamentary institutions could achieve social and political change.

While the Tamil nationalist struggle could be interpreted as an inevitable culmination of the processes of political interaction between the two major national groupings in Sri Lanka, (i.e. the Sinhalese and the Tamils), the Southern insurgency, on the face of it, seems more complex, and less inclined to fit into any easy explanatory model. Yet its consequences for the Sri Lankan body politic has been severe and traumatic. And perhaps the most distinctive feature of the July 1987 Uprising of the JVP was precisely that it was waged against the backdrop of a protracted military onslaught on Tamil separatists in the northeastern coastal belt. Such a situation then tends to create its own ideological imperatives. For in such a context, inevitably, the mantle of 'savior of the nation' (veera sebala) is acquired, quite naturally, by the Sinhala-dominated security forces engaging largely Marxist-oriented Tamil militants in battle. Alternately, the JVP, which initially conducted an insurgency in 1971 (the April Uprising) also described itself as a Marxist-Leninist grouping. Nonetheless almost 20 years later they did succeed in conducting an uprising in which they claimed to represent not so much the oppressed classes, but the 'patriots' (deshapremis); they were able to capture and sustain, however briefly, the ideological initiative over the armed forces².

Between the period July 1987 and December 1989 the JVP uprising convulsed almost the entire island, with the exception of the northern peninsula and the eastern coastal strip, where Tamil militants retained a constant presence. In Southern Sri Lanka for instance, at its height

External developments also strengthened their hand. The regime-in-power in its turn lost a measure of credibility since the Indo-Lanka Peace Accord (ILPA) which stemmed the military onslaught by the Sri Lankan armed forces in the north, was established under Indian compulsions in July 1987. This, to most of the Sinhala-speaking electorate reflected a loss of national prestige and autonomy. Consequently the ILPA was interpreted as entirely a diplomatic coup for the Tamil militants. The JVP then was able to capitalise on this sense of political disaffection that moved the Sinhala-Buddhist electorate.

insurgent activity and general instability was so wide-spread that in at least one district all 423 schools had to be closed down for different periods of time³. Consequently .school-going students found themselves engaging in different levels of participation, depending on factors such as personality, personal status and rank in school. Thus 'participation in subversive activity' became in fact a very fluid category, extending from somewhat marginal activities, i.e. involvement in demonstrations, in the pasting of posters to sometimes active involvement in the Deshapremi Janatha Viyaparaya (DJV)4 enterprise. The political repercussions suffered by school going students were equally clearly not commensurate with the extent of political involvement; they were also subjected to arbitrary repression by the state. At the same time, second only to university undergraduates, senior secondary school students found themselves the target of the intensive political radicalization programmes being conducted by the JVP. Against this political background it is perhaps important to explore the perceptions of such secondary school students with regard to the political mobilization processes that were being effected, and also their response to the repressive backlash that this brought about.

This paper explores the perceptions of such students, in particular, their views on political agency, and their expectations of the state and its forces of law and order. It will essentially focus on the extent to which such perceptions have been coloured by their immediate political environment; and to what extent such perceptions would appear to mark a radical departure from the traditional ideological stances adopted by the 'Old Left'-dominated radical-progressive sectors of the electorate⁵.

The paper will base itself on in-depth interviews conducted on a sample

Private communication by a Principal of an important secondary school in the region. This information was corroborated by another school Principal. Schools were rocked by violent strikes and demonstrations.

⁴ The DJV was the military arm of the JVP.

Such a broad grouping may range from parties such as the Communist Party of Sri Lanka (CPSL), the Lanka Sama Samaja Party (LSSP), the Mahajana Pakshaya (SLMP), the Mahajana Eksath Peramuna (MEP) to the Sri Lanka Freedom Party (SLFP), all of which have at some point or other engaged in United Fronts or coalitions with the Old Left, with subsequent movements rightward or to the centre.

of approximately 16 students in the age-group 16-19, selected from among five secondary schools in a Southern electoral district. These interviews are a part of a larger sample of 36 Arts and Commerce students in the Advanced Level classes,6 conducted between August 1991 and November 1992.7 The 16 students were chosen specifically on the grounds of general articulateness and interest in their socio-political environment. The interviews were largely individual but also substantiated by collective discussions. The study also uses other sources such as creative writings, poetry and essays collected from those who participated in the project. This paper is further a part of a larger study on the media and violence; and in the initial phases an attempt was made by the research team to avoid discussions on 'politics', since, in the light of the repression it was felt that such a topic would cause unease. Yet while on the one hand there was real apprehension on the part of those interviewed, at the same time, there was also a kind of anxiety to talk about the events of 1989-90. This need to speak, perhaps to explain to the external world (in the form of the researchers) that theirs had been a difficult experience, at times overcame the fear of any supposed sanctions that would impact on them if they were to speak. All names of those interviewed have of course been changed to ensure their privacy, while details of their social background have been retained.

Yet such a sample can ultimately not claim to be representative of a specific rural social stratum, or even an age-group within such a category, but merely to express the views of a number of individuals who underwent a similar social and political experience at a specific moment

These interviews, conducted over a period of 15 months, resulted in more than 250 hours of recordings; yet many of the most important discussions of course, could not be committed to tape.

The only criteria attempted for selection of interviewees were gender (25% of sample were female students) and income. Here, while social background in the sense of income levels did not display much diversity, what was interesting rather was the intricacy of class-relationships within a single family unit, where it was possible for instance to find a mother who was a domestic aide, a father who is a self-employed 3-wheel taxi-driver, one sister a school-teacher, another a domestic aide in the Middle East and even another brother who has just passed out of medical school. The Sri Lankan rural sector in the late '80s and '90s would appear to be in the throes of great social dislocation. While such issues are undoubtedly important, due to constraints of space, this paper will not address them.

in their lives, i.e. 1988-9. To this extent their perceptions and stories are both moving and pertinent, for their attempts to come to terms with the political reality around them and their ideological plight is surely shared by thousands of young men and women elsewhere in the south, central and north-central provinces of Sri Lanka. The specific discourse that emanates from their collective experience, while not replicated in all its aspects, may perhaps find echoes elsewhere in the rural and semi-urban Sinhala-Buddhist electorate.

This paper will be divided into four main sections. The first section will provide a background to political developments in the Sri Lankan Left movement. The second section will be devoted to ideological issues such as perceptions by those interviewed on the conditions in which armed struggle is justified and the role of the forces of law and order in modern society. The Third section will discuss actual developments in southern Sri Lanka and the extent to which the actions of both the JVP and the armed forces conformed to the expectations of those interviewed. The final section will address their personal experiences and that of other victims of both armed militants and state repression.

POLITICAL BACKGROUND:

The Left and Armed Struggle

With the arrival of universal franchise in 1931, the left, in the form of the Lanka Sama Samaja Party (LSSP) was perhaps the initial political grouping to emerge in the parliamentary arena. Though in the pre-independence decades it was the strongest anti-establishment force, in later years it became subject to the fragmentations that was to mark the left movement the world over. Thus in the post-independent period, constant friction between the Trotskyist and Stalinist factions led to the latter forming itself into the Communist Party of Sri Lanka⁸.

Perhaps the most pernicious issue to bedevil the left in the post-independence period was of course to do with the strategy of forming 'united fronts' with the 'progressive national bourgeoisie'. For by the '60s both the Third and Fourth Internationales had shifted their position on armed struggle as the only means of achieving socialism; and begun to look favourably on national communist parties engaging in united fronts with 'progressive forces'. However, such a stance frequently tended to be viewed askance by the more radical party cadres on the ground; and the identifying of which segments of capital are 'progressive' became a vexed issue. In the Sri Lankan instance the debate revolved over the political identity of the Sri Lanka Freedom Party (SLFP).

The SLFP initially broke away from the conservative and pro-establishment

While the LSSP affiliated itself to the Fourth Internationale, the CP remained attached to the Commintern.

The debate here was about the need to differentiate between the different segments of capital. On the one hand, there was the indigenous bourgeoisie who were seen as production-based and therefore to help increase national productivity; thereby creating the material base for a socialist society. On the other, there was the comprador bourgeoisie, who were viewed as essentially engaged in servicing foreign capital and located in sectors such as finance and banking. Such elements were thought to be furthering the imperialist project of the import-export economy, rather than developing the domestic economy.

United National Party (UNP)¹⁰. In 1956 it successfully contested the general elections with the aid of 'no contest' arrangements with the left parties, and subsequently attempted a 'socialist'-oriented programme of state-directed industrialization¹¹. While in the following decade the Left kept a cautious distance and adopted a policy of 'constructive criticism'; by 1964 the LSSP had decided to accept the offer of a portfolio in the cabinet of the incumbent SLFP regime. Such a decision then, implied that the LSSP now looked upon the parliamentary arena rather than armed struggle as a means of realizing socialism. This move also compounded divisions within the left that were caused by the Sino-Soviet break of the early '60s¹². Subsequently such parliamentarist tendencies precipitated the breaking away of numerous 'new left' groupings, one of which was the JVP.

The 1970s saw further developments. The LSSP and CP formed a United Front with the SLFP and the following year the JVP launched its April Uprising. The uprising on its part, was brutally crushed in a matter of months. Consequently, the United Left Front (ULF) governments' stance on the validity of armed struggle underwent a further shift, to a position of actually taking sanctions against those who engaged in such political activity. Ordinary court procedures of the legal system were now seen as inadequate for the problem of prosecuting insurgent suspects, and in May 1972, it brought in special legislation in the form of the Criminal Justice Commission (CJC) Bill. A significant feature of this piece of legislation was that it enabled the courts' acceptance of confessions made

The UNP was deeply committed to the Colonial import-export economy and the interests of its membership was firmly tied-up with the plantation sector. The leader of the UNP, DS Senanayeke was himself a member of one of the more wealthy plantation-owning families and a large number of the conservative nationalist elite who chose to join the UNP in 1947 were themselves mostly large landowners. For this reason, the left has frequently tended to identify the UNP with the 'comprador bourgeoisie'

In the 10-year Plan of 1959 attempts were made to lay the foundations of a 'mixed economy' where the state would focus on basic and heavy industry, while the private sector concentrated on the production of light consumer items.

This was to cause friction between the Maoist grouping with the CPSL who tended to advocate a 'peasant-based' armed struggle, as opposed to the trade union politics of the Stalinist mainstream.

to the police or a civil authority, even though extracted under duress¹³. With the incorporation of the traditional left into the ULF government, the CJC Bill was passed with a two-thirds majority¹⁴. The first insurgency also put into motion a pattern of events which was to become familiar. A State of Emergency was declared, a Curfew effected and strict press censorship imposed.

In the wake of this situation, the Civil Rights Movement (CRM) was formed by liberal left groupings outside the government, who either did not share the official LSSP-CP view that the insurgency was a CIAinspired plot, or felt that whatever the case may be, the CJC legislation could lend itself to abuses, in a situation where more than 18,000 were said to be in custody15. In February 1977 the proscription of the JVP lapsed with the dissolution of parliament. Subsequently a number of left organizations including the CRM wrote to the Prime Minister, calling for the release of political prisoners and the abolition of the CJC Bill. The new UNP government acceded to this request. However, by 1983, in the wake of the ethnic riots, both the JVP and the Nava Sama Samaja Pakshaya (NSSP)16 were proscribed. The 6th Amendment subsequently disenfranchised the Tamil United Liberation Front (TULF). While there was some dismay among liberal middle class circles about the latter development, there were no loud voices protesting the banning of the former parties, though it was commonly accepted that they had had if any,

Section 11(b) of the CJC Act reads "A confession or any other incriminatory statement to whosoever and in whatsoever circumstances made by any person who is alleged to have or suspected to have committed any offense, may at any inquiry before the Commission be proved against such a person, so however that if it is sought by or on behalf of such person to reduce or minimize the weight that shall be attached to such confession or incriminatory statement, the burden of proving the facts necessary to support such contentions shall be on him."

Of the 6 Communist Party members, Dr Wicramasinghe and Mr. Sarath Muttetuwegama abstained.

This is the figure given in parliament by the Minister of Justice of the ULF Government in reply to a question from the opposition regarding fatality figures. Alles also gives a figure of 16,500 suspects who had either been arrested or had surrendered to the authorities (Alles 1990, 197). Houtart (1974, 346) gives a figure of 16,000.

¹⁶ The NSSP is also a new left grouping which broke away from the Trotskyite LSSP.

only a marginal involvement in the July ethnic riots. Here it was mostly the foreign media which took it upon itself to put forward the JVP's case.

The London-based Amnesty International for instance, produced a report in February 1985 which observed that "in 1971, thousands of young members of the JVP, Marxist-oriented revolutionaries ... staged an insurrection ... since then the JVP has stated its intention to participate in the parliamentary process"17. The implication then, was that the JVP should be given the benefit of the doubt and allowed to continue its presumed parliamentary path. The domestic Left establishment however, was rather more unsure of the direction of the JVPs' political journey. Meanwhile in the Northern peninsula and in the East, the extent of insurgent activity was escalating. The ethnic crisis now further divided the left, for on the one hand, their stance of equal rights to the Tamilspeaking people required that they criticize abuses by the State's armed forces; on the other, the number of civilian targets attacked by Tamil militants increased day by day. Here again the vexed question of what constitutes "valid" military targets on the part of revolutionaries, and to what extent the presence of armed vigilantes can transform an entire village into a "military" target remained an unresolved debate within the left.

The July 1987 Accord was supported by many left parties as a means of allowing a measure of regional autonomy to the Tamil-speaking people. It was opposed by almost all the mainstream Sinhala-dominated parties, significant among which was of course, the JVP. The Accord was also a turning point in that this political stance allowed the JVP to turn its guns on the left. The unmitigated ferociousness of this onslaught served to push the left gradually and inexorably further and further into the arms of the establishment. A new phase now ensued, one of open collaboration with the UNP. Some left groups even developed paramilitary arms, such as the Peoples Revolutionary Red Army (PRRA)¹⁸. This then marked the

¹⁷ Sri Lanka: Detention Without Trial of Alleged JVP Members. Amnesty International, 12 February 1985. AI Index: 37/02/85 Dist: Co.

¹⁸ See Matthews 1989, 438; and also Chandraprema 1990, 238.

final co-option of the left. In the new situation, critical voices tended to come largely from those elements within the intelligentsia who were not politically active enough to be targeted by the JVP.

PERCEPTIONS OF THE ROLE OF ARMED STRUGGLE AND THE FORCES OF LAW AND ORDER

(a) The Role of Armed Struggle:

In the post-56 decades the Sri Lankan electorate appeared to grow in confidence; consistently larger proportions of the enfranchised took to voting at elections. In 1982, approximately 86% of the electorate participated19. At the same time, almost each new General Election saw a pendulous swing of political power, where the victorious party claimed an enhanced majority in parliament. Against this, in the Sinhaladominated Southern provinces, for the generation which arrived at their teens in the '80s, a decade of escalating political instability, issues of political legitimacy that seemed so clear-cut to previous generations were no longer etched in black and white. The persistence of the Tamil separatist struggle on the northern frontier and the unbanning of the JVP in 1977, its subsequent re-grouping and re-banning in 1983, appeared to throw up the question of the validity of armed struggle into sharp relief. While the political discourse of the mainstream parties of the '60s and '70s tended to pose armed struggle and parliamentary politics in terms of binary opposites, by the '80s however, the cleavage between these categories appeared to be increasingly unclear.

Thus for those secondary school-going students who participated in the study, even those disposed to openly discuss the role of armed struggle in politics appeared mostly unwilling to make a categorical statement with regard to its validity. Such a reluctance should perhaps be seen in the context of the massive state repression that has been unleashed upon this region. However what is interesting is the equal reluctance to condemn outright the need for armed struggle. Armed struggle it would

The October 1982 presidential election was perhaps the last nation-wide election to be held in a relatively stable political climate. The succeeding Referendum in December 1982 marked the descent into political chaos which marked the '80s. Despite the quenching of the July uprising, it cannot be said that conditions similar to the pre-82 political climate has in any real way been recaptured in the '90s.

appear, is sometimes not unjustified. In what contexts then, does such armed struggle become justified? Many of those interviewed were willing to approach the issue indirectly. In response to a question on the role of the state, Sumedha Jayantha²⁰ argued that the people's right to armed opposition is vindicated when the regime-in-power can no longer be seen to act in the people's interests; in such a situation, the state needs to be rejuvenated. "In reality", observes Sumedha, "since the state is an organ that is created by the people, such an institution should always act to further the interests of the people (mahajana yahapatha). If the actions of the state is contrary to the real interests of the people, then each one of us has the right to oppose the state; and convert it into one that will realize the peoples' interests." Expressed in almost classically Leninist terms, in this discourse, dissent does not stop at opposing the individual acts of the state, but means transforming it into something that will benefit the mass of the people.

What then comprises the 'interests of the people'? This again, curiously enough was an area of general consensus. The interests of the people refer to their basic rights. Lasantha Gamlath, 21 also elaborating on his view of the role of the state remarks that the people have a right to receive from the state what is owed to them; the state has a responsibility to the people. That is, it is the people (sic) who established the state; the government is appointed by the people 22. If the state does not do this (i.e. give the people what is owed to them), the people cannot allow themselves, like

Not his real name. Sumedha is a 17-year old commerce student. His mother is a schoolteacher in a very small rural school. His father who also used to teach, now drives a three-wheeled cab. His family's economic situation is somewhat difficult. He has three brothers and two sisters. Sumedha is very bright, interested in politics and writes short stories and blank verse, mostly on social and political themes.

Not his real name. Lasantha is a 19-year old Commerce student. His father is a type-setter in a printing press, and his mother is a housewife. He is the eldest in the family of 2 boys and 2 girls. Lasantha is very thoughtful, good in his school work and likes reading. He also writes short stories and poetry, mainly on social issues such as drunkenness and poverty.

Lasantha here fails to differentiate between the state and the regime/government. While the people may change the government, particularly if it is located within representative organs such as the legislature; but this is not so with the state, which is an extension of the executive.

kicked dogs, to be under the power of such irresponsible rule." This somewhat idealistic but powerfully expressed view clarifies the picture further. Armed struggle is justified in situations where the state has clearly failed to realize for the people their basic rights as citizens. Is armed struggle then the only way in such a situation? Not really, but it is a point on the spectrum of political dissent. For the evolvement from peaceful dissent to armed struggle is a gradual one. "Firstly", says Sumedha, "the people seek to resolve their problems by negotiation, through parliamentary channels; they express their grievances to the regime-in-power. So if the regime does not respond to their complaint; if the state refuses to concern itself with the problems of the people but continues to rule according to its own dictates, then actually, the people should display their opposition in other ways." This political process is illustrated graphically by Lasantha in his version of how the Tamil Eelam question evolved:

"Initially, the political party system evolved. Subsequently the Tamil people entered the political arena and started their own political party. They first cleared all the seats in the Jaffna peninsular. They then demanded minority rights (sulu jathinge aithivasikam) for themselves. They wanted, I imagine, rights that were equivalent to those enjoyed by the Sinhala people. But the government of the time did not allow this. They were anxious to give only the Sinhala people a place - they gave a greater place to the Sinhalese. This is actually not correct (hari ne), not really fair (sadharana ne). But that's the way it happened. Then the proportion of the minorities that were represented in Parliament became less relative to their significance in the population. The Sinhalese dominated. So those people (i.e. the Tamil-Speaking people) apparently refused to come to parliament. There was some problem related to their participation, I'm not sure. Then straight away, the youth in the north became motivated (pelambuna) to take up arms.

After that, an issue that should have been resolved through negotiation ... (shrugs expressively). After that, the Sri Lankan army went to the north and they have harassed the people. Subsequently, they (the youth) organized themselves into the tiger movement. Now they're asking for a separate state ... now it's not minority rights, its' a state of their own."

Lasantha then, who like many of his fellow students is deeply averse to the notion of a separate state, concedes easily that the Tamil question could have been resolved through parliamentary channels; if only there had been sufficient political will on the part of the mainstream political parties which led governments in the post-independence years. Though a political science student and well-versed in Sri Lankan politics, he cannot accept as valid the political imperatives upon successive governments that moved them to take up a pro-Sinhala nationalist stance visa-vis the minorities. He is then, essentially a product of the troubled '80s where the repercussions of past political mistakes have been expensive. A tolerant and soft-spoken teenager, he is nonetheless angrily impatient of what he perceives as the short-term and self-oriented politics of the mainstream parties. Yet ironically enough, while almost all those who expressed views on the subject appeared to share his views on the possibility of resolving the Tamil question peacefully in the past, at the present point in time they appeared equally united in opposing a negotiated settlement to the ethnic crisis. For such a negotiated settlement, it would appear could only be seen as an appeasement to Prabaharan²³, whose political goals are seen as not valid.

Thus taking up arms even in a just struggle in itself does not vindicate the moral stature of the revolutionary. In this instance, Prabaharan as a political figure was frequently depicted as driven by power hunger rather than concern for the Tamil people. This is perhaps a somewhat one-dimensional view; there is, it would seem, no need to suppose that even

Prabhaharan is the murderous leader of the Tamil Tiger movement or the Liberation Tigers of Tamil Eelam (LTTE), and a figure that is much demonised in the Sinhala media.

Prabaharan is not moved by a concern for Tamil-speaking people as well as a desire for power. Nonetheless in this emerging discourse, it is clear that even armed struggle against an unjust state is not always justified, for all who struggle enjoy different degrees of agency. "Much of the time", says Sumedha, "People who suffer under unjust rule are manipulated by the power-hungry. Now if I want to capture power, say the state is acting oppressively. Now suppose there is arbitrary repression by the state; I point out that the government has to be overturned. Then, as a matter of fact, I can be sure the people will support me." Oddly enough, in this instance, it is to the JVP that he referred, yet his view coincides with that of many of his classmates on the Tamil tigers. While Sumedha is analytic enough to locate the complex strands of idealism and opportunism which move freedom fighters, he is seemingly young enough to be critical of opportunism of any kind. Yet interestingly though many of his fellow students were not able to capture the issue in ideological terms, as the next section will perhaps illustrate, their practical political experience draws from them sentiments very akin to those he expressed.

At the same time, Sumedha's pessimism is also touched by an idealism that perhaps redeems it from outright cynicism. For, he says, such political adventurism is not always the case. "There are times", he points out, "when people take up arms for benevolent goals (yahapath aramunu); the Palestinians ... some organisations, they are armed, but they deploy their weapons for the benefit of the people. Like Saradiel;24 I mean, now he took up arms, but he did so to take money from the rich (loku minissu) and to distribute it among the poor (podi minissu)." Commenting on LTTE politics, he adds simply, "if the tigers are actually motivated by benevolent (i.e. people-oriented) goals, why then do they need to kill unarmed Sinhala peasants?" Thus taking up arms for a cause does not in itself guarantee that one's conduct is laudatory or morally justified, if such conduct does impinge on the interests of other (unarmed) sectors of society, even if they do stand in the way of one's political goals. Such a

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²⁴ Saradiel was a 19 century bandit whose story is built on the lines of Robin Hood, with a reputation for stealing from the rich and giving to the poor.

position then, appears to stem from a somewhat optimistic view of society as an arena where the good of the parts must necessarily amount to the good of the whole.

At the same time, somewhat revealingly, most of those interviewed were unwilling to compare the Northern and Southern insurgencies in terms of relative legitimacy. There appeared to be a general dislike to go into the issue very deeply, but to dismiss it as 'different'. This sentiment was perhaps best captured by C.A. Upekha25 "If you study the war in the north", he remarks, "it is very different to what happened down here. It unfolds in a very different way. Over here, it's like a battle fought out within one house. Over there, it is a battle between two houses. The issues are not comparable." The sense of alienation then, is complete. It is simply not possible to judge the northern militants by the standards we (i.e. the Sinhalese) judge ourselves, even though at one level we can see that they are only responding to an adverse political framework which constrains them. We cannot focus on this truth (which we know deep down) since it may weaken our resolution to stand for our own rights, rights that are being actively threatened by the Tamil militants (tigers).

Yet the ideological question remains. How then do armed militants differ from other sectors of civil society? From ordinary citizens? The difference, it would appear, is a matter of degree rather than kind. Once again Sumedha, who is interested in analytical questions has an answer. "There is" he says "a real difference between those who bear arms, and those who don't. That is, the ordinary citizen thinks, "we should not fight for our rights with weapons; we need to accept the conditions we have now and attempt to resolve our problems peacefully". Those who reject such a stance, who are not willing to spend 20-30 years winning their rights: those who think they should have their rights now ... they are different."

Not his real name. Upekha is 19 years old. He comes from a difficult economic background. His father is a retired foreman in a sugar factory some distance away. He has two married sisters and two brothers, one of whom is in the Middle East, but does not seem to be doing very well. He is very talkative and outgoing. He is also very observant. He does not like to read but is interested in drama and has written scripts for school plays.

The issue then is not so much the legitimacy of goals, as the means of achieving them. For men do not put themselves outside the bounds of society and take up arms lightly, without an adequate cause. Such a view of politics then stands in stark contrast to the political discourse of previous decades, where armed struggle was perceived in most instances as illegitimate by definition. And as Lasantha points out even those who are armed share the aspirations of ordinary people, to live well, to rear a family. Though they may be outside the law then, in this sense they are an integral segment of society.

In sum then, as many interviewees pointed out on various occasions, taking up arms does not ascribe moral weight on you one way or the other; it is in what situations you actually choose to deploy your weapons that redeems your goals or shows them up as false. Thus while taking up arms against a patently unjust state is of course justifiable, this in itself cannot vindicate one's subsequent political conduct. Rather, each such act needs to be measured against the extent to which it benefits the mass of the people, who are the ostensible beneficiaries of one's actions. Similarly, if at any point such actions serve to worsen the plight of the people, then armed struggle becomes a farce, a mere game of power politics indulged in by the politically irresponsible and the power-hungry. Issues of legitimacy then are no longer black and white, but etched in shades of grey. There are no universal standards that can stand for all time. Everything, including legitimacy has to be constantly sought and reaffirmed.

(b) Responsibilities of the State:

What then are the responsibilities of the state and its forces of law and order? Ironically enough, the collective expectations of the state on the part of almost all those interviewed was extremely authoritarian. Responding to a question on the relevance of the Penal Code that is prevalent in some Islamic states under Shariat law to Sri Lankan society, with regard to aspects such as the severing of fingers/arms for theft, the general consensus appeared to be that such a code was justified. "In

today's world" said G.A. Sugath Wijeweera26 "a person seeks to live not righteously (sadharana jeevithayak) but luxuriously (sukopabogi jeevithayak). Society has moved a great distance from a desire to live righteously. For such a society, a harsh legal framework becomes necessary." Is the desire for an untroubled existence then in itself purely hedonistic? No, but "in today's world" says Sumedha, "90% of the people, if they were ever to commit a crime; say if they were to assault someone else ... if you tell them to refrain, politely (hondin kivvanam), that will never happen. Such a person will never stop no matter what anyone says, unless he is (severely) punished." Nonetheless punishment, howevershould be appropriate to the crime. In what way? If the crime is one of poverty, such as the stealing of a loaf of bread, the severing of the fingers of such an individual is not appropriate (sadharana ne) for it is hunger that drives men to crimes such as that. A poor man would be further handicapped in earning a living, over and above his poverty, if he is punished in such a way. If on the other hand, the object stolen is a luxury car, harsh punishment is called for.

Thus while state coercion is required in certain situations, at the same time, there were certain conditions that needed to be fulfilled by the state. "Such laws (i.e. the Shariat) are justified" observes Sugath, "in a situation where the state has succeeded in creating for each person a livelihood ... I mean, it is difficult to establish such a state, but in a situation where this is not so, such punitive laws become invalid." This ties up with Sumedha's assertion that "if the law operates in any society, its operation should be directed first at bettering the material welfare of the populace; after this is realised, implementing such a punitive code is in order." This position, interestingly enough found agreement almost across the board²⁷. As the last section will show, the role of the state in employment creation

Not his real name. Sugath is an 18 year-old commerce student. His social background is comfortable relative to that of others interviewed. His father is an entrepreneur, his mother a housewife who is able to employ 2 domestics to help her. He has two brothers and an elder sister. Sugath is also good in his school work, but is not overly interested in politics. He also writes short stories that are sensitive and socially relevant.

²⁷ 9 out of 16 persons affirmed such a position.

and unemployment were a burning preoccupation with almost all interviewed.

There was also a favourable response to the full-employment and social welfare achievements of the ex-Warsaw Pact economies. What about freedom for the individual in such a system; is there no place for freedom in a socialist society? Of course there is, but it's a different kind of freedom. "Socialism has a place for freedom" says Sumedha who studies political science for his A/Ls, "but it's for collective freedom, unlike liberalism which stresses individual freedom. Freedom for each individual. In socialism the freedom is for all. For instance, take economic freedom. In liberalism, economic freedom is for the individual. Where socialism is concerned, economic freedom refers to the collective everyone pools their earnings, brings their income to an equal level, and this ensures freedom from want for everyone. In liberalism then, there is in reality true economic freedom for the capitalist, but not for the poor. I mean, the poor do not have the power to supply for themselves their basic needs...What liberalism really expounds is egotism, not freedom." Despite the breaking-up of the Soviet empire as a result of an unmanageable consumer-goods crisis, in a scarce economy such as Sri Lanka then, individual freedom is clearly seen as secondary to collective freedom from material want.

Do such punitive laws impact impartially on all segments of society? Not really. "The law" explains Sumedha, "is written down in one document, a constitution. But you cannot say it impacts impartially on each and everyone. Now today, the law impacts in one way on the rich (loku minissu) and on the poor (podi minissu) in another way. This is the situation. We cannot say the law impacts uniformly if it hinges on your economic situation, your social situation. This is however, actually not the fault of the law. It is the fault of the society concerned." In an intricately cleaved society such as Sri Lanka then, it is unrealistic to expect the law to impact impartially. But one should not on the other hand, be defeatist, for unjust punitive laws can be changed. "If people band together", remarks Sugath, "and they decide that the state has no

right to do this (whatever unjust act the law permits the state to do), that they will not allow the state to do this; for whatever legitimacy the state has, it is through the people's will (minisunge kamaththen)." Thus while existing law may impact unevenly, it is necessary to oppose new laws that are patently unjust and aimed at weakening more vulnerable segments of the community.

The forces of law and order then, also have a responsibility to the people. "For even official duties", said Lalith de Silva28 "have to be implemented for the benefit of the people; everything, in the final analysis, should be for the good of the people, shouldn't it? To commit an act that is contrary to the well-being of the people and to claim that one was only doing one's duty is a false position (boru wedak) isn't it?". Final moral responsibility then, devolves on the individual himself. While the state may give you legal sanction, it cannot provide your actions with moral authority. "Now suppose," comments Lasantha, "if there is an order from the state, 'kill this man', in fact even a police officer cannot, on the grounds that this was an order from above, maintain he is merely doing his duty and realising his responsibilities, and kill a man. That is wrong." The enormity of this categorical statement, cannot really be appreciated without an idea of the intensity of the repression that was experienced in this region, and which appeared to have penetrated almost every household at some point or the other. Again here, his was a lone voice. Many others chose not to articulate their general position on such a controversial issue directly. Yet as the following section will illustrate, in specific instances, when faced with personal experiences, frequently strong value judgements were made that reflected the positions adopted by Sumedha, Lalith and Lasantha.

Yet for many others the issue appeared to remain unresolved. Are there perhaps extreme circumstances where arbitrary police violence is justified? There appears to be real confusion about in which contexts if any, official murder may be condoned. The need to eliminate Tamil militants,

Not his real name. Lalith is a 18-year old arts student. Both his parents are retired schoolteachers. He reads widely, is well informed about national and international politics and has well-defined views.

for instance, was never really questioned. Not unexpectedly, where the JVP was concerned, the issues were more complex. Sugath on his part, comments somewhat euphemistically that "in that period (i.e. during the repression) ... actually the armed forces did not provide a proper service..." Sumedha's assessment perhaps captures this sense of a moral vacuum that persisted. "It was like this" he says. "Today people question what happened before, precisely because then, they were unable to question. If there were killings conducted by the army or police, people refrained from criticising not because they thought they were in order; not because they imagined murder was justified; they didn't criticise because they wanted to go on living."

Sumedha here is responding specifically to a question of whether ethical and moral standards are universal or subject to shifts across history. His answer, which is firmly rooted in his own experience, indicates that he believes that this is not so, that there are indeed universal truths. Yet it would seem that, tragically enough, his own social experience denies this. For in the instance he speaks of, for most people around him, fear, fear for their very lives served to paralyse their judgement, and impacted on their ability to act 'nobly'. Fear then, seemed to provide most people with a welcome sense of ethical amnesia, where it was possible to suspend judgement on the morality of the actions of forces they could not control. In this situation, particularly during 1989-90, collective standards of right and wrong appeared to have undergone real shifts.

PERCEPTIONS OF THE GOALS OF THE JANATHA VIMUKTHI PERAMUNA AND THOSE OF THE ARMED FORCES

To what extent did the goals of the JVP conform to the expectations of those interviewed? Or in other words to what extent were they seen to attempt to secure the rights of the people against an unjust state? To explore this question then, it is necessary perhaps to define what the rights of the people are in this context, that had been violated by the state.

Sugath, who stems from a relatively comfortable social background and appeared antipathetic to the JVP on many occasions²⁹ observes, "in my view, what happened was this. They (i.e. JVP activists) started well. When I say started well, I mean in the initial period their principles were good. If they had stuck to that, they could have evolved into a significant force (nagala enna thibuna). 'The poor suffer from social injustice; we will rise up against this'. This was their stance. In other words, it was felt that capitalism should be castigated ... Their vision (chethanava) was correct, if only they had realized it in that way. It never happened like that did it? They talked about one thing; what they did was something else." The picture becomes clearer. The state was unjust since it furthered uncontrolled capitalist developments (sukopabogi dhanavadhaya) intensifying in the process, income differentials. Such anti-people policies of the state were seriously contested by the JVP.

What is most interesting about such a perception is that on the one hand, the traditional Left has also consistently criticised the 'open-door'

The problem of dealing with sharp contradictions in the statements made by the same person on different occasions is perhaps a perennial research problem. On the other hand, it would appear that people frequently expressed views that seemed contradictory on the surface. On closer examination however, it is possible that such judgements actually referred to the specific behaviour of agents in a given situation. Thus apparently contradictory positions on, say, the JVP, may be explained by the fact that the interviewee experienced both positive and negative interactions with different segments of the JVP and was consequently confused and unsure of what his final position on their project should be.

policies of the post-'77 regime and its role in widening the gap between the rich and the poor. On the other, the JVP consistently mobilised for the July uprising on a 'patriotism' platform, rather than one which espoused a struggle for social justice. But even though many did mention patriotism as a factor which influenced people to join the JVP movement, in any discussion of their principles, patriotism was conspicuous by its absence. Unlike for the Old Left, class legitimacy was never a serious problem for the JVP; the public never seemed to question that they did indeed represent the underprivileged³⁰.

Moreover, at least in the early stages, they did generate massive public support. "In those days" said Upekha, "a certain climate evolved in the village. If any person did not come forward to do what was requested (by the insurgents) ... there was a general climate where everyone went out of their way to help them. That is, if anyone were to refuse such a request, they were, sort of, ostracised (kon karana gathiyak) by the community." Sumedha agreed. "There was", he said, "a certain inclination towards their message. What I mean is, what they presented was ... a particularly moving ... that is, a version of events that drew peoples' minds ... The villager who never learned his abc, after he joined up, he developed a curious articulateness, an ability to put things across. In this initial period, even sections of the armed forces were attracted".

Against such perceptions, looking back in the light of the bleak events of 1989, there were equally strong negative views. "They were in reality", said Lalith, "a group who did not know where they were going. And because of this, many others, who never really stood in their way, also lost

JVP propagandising was mainly conducted through the famous 'five classes'. In 1969 the main lectures were titled a) The Economic Crisis in the Capitalist System b) Indian Expansionism c) Independence d) The Left Movement in Sri Lanka and e) The Path the Sri Lankan Revolution should take. By 1987, these lectures had been slightly adjusted and retitled as a) The Crisis in the Capitalist System b) There is no Solution in the Old Left and Capitalist Systems c) How can we Resolve this Crisis d) The History of the JVP and e) The Path to Socialism. However, in the 1987-90 period in the literature distributed by the JVP and DJV cadres in the form of pamphlets, leaflets, letters, periodicals, posters and statements to the press, the key theme was patriotism. Thus there appeared to be an ambiguity within the ranks of the JVP itself. For despite having taken the decision to agitate on a 'patriotism' platform by July 1987, at the same time, day-to-day ideological mobilising tactics appeared to be still based on issues of social class.

their lives...". Sugath agrees. "Anyone in the community, anyone at all who could raise his head slightly above the others - they (i.e. JVP activists) would target him. That is, their feeling was, everyone should be in the same (social and economic) situation as they; I mean, those who joined the group were very ordinary folk. What they thought was, 'now everyone should operate at our social level; we cannot call anyone "sir" ("mahaththaya"), we cannot look up to anybody.' That was their attitude." Such a perception, hostile as it is, is in essence very much in keeping with the JVP's preoccupation with issues of social justice.

Such an ambiguity of perception however, while also reflecting social and attitudinal biases of the interviewees, could also signify differences within the ranks of the JVP. For "at the start", said Upekha, "let's say that those who became activists were the progressive-minded people (dhiyunu kattiya). After all, it was from the campus level that it mostly spread. But later on, at the village level, the people who began to join were those who couldn't get into the 8th grade ... people like that. After that it became a meaningless project (therumak ne meka). What they tried to do, was to take undue advantage (ayuthu prayojana) of the movement. What they thought was, 'the armed forces are against our movement. We should harrass them.' They did not try to understand that people joined even the armed forces because they need a daily wage." Such a perception is corroborated by many others. "At the latter stages" observed Sumedha, "most of those who joined were loafers (rasthiyadukarayo); it (recruitment) spread by word of mouth, wherever the guys hung out, in the street corners ... it was like that." Further, such activists lacked clarity about their own goals. "Though they said 'let us destroy capitalism", said Upekha, "even while they were saying this, they retained capitalist notions in their minds. That is, they only attempted to improve their own position (i.e., materially). What they tried to do was to overcome their own poverty (nathi bari kama). That is where they went wrong." The goals of such segments within the movement then, appeared to be not so much social justice as self-enrichment, or at best, self-betterment³¹.

Against this, Alles (1990) discussing the financial accountability among those who participated in the April Uprising of 1971, is moved to comment on what he perceived as the personal integrity and absolute commitment to the cause displayed by party cadres in their dealings with party funds.

What kind of people then, joined the JVP? "To a great extent", said Upekha, "those who joined were not those who were employed; it was mostly the unemployed. It may have been that some of those in full-time employment did have a commitment (kapaveemak) to the movement; they may have supported it (i.e. financially). But those who had the greatest commitment were the unemployed ..." Once again, this perception appeared to receive general consensus. Even fairly consistent critics such as Sugath seemed to agree. "Yes", said Sugath, "it was because of economic hardships that this happened to people (i.e. involvement with the movement). It's a great pity. We lost so many intellectuals. It's like this. Some people joined because they had financial problems. Others because they nursed patriotic sentiments. ... In any case, both categories of people lost out in this; this is a struggle which nobody won...". Thus even the strongest critics of the JVP are also equally ready to affirm the economic needs which drove many young persons to join the movement.

For such economic imperatives were readily accepted as primary motivating forces in life. Many of those interviewed displayed a preoccupation with the problems of unemployment, and the role of the state in employment creation was constantly discussed. While there appeared to be some consensus on the state's obligation to create employment, there was little agreement on which type of economic policy would achieve this. Some even ventured the opinion that the timely creation of Free Trade Zones (FTZs) in the south may have prevented such an outbreak of political violence. "if the Zone (i.e. the Koggola FTZ in the South) had been developed five years before", said T. B. Vasantha, "this question may not have surfaced again." It would not have been acerbated (ugra) to this extent. What I mean is, when people have no employment, now problems crop up, at home; everyday there are squabbles over money.

Not his real name. Vasantha is a 19-year old Commerce student. His father does not seem to be in employment, but his elder brother runs a vegetable stall in the market. He has two older sisters who are at home. Circumstances appear somewhat straightened. Vasantha is a keen athlete and also takes an interest in scripting and producing school plays.

He is referring to the high levels of unemployment which was popularly perceived to be the motivating force behind the first JVP insurgency of 1971.

It is in situations such as that, that people are driven to join movements such as this. Yet even the state on this occasion ... on this occasion there was nothing to be done ... If it (the FTZ) had come into being even 5 years ago, this question may not have evolved. People would not have been subject to this kind of (arbitrary) assassination. If the Zone does not succeed ... in 5 years time ... such a movement will rise again."

The full implications of such a view however, needs to be seen against the backdrop of, on the one hand, strong reservations within the Sri Lankan political culture vis-a-vis the 'Open Economy' as a force which brings in uncontrolled capitalist development and consumerism, and on the other the FTZ as an enclave of oppression of the rural and urban working classes. Many of the short stories and poems written by those interviewed reflected these twin themes of social and economic oppression. Yet at the same time while accepting that the conditions of employment in such enclaves are clearly unfair, nonetheless, it is seen as a positive option to the degradation of unemployment. The same students who talked of the FTZ as a means of employment creation then, were also those whose creative writings highlight the plight of the workers in these Zones. Theirs it would seem, is a terrible dilemma. It is the dilemma of the need to retain one's personal dignity in the community as an employed person, working against the ideological conviction that one is participating in and thereby reinforcing unjust and demeaning social structures. This painful ideological plight then, perhaps echoes that which moved so many others to take up arms against the system.

Further, political strategies deployed by activists were seen as important as formal ideological positions. What then were the political strategies of the JVP, and did they violate the overall goal of not acting against the interests of the people, at least those who were seen to suffer from social injustice? Firstly, they persistently taxed the community. All members of the community were expected to contribute to their endeavour. "Everyone in the village" said Sugath, "received visits (of JVP activists). That is, if no one in the family had joined up with the movement, that family would face problems. That is definite (anivaryamai). At the very

least a contribution of money; at least you have to give them money ... it was like that. Now from our house, they required money at least once a week; money, or perhaps a coconut. They take those away ... they take things away by force". Sugath, as evident, is still critical. While some segments of the community appeared quite willing to comply, such a modus operandum did antagonise others.

Sections of the village elite were bitter. "In general", said Sugath, "they talk well (politely). But what I mean is, now if they come to collect arms34 and if you don't have a weapon to give them ... now in a situation like that ... or in a situation where you had not complied with some edict of theirs ... in such situations, their attitude is most strange; they ridicule you (savuththu karala), they attempt to intimidate you (yatath karanna); that is, they talk down at you. People don't like that." Not unexpectedly, the JVP was visibly antagonistic to the traditional elite, and in a highly cleaved South Asian society where caste intertwines with class, in numerical terms such a social strata appears diffused throughout the society. Whether loved or feared however, until mid-1989 then, the JVP would appear to have been in a strong position. "In those days (i.e. early 1989)" said Upekha, "they controlled the area. If they said they would do something, they would do it, they wouldn't pass it up. Now if they said they would kill someone or the other, they will somehow do this, won't they? They will somehow find out where he lives and do it. This created much fear in peoples' minds. They realized the JVP kept its word". Many agreed. "If you were even slightly critical of them", said Sugath, "I mean if you were someone who was slightly better-off than the ordinary person, they come at once ... and sometimes kill you. In that way, many people died."

Thus while in the main the JVP's actions were aimed initially at the rich within the community and UNP activists, certain sections of the movement did not toe the party line. "Once the riffraff began to join" said Upekha, "the movement became meaningless. They (the new recruits)

One of the main arms collecting strategies of the JVP and DJV activists were to go from house to house collecting personal weapons belong to individuals, both in order to accumulate weapons and disarm potential enemies in the vicinity.

thought what they should do is to harass those in the armed forces." For this purpose they deployed the poster as a weapon. For by the first quarter of 1989, the JVP had already begun its programme of eliminating those said to be 'anti-social elements', including among others, drug addicts, prostitutes, and lottery ticket sellers. These programmes were largely conducted through poster campaigns. In most urban and rural areas across the south then, JVP or DJV posters appeared to have captured every available public wall space. Such posters informed the public about the JVP-sponsored curfews, hartals, strikes and demonstrations which was a feature of this period. Between July-August 1989, JVP fronts such as the National Workers Action Centre and the National Students' Centre came into being in the trade union and student sectors respectively; the most significant support-bases of the party. Consequently these centres coordinated a series of devastating strikes which seriously handicapped the national economy. The transport, health and education sectors were frequently at a stand still. The plantation and industrial sectors were also badly affected.

Yet this massive campaign of intimidation was entirely a psychological one. "The posters created such a sense of fear" observed Sugath. "What I mean is, if a poster is put out (by DJV activists) ... it is only to indicate that if you don't accept their edicts, they will kill you ... So who does not fear death? Everyone fears death. In fact, it was at a point when they (the JVP) did not have access to weapons that they took to intimidating the people through posters. They gained ascendence only through sheer intimidation. However, once they gained a certain position, where they went wrong was when they threatened to kill the families of those in the armed forces." By August 1989 then, the JVP took the fatal step of issuing an ultimatum to those in the armed forces, where they threatened to assassinate the families of security personnel who did not resign from the forces.

This tactic of the JVP, after the initial numbing shock, drew universal disapprobation. "When they threatened to kill the parents of those in the armed forces" said Lasantha, "They wanted only to become more powerful, to strengthen their grip on the community. But that is where

they miscalculated. If they had desisted from that fateful step ... they would still be here today." The security forces, after all, were drawn from the same social base that the JVP recruited its cadres from, and were subject to the same economic forces. "They want the security forces to resign", commented A. L. M. Rohan Sirisena³⁵, "They would say that. But after they resign, will the JVP support them (financially) and help them to live and eat everyday?"

The security forces on their part responded with savage violence. The response to this development was mixed. "This situation" said Upekha, an uncompromising critic, "this situation was mostly created by the JVP, wasn't it? They brought it upon themselves. Because, up to then, they were in a good position. I mean, the armed forces, they came and went, yes, ... but they did not trouble anybody, they did not harrass (sic) anybody. But when you are personally threatened ... who will just watch and do nothing?". Such a response was shared by many others. "After that", said Sugath, "they did kill someone (a member of the family) of a soldier. After that of course, they (the armed forces) didn't let things go ... they persistently killed. Now in our village, the person they (i.e. the JVP activists) had killed was from the L..... area. They killed the mother and I think, the younger sister - they killed them both. (After that) even in our village, they (the armed forces) came and cleared out everybody ... they just took away the young boys and killed them. They killed them, tied them up in gunny bags, sent them floating down streams ...".

Nonetheless, to what extent could one be certain that all such slayings were in fact conducted by the armed forces themselves? Were they actually in uniform? What about the operations of the vigilante groups that are described in numerous publications and sometimes even the mainstream media?³⁶ Here Sugath makes a somewhat astonishing

Not his real name. Rohan is 18 years old. His father works in a government department and his mother is a housewife. He has only a younger sister. He is a prefect in his school. He is well informed about politics, but does not usually venture opinions on his own.

The operations of such paramilitary 'death squads' such as the 'Green Tigers', the 'Ukussas' (Eagles) etc. have been described by among others, Alles 1990 and Chandraprema, 1990. Further, in recent months the Sinhala language media, particularly in their Sunday supplements, have also published narratives of abductions and disappearences (see for instance Irida Lankadeepa 15 November 1992, p 1, and Irida Lankadeepa 22 November 1992, p 13).

observation. "We thought that these things (i.e. the killings) are done by the army," he said, "we assumed that the killings were effected by the army ... but ... it's not the soldiers who come ... Men in civvies come and take people away ... In that way, we don't really know who takes people away; a (unnumbered) vehicle comes, they immediately put you inside and take you away. What people refer to as killings by the armed forces were, most of the time, these kinds of operations." While many others who agreed with him refused to substantiate their claims further, incredibly, the community appears to believe implicitly that all such extrajudicial sanctions are perpetrated by different segments of the armed forces in civilian guise, which perhaps explains the constant and somewhat puzzling references to an undifferentiated category labelled 'the armed forces', as opposed to say, "the police", the "police commandos", the 'the navy', etc. who were all operating in the south during this period. The popular belief which prevailed in middle-class circles, that vigilante groups were located from sectors of the community outside the armed forces clearly finds no echo here.

But if this is so, is this kind of state terrorism is ever justified? Yes, maybe, sometimes. "What I say is this", Sugath elaborates, "now, until then, until then the armed forces, they waited - they waited in silence. Whatever they did, they waited ... that is ... they refrained from killing people. It was afterwards that they began killing people. Now, if you kill my mother and father, I won't stand quietly watching, will I?". Rather frighteningly then, Sugath, like Upekha appears to feel the armed forces had displayed considerable patience, simply by not engaging in murder. Others were not so forgiving. "What the armed forces did", Lasantha admits, "was against their commitment to act according to the law; it was actually against the law, what they did. You cannot just kill in that way ... But they did these things because their loved ones were threatened." All in all then, this move by the JVP was seen as barbaric to the extent of justifying to some extent, the onslaught unleashed by the armed forces. In this instance then, the JVP was seen to have violated a fundamental code of Sinhala-Buddhist culture, i.e. respect for one's parents. Such a code then which forms a basic tenet in the strong kinship linkages which

were so central to Sinhala Budhhist identity, had in this instance been brushed aside by the JVP, and such a move evoked intense social outrage. As Lasantha's comments indicate, the final commitment of all sectors of society, including branches of the state such as the armed forces then, is seen as to their loved ones rather than to a higher cause such as 'the state' or 'the revolution'.

While Sugath and Upekha feel that the JVP did not appreciate the armed forces' restraint, others even attempt to rationalise such arbitrary extrajudicial sanctions. "Now imagine" said Vasantha, "that I had been abducted and then killed. They bring my headless body and leave it in front of my house. I would also have done something similar - perhaps killed someone else ... that's the way it usually happened." Duminda agrees. "It is only if I have committed murder that they (i.e. the security forces) would treat me in that way (i.e. returning his headless body to his parents). Much of the time ... now there are apparently many others ... now there are many boys who were taken away from our village, we have information. They are detained secretly, in places like Boossa.³⁷ The guys at Boossa, they are, sort of, those at the basic level (samanya mattame kattiya). That is, they may/may not have been involved ... people like that. There are also people who were more heavily involved; they are hidden away." A kind of border justice of the Wild West kind appears to have prevailed, where extra-judicial sanctions are graded according to perceived levels of culpability.

Yet others have different perceptions. Such a mode of justice was not always metered out. "Initially", said Ranjith Jayawardene³⁸ "it was the JVP which did the killing. Later ...what did the state do, that is ... the police, the army ... while those who were deeply involved were allowed to be, they abducted others. While those who were full-timers remained

^{3?} Boossa is a well-know detention centre of the Prisons Department where political prisoners were detained.

Not his real name. Ranjith is 18 years old. He has a large family of 3 sisters and 4 brothers. His father does carpentry work and one brother works with him. One sister is a supervisor at a garment factory in Colombo and another brother is at university.

quite free in the neighbourhood, that is people who committed murder and so on, they are still around. Those who got caught were only those who pasted a poster once in a way ... or joined the movement out of fear ... those are the ones who died."

How then, is it possible to account for such conflicting views? Here again, notwithstanding the ideological biases of those interviewed, it is possible that armed personnel in different areas acted according to different codes of morality, or displayed different levels of discipline. Ultimately however, the political climate was such that in a situation where law and order had almost entirely broken down, the extent to which the high command in the armed forces could impact on lower level cadres also diminished perceptibly. In such a situation, notions of collective discipline disintegrated and large segments of the armed forces became a collection of individuals some of whom were clearly more able to monitor their own actions than others.

POLITICAL EXPERIENCES

How did the response of the army to the JVP's ultimatum impact on the school-going population? Very harshly. "Because of the repression (bheeshanaya)" said Sumedha, "the male/female ratio in the schools underwent sharp changes." While this perception was repeated by many others, it was however difficult to see how the repression of 1989 which would have impacted on senior students, could have had an adverse effect on the gender ratio of students in the 16-19 age group in 1991-2 when the study was conducted. In any case, the sex ratio in this group was not markedly different to that which prevailed in the grades immediately lower. Interestingly, female students who participated in the project did not make any such observation, but when asked to comment on the adverse male/female ratio, pointed out that this was a consistent feature in the educational system, particularly in the Arts and Commerce media. Teaching staff on their part volunteered rational and demographic explanations of the high drop out rate of male students, which was seen as due to alternative opportunities in the commercial sector. While such explanations seem perfectly feasible, still the fact remains that it was the subjective perception of many male students that their numbers had been adversely affected by the repression.

Such a conviction could only stem from their personal experiences during this period. "Much of the time" said Lalith, "it happened to people whose options were closed. Now I had a friend. His father was attached to the armed forces. To counter this; to save (beraganna) his father, he joined the movement. Later the army came and took him away. Then, of course, they killed him. Though his father was in the army, there was nothing he (the father) could do ... there were lots of people like that ... So he died." At the ground level then, in a political climate where several forces i.e. the insurgents, the police, the army and armed vigilantes were all

A curious discovery of the field work was that it was quite common to find families where one brother, or perhaps an uncle may have been attached to the armed forces, while another member of the family is a JVP/DJV functionary. Yet on closer scrutiny, it can be seen that such developments were not always due to ideological convictions, but in most cases, pure survival tactics.

operative at the same time, physical survival was hard for the politically powerless.

But are not such persons perhaps guilty of contravening the law? "The law?" said Sugath, "I don't know. It's not very clear to me ...think of what happened to my friend - he was my age, a few months older, 17 he was. He got caught trying to paste a poster. They had shot him then and there, and then taken him away. They took him away, but then they kept him for two days; they'd shot him in the leg. It was on the next day that they killed him. They killed him and brought him back to where they'd found him and left him there. Things like that happened. But those who were heavily involved (in JVP activities) are still around. So there are many people like my friend in my village. But I think there are lots of people who were more involved but who were never taken in. That's not only so in our village - you ask around in any village ... So that is why I cannot say what happened was justified (sadharana ne) ... I don't know about the law, of course." This statement then, appears to contradict other observations made by Sugath, where he seems certain that the JVP was initially at fault. Yet on closer investigation, it is clear that what he feels is that while the JVP may have been at fault, the armed forces also were not seriously interested in locating the 'real' or 'hard core' insurgents, but were focussing on eliminating what they saw as the general support base (kukkan ivath karanna). Their main aim then, would appear to have been to terrorise the population into withdrawing their support to the insurgents. Such a perception is reinforced by the experiences of other friends and acquaintances.

A. K. Ajith's⁴⁰ story is also interesting. "In our village", he said, "they (presumably the insurgents) burnt a bus just in front of our house.⁴¹ My younger brother and myself, we both came out to see what was

Not his real name. Ajith is a 18 years old commerce student. His father runs an apparently successful catering business. He has two brothers and one sister. He is interested in amateur dramatics and sketches in his free time. He is not overly interested in politics.

This incident probably transpired during the transport strike between July - August 1989.

happening. We did not stay inside the house on that occasion. There was nobody at home. My father - during the troubled period, 42 he had problems, therefore he had gone to Colombo for a while. 43 Anyway, they (the armed forces) took us both away. They took us to some remote village near the jungles. They took us into the jungles. Then they told me to lead the way. So I didn't know this area at all. I didn't know where the roads were. It was mostly footpaths, anyway. So what could I do, I just went round in circles, I didn't know where I was going. Later on, one of the chaps who took us there, he was a good guy. He said 'malli, (young brother), don't be scared. We can see you don't know your way about. We'll take you back home now.' I told him, 'I don't mind if you take me, but please don't take my brother', but they released us both. They took us into the jungle I think to check out if we knew our way about - in those days many of them (i.e. insurgents) were operating from the jungles."

In this incident, the student concerned was almost abjectly grateful that, even though he and his brother had been abducted, they had been returned alive. But he also has questions. "Why", he asks, "when the chaps who set fire to the bus were also hanging around, did they decide to pick on us?" He then provides his own answer. "Because" he replies simply, "because my brother was rude (cheeky) to the army chap." The army officer, antagonised by the impertinence of the young boy may have decided to give the two of them a fright. It is not clear if they were released because the two subordinate officers did not wish to eliminate them, or because he ordered them not to. Further, why had the young boy offered himself in exchange of his brother, whose 'impertinence' was after all the cause of the whole episode? "Because" said Ajith, "he was very young⁴⁴ and there was nobody home." He preferred to go with the army officer, because he could not face his parents, or the situation of trying to find out where his brother was afterwards.

This is a frequently used euphemism to describe the latter part of 1989 when both insurgent activity and state repression were at their height.

⁴³ His father may have been a UNP functionary, though he nowhere mentions it.

⁴⁴ He was actually only one year older than his brother.

A significant feature of the JVP campaign was the agitational programme conducted in the secondary schools. How were these campaigns organised? Sugath speaks of his experience. "The chaps from the Deshapremi group (i.e. the DJV), they're the ones who come, from the campus. So they came to the school and told us ... they harassed us properly (dasa vada dunna). They thrashed the boys in order to get them out of the school premises. The kids had no idea about these things (i.e. demonstrations). Now in a village school, when you suddenly attempt to effect a strike, who knows what it's all about? Actually, even I, myself didn't know how a strike was conducted. So they came and told us to strike. Though they told us this, we didn't know what to do. So they told us what to do. But the next time they came, we still hadn't come out. That was the time when they came and thrashed the boys. Anyway, so now what could we do, we stepped out (went on strike)." This appeared to be the normal format.

Duminda's experience is similar. "In those days", he said, "the guys from the campus come to organise the strikes. To get the school kids out. In those days, also, there was a climate of ... the students were in an enraged (kupina) mood (because of student abductions by the armed forces). Many schools, also because of intimidation went on strike, sometimes with the consent of the staff. When I say intimidation, there were in some cases, the killing of school principals (by the JVP) in connection with the handling of the strikes; in schools like P...... and also in M..... they killed the principals. But we don't know if it was a private feud between him (the principal of school M.....) or what. But they wanted to eliminate him from the Rural Development Society, he was the secretary. He wouldn't resign." Thus it was not clear if personal vendettas and feuds were also being played out under the guise of JVP/state politics. The RDSS are powerful socio-legal organs and voluntary posts in them carry much social prestige and weight. Jockeying for position within such organisations would appear to be customary features of village-level politics.

The DJV then deliberately utilised senior school students to organise the strikes. How was this achieved? Upekha's explanation is interesting.

"Let's take our school as an example" he said, "Now say a successful strike had been organised in our school. Then they tell us to go to R...... (another school in the vicinity). Now, in this school, in general, it's mostly students we know, mostly friends. So we go to people we know and say, 'its like this, we were told (by the DJV) to go about things in this way. They said they would come,' we tell them. When we put it like that, they (the students of the adjoining school) usually do what we ask. Because they trust us, and because of the friendship, they think we can't be just having them on, this must be serious. But still, though at one level he (the student concerned, in the next school) trusts you, deep down, he is also apprehensive, he has many fears. He wonders if you have actually gone to school and met up with all these contacts you speak of ... or are you really a DJV functionary (spying on him). Like that ... it was a time when each person began to distrust even himself. It was a time when people didn't seem to trust themselves, there was such confusion ... it's very difficult to explain now."

How did he escape involvement? Through sheer canniness. "So we escaped", he said, "when I say escaped, I mean we gave them (i.e. DJV functionaries) the slip, we managed to evade them on occasions when commitments would have been demanded of us. Now they (DJV activists) are watching from the road. They watch to see what we're doing. But in a situation where there are lots of people, you can't focus on one person. Where there are around 2,000 students, you can't be watching each one. So the senior students realized this. They also grasped the fact that ultimately it will be they who will have to pay the (political) price for all this. So therefore, what they sought was, to get things done by someone even a year junior to them, so that they (the younger students) can be seen to be the leaders. Now this is what our seniors were trying to do to us. We also knew we would be soon faced with this situation. Because we wouldn't be able to refuse if they approached us. So, before they could actually instruct us to do this, we gave them the slip. That's what we did. I mean we were also present during the strikes. But though we were present, we didn't get involved in making speeches, explaining the causes of the strike. What I mean is, we didn't get involved in implementing it ... In general, those who did these things are not alive today, ... to a great extent."

The armed forces on their part, also engaged in a variety of manipulative tactics. "When you intimidate school children" said Lalith, "They do what you tell them do ... through fear. So what did the armed forces do next; ... now you have younger children in the school; they (the armed forces) deceived them ... they gave them sweets and chocolates ... they fooled them and created a sense of obligation (among the younger kids). They made friends with them and asked them, now which of the seniors do these things (organise strikes etc)? So they tell them, 'those people; those are the ones.' They don't realise (the enormity of) what they say. But what the armed forces did not understand is that they (i.e. senior students) participate through fear. What they thought was, 'these are the fellows who are behind everything...'. So to a large extent, it was people like that ... school-going kids who got killed ...".

The army also on occasion deployed pre-emptive tactics. "In those days," said Lalith, "the army conducted a Rehabilitation (punarutthapanaya) camp for school prefects. Most of the schools in the district participated ... when we went there, we met friends ... I mean, students we know;... the army uses detainees as domestic aides in their camps. Maybe, it's possible they (the detainees) are released now. It's because now when they take away (abduct) students,... other students realize that this could happen to them too ... ". Sometimes the armed forces appeared to have indulged in cat-and-mouse games, releasing detainees only to take them in again. "In those days", said Duminda, "to a great extent, what they (the armed forces) used to do was, when they catch a large number of people (during a raid), they send them to the Boossa camp in Galle. They keep them there and get them to work. A boy in my class was taken ... he hasn't been released yet. What I mean is, they release you, and when you come home ... after two or three days, they take you again. This boy is still there. He said he was supposed to cook for the army camp... He couldn't sit for his O/Ls. It was because of the strike in our school, after that they (the army) took lots of people away, mostly from his village. Some were killed, the ones who were activists." While it is possible that the community had a good idea of who the activists were, it is not clear if many people became conveniently designated 'activists' once they were dead, both by the community and the armed forces.

What about the participation of women? The ratio of female participation was thought to be much lower than in 1971. And interestingly, the overwhelming proportion of the female students interviewed, even those whose creative writings displayed unusual sensitivity to social issues, professed disinterest in politics. 46 Yet women were frequently victims of the repression. "I know of many women who died", said Upekha, "but I cannot say their deaths were justified. Why I say that is because what generally happens is that the person she is married to, he is the one they (the armed forces) usually want to catch. Suppose now they can't lay hands on him, he somehow evades them. But the wife, she returns home. They (the armed forces) get hold of her, and take her away. Sometimes they torture people like that. They torture them, and then they kill them." Other women lost the main bread-winner in the family. While many such women seemingly picked up the pieces, yet as Sumedha observes, many still see the eyes of lost loved ones in every stranger who crosses their paths.

Others search unendingly for the disappeared. In the early '90s, numerous groups such as the Mothers Front, the Mothers and Daughters of Sri Lanka, the Parents of the Disappeared, etc. have emerged as the bereaved attempt to seek collective remedial measures. While the dead cannot be restored, perhaps the most debilitating factor is the uncertainty of not knowing if the disappeared still live. At the 2nd Annual Conference of the Mothers Front held in Colombo on 23 June 1992, Dr Manorani Saravanamuttu, who lost her only son, spoke of the desperate emotional anxiety women in such a predicament face. "That is why", she said, "I

Here one should keep in mind that activists were almost always masked when they moved among the community.

This is perhaps due to the smallness of the sample, 25% of which were female. In any case, the extent of violence on both sides appeared to have intimidated and alienated most female students.

still say that I was one of the luckier mothers - because I received my son's body back to mourn over. I could not even begin to imagine what it would have been like not to have ever known..."⁴⁷

Though women activists were in the minority, some did participate. Sugath describes the story of a schoolmate. "She was an O/L student", he said, "a small (petite) girl. She used to live close to our house. There was a good poster about her (after she died). She was a good speaker - she had a fine delivery. That is ... she was very eloquent (chathurai). She was in our school. Her name was Ramani. She had a very convincing presentation ... it was curiously persuasive, that lecture she used to conduct.48 This speech ... I mean, anyone would be moved by her speech, somehow. Later on, of course, they took her away. Even we didn't realize that she was involved to that extent. But the things they had done to her! Finally, they had severed her arms and head off and stuck it near the fence of her house. Her family, they never dared to even come and see what was there ... because they (the armed forces) may have shot anyone who came to see ... She was the brightest student in our school. But she had problems at home. There was no father, and the brothers all drank. There were also many younger sisters, a large family. Maybe it was to escape from such economic problems that she became involved."

Yet ultimately, many who lost their lives were those who stood suspended between both parties. As Sumedha points out, "now there were many people who were uncommitted (madhyastha aya) ... they were not committed to one side or the other. Now much of the time, it was people like that who died ... What I mean is, the JVP suspects that you may be working for the army ... the army suspects you're with the JVP. So there is pressure from both sides: For the JVP functionary, he is only targeted by those in the security forces; the army man has only the JVP to fear. But

This speech is also reprinted in the 'Kantha Maga', publication of the Progressive Women's Front, December 1992, p 2.

He refers here to the JVP 'five lecture' programme used in the 'conscientization' of new recruits into the movement. Literally thousands of students attended at least one class, frequently out of sheer curiosity.

for ordinary people, the JVP impacts on them, and the army also ... those are the people who died." In the last count then, the most politically vulnerable were those who could not depend on either the JVP or the armed forces to defend them. In a situation of active conflict then, there is no place for the 'uncommitted' in civil society, as political reality becomes increasingly polarised. The concept 'non-contestants' in any armed conflict then recedes to the sphere of social theory, wholly irrelevant to the politics of both the forces of law and order as well as the insurgents.

Conclusion

It would appear then that the political compulsions of the '80s have indeed impacted on the discourse of a new generation. Where the Sinhala-speaking electorate was concerned, it would seem that all the significant political developments which marked this decade have conspired to create confusion, insecurity and intractable ethical dilemmas for them. For, on the one hand, the escalating Sinhala-Tamil ethnic conflict poses a dilemma; while it is clear that successive Sinhaladominated regimes have mishandled and deployed unnecessary violence against this important minority, now it would seem that Tamil militants have seized the initiative and are seeking to eliminate Sinhala peasants village by village. On the other, in the realm of parliamentary politics, the conduct of the 1982 Referendum and the re-banning of the JVP in 1983, side by side with the increasingly repressive law and order policies of the post-'77 UNP regime have posed the question of the acceptable limits of political opposition to an increasingly unresponsive government. Thus for those who participated in the study, armed struggle and extra-parliamentary dissent emerged as an acceptable mechanism of expressing political dissent. Yet in this discourse, taking up arms does not in itself guarantee that the new order brought about by such arms will be a more just one. The people then, have to be constantly vigilant to see that their rights are not contravened. This then is the responsibility of the people. It is only dissent that will free them from the final humiliation of accepting, "like kicked dogs", what they know to be unjust rule.

To what extent did the JVP's actions conform to the expectations of the new electorate of the '80s? In many areas, a general consensus prevailed. It was accepted that many of those who joined the movement did so because of a desire for a greater measure of social justice in their lives. But the way such a struggle was conducted also seemed problematic to many of those interviewed. Tactics such as intimidation of the community and the forced participation of secondary school students in JVPsponsored activity were seen as clearly illegitimate. Most of all, the fateful decision to attack the families of personnel in the armed forces was ANTERNA DE

seen as particularly barbaric. For, in the initial stages, even segments of the armed forces were drawn to the social message of the insurgents. So why then does a movement that is posited on the premise that social injustice prevailed in Sri Lankan society not understand that even those in the armed forces were subject to these forces and it was the need for employment which moved them to join the security force? In this discourse then, both the insurgents and the forces of law and order are organically rooted in society. Thus to categorize segments such as 'the families of armed force personnel' as politically liable for the repressive policies of the UNP administration was seen as an invalid position. The vexed question of how to define what constitutes a military target as opposed to a civilian one remains unresolved.

The armed forces themselves were seen to operate at different levels of morality during this phase. While some segments were clearly indisciplined, others did appear to try to retain, however briefly, some sense of balance. Moreover, the armed forces are seen to have gone out of their way to destroy what they saw as the support-base of the insurgents, rather than core activists, who were perhaps politically and militarily more dangerous to confront. It was accepted that what were described as "vigilante groupings" by the government were in fact members of the armed forces in civillian guise. Yet the most startling feature of the study remains the passive acceptance of arbitrary abductions and other extrajudicial sanctions effected by the forces of law and order. Clearly, no society is able to absorb such an extent of violence as Sri Lanka has seen without visible scars. Thus Sri Lanka, the oldest electorate in Asia, appears to have arrived at a point where arbitrary executive action no longer outrages. Consequently, a new generation has internalised a new approach to state-society relations, and a new balance of power between the executive and representative organs of the state that is a distinctive feature of the world order of the '80s.

And yet, there is also a deep conviction, particularly among the male school-going population that they have suffered; that they have been the victims of political power-struggles in which they had no part; for in most instances they had no choice with regard to the extent of their agency in such projects. Such students then, comprise the most vulnerable sectors of the electorate, those who were caught-in-between the scissor of JVP intimidation and state repression. It was, as many pointed out, a time of confusion. Confusion in fact, became a weapon deployed by both the armed forces and the militants. It eroded deep-rooted loyalties and replaced them with fear, fear of arbitrary assassination. It was a time when each person began to distrust his own actions and motives. For when one is living in fear, one does not act nobly, but is constantly engaged in shifting attention from oneself, in implicating others whenever possible. At the end of it all then, many are left with feelings of anger, but also of deep guilt. For had they also not participated in the repressive enterprise, in one way or the other?

Moreover, as the formation of groups such as the Mothers' Front in the early '90s indicate, the other serious victims of the uprising and repression were women. For, for women and sometimes children, particularly those in the lowest income groups, their guilt assumes social proportions, and is inexorably tied up with the behaviour and status of their menfolk. At times it appeared almost as if the forces of law and order perceived women linked to the insurgents as in someway sexually deviant, thereby demanding an appropriate response by them. And even though a significant proportion of women participated in the April uprising in 1971, by 1987 their numbers seemed to be distinctly fewer. Though many women died, those identified as active participants among them by both the community and the armed forces are still a marginal proportion. Those who did succeed however, frequently appeared to be those who were talented above the ordinary, so as to be able to survive in what was clearly an authoritarian, violent and male-dominated environment.

Finally it would appear that the entire experience has served to deepen rural/urban social cleavages rather than contain them. The issues which most of those interviewed kept returning to were those of education and employment. Such issues were seen as essentially problems which face the rural educated rather than the "English-speaking" urban

elite.49 Reflecting on the experiences of friends and acquaintances detained in army camps, to many of those interviewed, the most unacceptable aspect of their situation was seen to be not so much their physical suffering. Rather, the fact that persons in such a plight were not able to sit for their O/L examinations and the fact that their educational prospects were shattered was seen as infinitely worse than physical suffering. In a society where education has a very high prestige, in fact many students appeared to some extent judge their contemporaries' personal worth in terms of academic performance; "It's such a pity, she was the brightest student in the school", etc. Many expressed real sadness that "intellectuals" i.e. university students had died in large numbers; their education was seen as a national resource that had been wantonly destroyed. On the other hand, almost all those interviewed agreed that education in itself was not always a sure path to employment, which was yet an important need for the preserving of ones' self-worth (aathmagavraya). Thus the economic difficulties and lack of employment opportunities that had moved large numbers to join movements like the JVP are still a factor to contend with. Despite the intensity of the repression of 1989-90 then, if such root causes are not addressed; if the employment creation strategies on the present government does not succeed on a long-term basis, then, in the words of Vasantha, "in 5 years time ...such a movement will rise again."

Throughout the interviews, there were frequent accusations - both humourous and not so humourous - thrown at what was perceived to be the 'elite' urban social background of the researchers, who were presumably thought to be shielded from such harsh social realities. Yet at the same time, there was also persistent attempts to 'explain' their position and why they were preoccupied by such issues, to the researchers.

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ETHNIC CONFLICT AND THE PROVINCIAL COUNCIL SYSTEM OF SRI LANKA

Sunil Bastian

Ethno-religious composition of Sri Lanka

Sri Lanka is a multi-ethnic society. According to the 1981 census, Sinhalese(74.6%), Sri Lankan Tamils(12.6%), Indian Tamils(5.5%) and Muslims(7.4%), (Moors(7.1%) Malays (0.3%)) formed the major ethnic groups. Sinhalese who form the majority of the population speak Sinhalese and the bulk of them belong to the Buddhist religion. Tamils are identified by their language, Tamil. Bulk of them belong to the Hindu religion. It is only among Christians who form 6% of the population that one finds both Tamils and Sinhalese. However in the context of the ethnic conflict, language rather than religion has become the more important identity among the Christians. In contrast to this, in the case of the Muslim population religion has become the main source of identity. Among the 6% of Muslims at least three languages are spoken - majority of them speak Tamil; Sinhalese has become the language of Muslims living in the Southern part of the county and a small minority of them speak Malay. However a stronger religious identity bind them together.

This complex matrix of ethno-religious identities is further complicated by regional differences in the distribution of these ethnic groups. The Northern and Eastern Provinces of the country has a greater concentration of the Tamil speaking minority. Northern Province is predominantly populated by Sri Lankan Tamils and the Eastern Province has a mixture of Sri Lankan Tamils, Muslims and Sinhalese. Of the other Provinces of the country, which in the current parley forms the "South" of the country, there are two Provinces- Western and Central, which has a multi-ethnic population. The other five provinces are predominantly Sinhalese.

Breakdown of the post independent ethnic contract

The conflict situation in Sri Lanka can be conceptualized as one of integrating a multi-ethnic society. One of the most important aspects of

this integration is the evolution of a political structure that can form the basis for the creation of a multi-ethnic society. Multi-ethnic societies that adopt a democratic system, based on one person, one vote elections, in order to choose their leaders always face a problem of safeguarding rights of minority ethnic groups. The electoral process will always give an advantage to the majority group because of their higher proportion in the population when the voting behaviour is determined by ethnic loyalties. This is the situation in most developing societies. In such a context other measures have to be introduced in order to safeguard the rights of minority ethno/religious groups.

The liberal answer to this issue has been the treating of every individual equally, irrespective of their ethnic or religious backgrounds. However, this has not been an adequate answer to the problem of group rights. International experience shows, that countries have adopted several methods to safeguard rights of minorities in such a context. These are:

- Regional autonomies that devolve a certain degree of power to regional bodies so that the power of the central legislature where the majority dominate is limited
- Checks and balances at the Centre in order to safeguard the rights of minorities

Sometimes a combination of these two methods has been adopted by some countries.

As Sri Lanka was moving towards independence her multi-ethnicity became the crucial issue in discussing the question of the future constitution and the future political system of independent Sri Lanka. Although in the late twenties some of the political leaders and representatives of certain ethnic groups put forward the idea of a federal constitution for Sri Lanka, the concept of regional autonomy was not accepted in forming the state structure of newly independent Sri Lanka. Instead it emerged as an independent nation with a centralised form of government having the status of a dominion within the British Commonwealth. It was based on

a Westminster model with two chambers, a Prime Minister with a cabinet of Ministers having executive power and an appointed Governor General remaining as the representative of the British Crown.

For the purpose of safeguarding rights of minorities, Sri Lanka adopted various mechanisms of checks and balances at the Centre. These measures were:

- Distribution of seats in the parliament so that there was some sort of balanced representation. The first parliament tried to maintain a 60/40 balance between majority Sinhalese and all minorities. Such devices like multi-member constituencies, where there were pockets of minorities, was used to achieve this.
- A second chamber into which minority representatives could be appointed.
- A special clause (Section 29) in the constitution to safeguard the rights of minorities.

The history of ethnic relations in post-independent Sri Lanka was the history of ineffectiveness of these safeguards at the centre. Articulation of the political power of the majority through the political system saw the breakdown of checks and balances. The first landmark of this breakdown was the disenfranchisement of the bulk of the Indian Tamil population. Most of them formed the working class in the plantation sector and were brought to the county during the British period. The new citizenship laws of the independent Sri Lanka effectively converted a bulk of them to a stateless position. This was in 1949. This did away with the balanced representation in the parliament.

The second turning point was the emergence of Sinhala Buddhist nationalism as a dominant political force. The elections of 1956 brought into power a government with a hegemonic Sinhala Buddhist ideology. Although the influence of this ideology was seen even prior to independence, it was after 1956 that Sinhala Buddhist Nationalism became the

dominant ideology of the ruling class.

The passage of a Bill in 1956 that made Sinhala, the language of the majority community, the only official language was the first major signal of the emergence of this ruling ideology. It effectively ended the two language formula which was accepted at one time by the Sri Lankan polity. This was followed by many other policy decisions affecting various spheres of the Sri Lankan society which helped to establish the Sinhala-Buddhist hegemony.

Next came the enactment of the first republican constitution in 1972. This constitution ended the dominion status of Sri Lanka. It created a political structure that ensured the superiority of the legislature. However framers of this constitution had little regard for minority demands and centralized power in the Sinhala dominated parliament. It removed the safeguards that were there in the previous constitution, gave pre-eminence to Buddhism in addition to the Sinhala language which was already entrenched in the constitution, and most importantly, concentrated all power in the Sinhala dominated legislature. The clauses that safeguarded the rights of minorities in the 1948 constitution were removed and a special place was given to Buddhism in the constitution. The ethnic polarization even at this time was such, that scant attention was given to any demand for regional autonomy. Representatives of the minority boycotted the proceedings of the constituent assembly that formulated the new constitution.

The dominance of the Sinhala Buddhist hegemony in the political structure was also reflected in the society at large. As a result several attempts by political leaders to find answers to Tamil grievances were thwarted due to dominant chauvinistic sentiments in the Sinhala society. Bandaranaike/Chelvanayagam Pact signed in 1958 and Senanayake/Chelvanayagam Pact signed in 1965 were two significant attempts which tried to work out a form of regional autonomy as an answer to Tamil grievances. Both these attempts were opposed by the political party that was in the opposition at that moment making use of the prevailing chauvinist sentiments in the Sinhala society. The United National Party

(political party in power at the moment) spearheaded the oppositional campaigns in 1958 and the Sri Lanka Freedom Party (the major opposition party) who was in opposition in 1965 supported by some of the left parties opposed the Senanayake/Chelvanayagam Pact in 1965.

Once ethnic consciousness began to dominate the electoral process, it was used by all political groups who had a chance of ruling the country for their own political ends. The mass consciousness was also dominated by ethnicity. Both rulers and the ruled formed parts of a society where ethnic consciousness pervades all parts of the society.

Response of the minorities

The response of the minorities to the emergence of hegemony of Sinhala Buddhist nationalism came primarily from the Sri Lankan Tamils who form numerically the biggest minority. The Tamil political leadership agreed to the safeguards at the centre at the time of independence, although the demands of some of their leaders were more than what was agreed upon. With the ascendance of Sinhala Buddhist nationalism these demands soon changed to one based on regional concepts. In the mid fifties, the majority Tamil party put forward the demand for a federal system of government and by the early seventies this had escalated to a demand for a separate state.

The emergence of the separatist demand coincided with the enactment of the first Republican Constitution in 1972. The early seventies also saw the aggravation of the ethnic relations due to the introduction of new admission schemes for entrance into the university. These schemes had discriminatory elements vis-a-vis the Tamil students.

With the escalation of the ethnic conflict a new political leadership also emerged within the Sri Lankan Tamils and armed struggle became the dominant form of political struggle. The social background of this new leadership was more of a petty bourgeois character. They were less westernised than the earlier Tamil leadership, and were based in the Northern Province where there is a concentration of Tamil population.

All these factors contributed to the strengthening of the Tamil demand that sought control over a certain part of the country where they had a majority and by the mid seventies the beginnings of an armed struggle as a form of political action was seen.

By the time Sri Lanka held her general election in July 1977 The Tamil political demand had evolved decisively towards winning power over a region of the country. In the 1977 elections the Tamil United Liberation Front that spearheaded the demand for a separate state not only swept the electorate in the North and to a lesser extent in the East, but also became the major opposition party. For the first time in Sri Lankan history, the parliament also reflected the ethnic polarization in the country. While the United National Party with a five-sixth majority obtained largely from the Sinhala majority was on the government side, the Tamil United Liberation Front was leading the opposition after winning the Tamil vote mainly from the Northern and Eastern Provinces on a separate state demand.

The 1978 Constitution of Sri Lanka introduced a Presidential form of government. Under this Constitution a President is elected directly. The same constitution also introduced the proportional representation (PR) system of elections instead of the first past the poll system of the Westminster model. Parliament is elected through separate elections under a PR system. Today we have the first parliament elected through the PR system.

Sri Lanka's ethnic conflict aggravated to the level of a civil war within a very short period of time. The armed struggle of the Tamil militancy developed into a qualitatively new stage after the anti-Tamil pogrom of July 1983. Most of the Southern part of the country was affected by this pogrom. This resulted in the migration of more than one hundred thousand refugees from Sri Lanka to Tamil Nadu in India. This not only gave new recruits to the Tamil militant movements, but also paved the way for the direct involvement of India in the Sri Lankan conflict. Within a short period of time it escalated with a heavy toll on the Sri Lankan society.

Following periodization gives a brief description about the growth of the

violent conflict directly related to the ethnic issue from 1972, when the first Republican Constitution was enacted to the point of signing the Indo-Lanka Accord which paved the way for the establishment of a system of Provincial autonomy.

- Enactment of the first Republican Constitution and the emergence of the separatist demand among the Tamil minority and the beginnings of Tamil militancy.
- 1974-1979 Sporadic attacks by Tamil militants. Bank robberies, attacks on police stations, killing of informants, etc.. In 1979 the government enacted the Prevention Terrorism Act (PTA) and sent the armed forces to the Northern part of the country to crush the Tamil movement. The new government elected to office in 1977 adopted a policy of talking to moderate sections of the Tamil leadership, while dealing with militants through military means.
- Violence in the North continues. Armed forces did not succeed in defeating the militant movement. What we saw instead was reprisals against civilians, harassment of civilians, arrests, detention, torture, etc.

This period also saw frequent incidence of violence against Tamils living in the other parts of the country. These are ethnic riots in which the victims were Tamils. This period ended with the July 1983 pogrom against the Tamils. In this pogrom Tamils were attacked all over the country, their property destroyed and thousands reduced to a refugee status. Refugees poured into Tamil Nadu as well.

1983 - 1987 - The armed conflict in the Northern parts of the country increased in intensity. It also spread to the Eastern part.

The conflict continued to take a heavy toll on the civilians.

Human rights violations against civilians continued.

The conflict during this period was interrupted from time to time by discussions between militant groups and the government with India acting as a mediator. Two rounds of discussions were initially held in Thimpu, the capital of Bhutan. Then negotiations moved to Colombo. Finally this process resulted in an accord signed between Sri Lanka and India in July 1987. In the accord the Sri Lankan government agreed to enact legislation that will create a system of Provincial Councils in order to resolve the Tamil problem. Power was to be devolved to these councils. The accord also had clauses pertaining to Indo-Lanka relations. The accord also brought in the Indian Peace Keeping Force (IPKF) into Sri Lanka. The objective of this was to disarm the Tamil militants.

1987 - 1990 - The peace in the North/East and the truce between the IPKF and LTTE was short lived. LTTE went back on the agreement to accept the PC system. In October 1987, the IPKF began its military operations in order to disarm the LTTE. In 1987 the government proceeded to establish the Provincial Councils. Elections to the North/East Provincial Council were held in November 1988.

However, the new government in Colombo, which came to power in 1989 departed from earlier policies and requested the withdrawal of the IPKF and began negotiations with the LTTE. After some hesitation the IPKF began to withdraw. The security vacuum left by this was filled by the LTTE. This was done in collaboration with the government.

This situation led to a sense of uncertainty within the North-East Provincial Council. As a reaction to this the Council declared a separate state. The Central government enacted new legislation in order to dissolve the Provincial Councils. This also marked the end of the first administration of the North East PC.

1990

The complete withdrawal of the IPKF took place by end of March 1990. Within two months the negotiations between government and LTTE broke down and a full scale war began in the North and East. This war still continues. It is marked by large scale military operations which include aerial bombings. The civilian population is subjected to many hardships. Death, injury, lack of essentials, breakdown of institutions of civil authority and other services. Prevalence of internal refugees affect these areas.

Reducing the role of the Central State - Sinhala and Tamil ethnic perspectives

Historically the demand to reduce the power of the central government in Sri Lanka has come from two sources corresponding to the demands of the two ethnic groups, the Sinhalese and Tamils.

The political demand of Sinhalese has been essentially for decentralization of administration with the objective of transferring the initiatives in the development process to local or regional levels. The ultimate objective of this strategy at the policy level is to make the development process more effective.

The social conflicts which emerged in the "South" in the early seventies motivated politicians to look for decentralized answers. Decentralization was considered a means of taking 'development and the administration to the grass roots'. It was expected that through this it will be possible to ensure a better link between development programmes and the beneficiaries. This would result in the political acceptance of government programmes. This seems to be the political content of this demand for decentralization.

In the case of the Tamil minority, the demand was for the establishment of regional bodies with legislative powers in order to meet the grievances of minorities. This was a demand from the Sri Lankan Tamil minority for

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autonomy in the North and East. It was first expressed in the mid-fifties in the form of federalism and escalated to a separatist platform by mid-seventies.

While the socio-political forces which demanded reduction of the power of the central government due to 'development' reasons emerged primarily in the 'South' of Sri Lanka, the pressures for political autonomy in the region arose from the ethnic conflict. The demand from the South also has a political content. However its nature is one of trying to influence the centre through a process of decentralizing decision-making power to the grass-root level. On the other hand the demand of the minority is for autonomy from the Centre so that they have a greater freedom to manage their own affairs. While the decentralization demand maintains a link with the Centre, hoping to influence the Centre more, the devolution demand from the minorities has an emphasis on the autonomy from the Centre.

During the post-independent period there were several attempts at decentralization as an answer to the first demand. The establishment of District Development Councils in the mid seventies was the first major attempt at decentralization during the post-independent period. In contrast to the initiatives at the level of local authorities which prevailed before, DDCs was a structure covering the entire country. It was also given a political backing through the direct participation of the Members of Parliament in these structures. The insurgency of 1971 was a major factor in this desire to decentralize the administration and bring about greater participation of the population in the development process at district levels. The development activities of the district and co-ordination of these activities through a district plan was the main concern in this attempt.

District Development Councils established in 1981 went a step further in this process by making these district level institutions elected bodies. This system also made provisions for the participation of Members of Parliament from the districts in DDCs. Hence there were two sets of elected representatives linked to the district administration in this

attempt at decentralization. This elaborate structure was co-ordinated by a District Minister who was also a Member of Parliament from the district. The Government Agent (GA) who was in-charge of the district was the chief administrative officer of the set-up.

The minority demand for devolution which was never considered seriously by the Sinhala majority, assumed a hegemonic position in the eighties due to the aggravation of the ethnic conflict process and the pressure from India. Therefore once-again the idea that has been rejected by the Sinhala majority as a solution to the ethnic problem several times, came back to the political arena.

The first mentioning of a scheme for devolution of power through a regional autonomy framework in this phase of the ethnic conflict came about in the so-called annexure "C". This was part of an understanding that emerged from a meeting between Prime Minister of India and President of Sri Lanka after India became involved in Sri Lanka's problem more directly. However, this document could not get the approval of the All Party Conference that was summoned to look for solutions to the ethic conflict after July 1983 incidents. This was a conference that U.N.P. promised in its election manifesto for the July 1977 elections. But it was called only after massive violence of July 1983.

Despite this situation this conference could not offer anything beyond the already mentioned District Development Councils (DDCs) as an answer to the ethnic conflict. As already mentioned these bodies established in 1981 attempted a form of decentralization to the district level. Therefore while the internal actors could not go beyond this framework, conflict intensified significantly with India's direct involvement expanding in many ways. The conflict also generated much international publicity and pressures for a political answer to the conflict became greater.

As already mentioned the pressure to find a political answer to the ethnic conflict resulted in several rounds of negotiations between the representatives of Tamil militants and the Sri Lankan government with India acting as a mediator. Two rounds of discussions were held in Thimpu, the

capital of Bhutan in 1985. Then in 1986 negotiations continued in Colombo with direct participation of India. However this entire period was also characterised by violent conflict.

The dynamics of the conflict took a new turn with the signing of the Indo-Lanka Accord in 1987. This is the first official document signed by a Head of State in Sri Lanka that had accepted the multi-ethnic character of the Sri Lankan society and the need for a scheme of devolution of power on a provincial basis in order to meet the grievances of Tamil people. This resulted in legislation being brought to establish provincial councils. Thus the aggravation of the ethnic conflict has brought back the regional concept as an answer to the ethnic conflict of Sri Lanka.

The necessary legislation to establish the PC system was passed in November 1987. These include the 13th amendment to the Constitution and the Provincial Councils Act. Following this, elections to the PCs were held on a staggered basis as follows.

- April 1988 elections to some of the Southern provincial councils
- June 1988 elections to remaining Southern provincial councils

Sri Lanka Freedom Party (SLFP), the main opposition party did not contest the PC elections. United National Party (UNP) won power in all 'Southern' Provincial Councils.

Elections that brought about the present political composition of the PCs was in no way an ideal election. Violence and the boycott by the main opposition parties delegitimized PC elections to a certain extent. Generally the voter turn out in these elections was low.

The elections to the North/East Provincial Council was held in November 1988. The Indian Peace Keeping Force was present in the area while these elections were held. Eelam People's Revolutionary Liberation Front

(EPRLF) which is one of the Tamil militant groups, accepted the PC system and the 13th amendment, and came to power in the North/East PC. Liberation Tigers of Tamil Eelam, the most powerful Tamil militant group did not accept the PC system. As in the 'South' elections to the North/East PC were not held in a situation conducive to free and fair elections. This did affect the legitimacy of the North/East PC.

After the enactment of the 13th Amendment the government proceeded to establish rest of the institutional framework of the PC system. Passage of Provincial Councils (Consequential) Bill in May 1989 in order to provide a legal basis for the PCs to exercise executive powers till they have the capacity to pass their own legislative enactments was an important step in order to expedite the process. Establishment of Provincial Public Service Commission, Finance Commission, and Provincial Police Commission and Land Commission are some of the other important steps. Provincial High Courts are yet to be established.

Provincial Council experience - The North/South divide

As our analysis of the history of attempts to reduce the role of the Central government shows the Provincial Council system established now in the 'South' came about not because of political developments in the south of Sri Lanka but because of the Tamil militant struggle and pressure from India. In other words there was no broad based political movement supporting devolution of power in the 'Southern' part of the country. It was imposed on the 'South' as a means of 'selling' the solution to the ethnic problem to the majority population.

India's decision to intervene directly in the ethnic conflict of Sri Lanka, mainly for her own security considerations, played the key role in the establishment of the Provincial Council framework. Under very difficult conditions, amidst a growing violent conflict that was beginning to spread even to the south of the country the former leader of the UNP, J.R.Jayawardena took the initiative to pass legislation and establish the Provincial Council system. He was supported by a section of his own party. But what was more important in seeing the legislation through was

the power he enjoyed as the President of the country and as the leader of his own party. The Indian presence also indirectly helped to take care of the security situation in the south and to hold PC elections.

As a result of these antecedents, development and decentralisation issues, rather than a concern for devolution of political power, have dominated the 'Southern" PCs. Therefore the concerns and the perspective of the 'South' has been closer to the issues of decentralization of administration rather than to the devolution of political power. The fact that all PCs of the South are led by the same political party that rules at the Centre has been another contributing factor for this.

This has led to a situation where some of the PCs in the South are not showing an initiative even to make use of the powers given to them by the present framework. As a result, while there has been a transfer of functions from the Centre to Provinces very little has been done by PCs themselves in order to develop their own initiatives in terms of planning, enactment of their own statutes and in development of provincial institutions. Of course this situation can change in the future and even at present there are differences between Provincial Councils in this regard. Experience can bring about political initiatives. It will be certainly enhanced the day that opposition parties assumes power in the Provincial set-up.

Within these limitations most of the problems faced by the Southern PCs in the transfer of power can be considered as 'teething problems' that could be taken care of in time to come. Most demands of PCs have been about expediting the transfer of implementation functions as envisaged in the 13th Amendment. Since all these provincial councils are under the UNP, who also hold power at the Centre, there are many channels through which these problems are sorted out.

This is in stark contrast to what happened during the short-lived experience of the North/East PC which showed political will to demand power from the Centre even under difficult conditions. The PC experience in the North/East was short-lived. It lasted from November 1988 to mid-March 1990. But during this period the North/East not only attempted to take over power from the Center within the limitations of the 13th Amendment, but also kept up a continuous critique of the system.

Some of the limitations of the 13th Amendment and the PC system were highlighted in a lengthy report (Devolution of powers to the Provincial Councils - undated) that the North/East PC submitted after being in office for seven months. This report was presented to the Indian government. It listed shortcomings under 13 headings. Some of the more important issues raised in this report were,

- The 13th amendment has a major flaw in that it takes away some
 of the powers given to the Provincial Councils through the
 Provincial list, by the attached appendices. The Act has appendices on all crucial areas like Land, Police and Internal security
 and Education
- The Central government treats the Concurrent list, which shows powers that have to be shared between Provinces and the Centre, as an addition to the Reserved list.
- Provincial Police have not been established nor the Provincial Police Commission. However, the Central government continues to recruit Police to serve in these areas.
- No devolution in the area of Land settlement has taken place.
 The Central government continues to settle people specially in the East
- Public administration at district level is still under the Centre

Some of the grievances stated in this report have been remedied after this report was prepared. Government passed legislation for the establishment of Provincial Police Commission and the Provincial Police. However the inadequacy of the present PC framework is a dominant point of view prevailing among the Tamil political groups. There have been

criticisms regarding the inadequacies in the 13th Amendment from the Tamil side right from the beginning.

At present it is rather uncertain whether powers given by the present Provincial Council framework will satisfy Tamil demands. The recent round of conflicts which prevail in the North and East has also hardened the Tamil positions further. In addition the limitations demonstrated by the PCs that have functioned in the rest of the country has resulted in proposals being made for a more federal system of government.

In other words the PC system has not been tested so far as an answer to the ethnic conflict. Although the demand for PCs came due to the ethnic conflict, the experience of the PC system in the North/East was short lived. There are no PCs functioning in the North/East at present. It is also not clear whether the powers given by this framework will satisfy Tamil grievances.

Therefore, the 'North/East - South' divide on the question of devolution is still present in Sri Lanka, but in a new form. This divide is partly a continuation of the two process that demanded reduction of the power of the central government. Now that PCs are there, the 'Southern' PCs seem to look at its problems purely as a 'development' issue. For North/East it is essentially a question of political autonomy. It is important to keep in mind the tension between these two currents which has a historical antecedent, in order to understand the devolutionary process in Sri Lanka.

Provincial Autonomy and centralizing tendencies of a liberalised economy

The attempt at devolving power is further complicated in the present context as a result of two other important factors. The first, is related processes, related to the liberalised economic model followed by Sri Lanka. The second, is closely linked to the Presidential form of government which was also introduced along with the liberalized phase of capitalism. The Presidential form of government liberalized model in the economy along with the attempt to devolve power are the processes that

characterize the present Sri Lankan reality. Therefore it is necessary to see how these influence and interact with each other.

The introduction of the liberalized phase of the economy has meant significant changes in the economy. These changes have been carried out through a highly centralized process involving institutions like the Finance Ministry and multi-lateral agencies like the World Bank and the IMF. This centralized process of decision making continues even after the establishment of the provincial set-up.

Under the liberalized economy the central institutions seem to be extremely keen to keep their control over the major development projects. This includes large development projects like Mahaweli, Road Development, or Southern Province Development project; growth sectors of the economy like Tourism, industrial development; and lifeblood of the economy like foreign aid. All these things are controlled from the Centre. Sometimes the very fact of large scale aid dependency in these projects brings about Central control. Even in such a sphere like rural development, which by any standards should be under provincial initiative there is a large degree of Central control because of the foreign aid factor.

This calls for a closer look into the Central Institutions of planning and their relationship to Provincial Systems. The establishment of the PCs should have an impact on the Central planning process as well. Central planning cannot be continued in the same way as before. In fact for a small country like Sri Lanka showing a considerable degree of integration in her economic structures such reforms at the Centre could be as important as the establishment of a PC system to make devolution of power a reality. For this purpose the reality of regions with devolved powers should be built into the planning process entrusted to the centre. The national plans now should incorporate planning initiatives from provinces and planning carried out at the centre keeping in mind the reality of provincial structures. It is not clear how far this kind of thinking has percolated to the centre up to now.

One aspect of this consideration must mean reforms in institutions that

are still controlled by the Centre, but whose decisions have an important bearing on the socio-economic well being of provinces. For example there are many Centralised Boards, Commissions, Authorities, etc. (e.g Coconut board, Tea small holder development authority, Roads authority) who might be on one hand looking after subjects that are now devolved in provinces or whose decisions have critical impact on the situation in the provinces. These certainly have to be reformed and get adopted to the new situation.

The relationship between provincial institutions and institutions located in regions but coming under the control of the Centre is another problem area that has to be resolved. In the regions there are institutions at three levels - Provincial level, District level and the Divisional level. (This is a sub-unit of a district coming under the Assistant Government Agent) Integrated Rural Development Programmes (IRDPs) operating at district level and Divisional level institutions are the main structures available to carry out development activities in the regions. These could form a well knit structure for the PC system to operate with a certain degree of integration taking place at the Provincial level.

However at present the District level and Divisional level institutions are under dual control. IRDPs are still managed primarily by the Regional Development Division of the Ministry of Policy Planning and Plan Implementation at the Central level. At the A.G.A. level the newly established Divisional Secretariats are controlled strongly by the Centre. In a way, the importance given to Divisional Secretariats, could become a means of by-passing the Provincial system, making use of a unit at a lower level which is controlled from the Centre.

Therefore, for the Provincial set-up to be successful there has to be reforms in the institutions controlled by the Centre operating both at the Centre and the regions. However, some of the difficulties of reforming central institutions comes from the dynamics of the liberalised economy.

A major political factor contributing to the centralizing tendencies under the liberalized phase of capitalism has been the Presidential form of government that was introduced along with liberalised policies. The 1978 Constitution of Sri Lanka introduced a Presidential form of government. The President is elected directly. Since it was established the Presidential system has come under a great deal of scrutiny and criticism. The main opposition political parties have pledged to abolish the Presidential system if they come to power. The criticism is mainly regarding the powers enjoyed by the President and the relative independence enjoyed by the Presidency in relation to the Parliament.

However the main argument for a strong Presidency with powers to take unpopular decisions without depending on the vagaries of the parliament, was dictated by the need of the new directions in the economic policy. Under the Presidential system not only is there a powerful Presidential secretariat, but the President can also take under him important Ministries that make crucial decisions regarding the economy. This has been extremely important in carrying out major decisions in order to create a liberalized economy. There is a close link between creation of a Presidential system and centralization seen under the liberalized policies.

In addition, the same Presidential system is used now to take over areas of power that should really be with Provincial Councils. For example, the poverty alleviation programme called Janasaviya or the much publicized land alienation programme through the Presidential Land Task Force are glaring examples of programmes that should have been left to the provinces. Under the 13th Amendment these are functions that Provincial Councils should have a role to play. However, these are also programmes that are politically important for those in power. Both these programmes have a very high profile and have been undertaken by the incumbent President as a political response to the JVP led instability in the South. Therefore, Powers of the Presidency have been used to undermine the Provincial Council system in these instances.

Concluding Remarks

The primary objective of this paper has been to analyse the ethnic conflict which has been a major issue in the Sri Lankan society during the last

decade and to look at the attempt to develop a system of regional autonomy by the establishment of Provincial Councils as a way out of the conflict.

Basically, the paper conceptualizes the conflict situation in Sri Lanka as one of integrating a multi-ethnic society. One of the most important aspect of this integration process is the evolution of a political structure that can form the basis for the creation of a multi-ethnic society. The first part of the paper traces the breakdown of the political contract between Sinhalese and Tamils in order to safeguard rights of minorities; the escalation of the ethnic conflict; and the emergence of a Provincial Council system.

Sri Lanka emerged from the colonial period with a highly centralized form of government. Although in the late twenties some of the political leaders and representatives of certain ethnic groups put forward the idea of a federal constitution for Sri Lanka, the concept of regional autonomy was not accepted in forming the state structure of newly independent Sri Lanka. Instead she emerged as an independent nation with a centralized form of government having the status of a dominion within the British Commonwealth. The political structure was based on a Westminster model with two chambers, a Prime Minister with a cabinet of Ministers having executive power and an appointed Governor General remaining as the representative of the British Crown.

For the purpose of safeguarding rights of minorities, Sri Lanka adopted various mechanisms of checks and balances at the Centre. The history of ethnic relations in post independent Sri Lanka was the history of ineffectiveness of these safeguards. Articulation of the political power of the majority through the political system saw the breakdown of checks and balances. The hegemony of Sinhala Buddhist Nationalism which became the dominant ideology of the ruling group eroded the safeguards for the minorities.

The response of the minorities to the emergence of the hegemony of Sinhala Buddhist nationalism came primarily from the Sri Lankan Tamils who form numerically the biggest minority. The Tamil political leadership

agreed to the safeguards at the Centre at the time of independence, although the demands of some of their leaders were more than what was agreed upon. With the ascendance of Sinhala Buddhist nationalism these demands soon changed to one based on regional concepts. In the mid fifties the majority Tamil party put forward the demand for a federal system of government and by the early seventies this had escalated to a demand for a separate state.

The Tamil demand for regional autonomy was continuously rejected by the Sinhala majority claiming that it is equivalent to a division of the country. Although two Prime Ministers of independent Sri Lanka came into an agreement with the Tamil political leadership to establish regional forms of government, both these attempts were given up because of the opposition from the majority.

However escalation of the ethnic conflict, its social costs, international pressures as well as pressures from India brought back the regional answer as a way out of the conflict. Keeping with the substance of the agreement with India, now known as the Indo-Lanka accord, the Sri Lankan government established a system of Provincial Councils in 1987. The Constitution was amended for this purpose and eight Provincial Councils were set-up. These included seven councils in the region identified as the 'South' where the Sinhala population predominate and one for the amalgamated North/East province with a preponderence of the Tamil population.

The elections to the Provincial Councils in the 'South' was boycotted by the Sri Lanka Freedom Party, the major opposition party. It was also violently opposed by the more radical nationalist Janatha Vimukthi Peramuna(JVP). JVP carried out a violent campaign against the Provincial Councils in the 'South' in which thousands were killed. The JVP in turn were brutally suppressed by the armed forces in 1990. The United National Party and the parties of the left contested the Provincial Council elections and the UNP won power in all 'Southern' PCs.

In the North/East, the elections to the PCs was also marred by violence.

The Liberation Tigers of Tamil Eelam, the militarily strongest Tamil group, opposed the 'solution' after a brief agreement to go along with it. But very soon they were engaged in a military conflict with the Indian Peace Keeping Force (IPKF) who were sent to the island in order to disarm the militant groups and oversee the implementation of the Accord. The Eelam People's Revolutionary Liberation Front (EPRLF) won power in the North/East PC. The presence of Indian troops and the protection given by them for those political groups who agreed with the Accord was a major reason for the EPRLF victory in the North/East PC election.

However the PC experience of the North/East council was short lived. It lasted for about a year. The regime change in Colombo in December 1988 resulted in a turn around of policies towards India and the LTTE. The new regime in Colombo requested the Indian troops to leave the island and initiated negotiations with LTTE. North/East PC was left without the protection either of Colombo or of India. In this climate of instability, the North/East PC proceeded to declare a separate state. Making use of this the Colombo government dissolved the North/East PC in April 1990.

The discussion between LTTE and government which also lasted for about a year did not result in any tangible answers to the ethnic conflict. It was clear that it was the common antagonistic factor of India which kept this discussion going. Within two months of the withdrawal of IPKF from Sri Lanka the discussions broke down and a full scale military conflict between the LTTE and the Sri Lankan Army began in June 1990. This round of conflict still continues in this part of the country.

Thus after years of opposition from the Sinhalese, the Sri Lankan government has established a legal framework for the establishment of a Provincial Council system. However it has not undergone any adequate test to see whether it will satisfy Tamil grievances. In other words although the demand for a form of regional autonomy came due to the ethnic conflict, the experience of the PC system in the North/East was short lived. There are no PCs functioning in the North/East at present. In addition the recent round of conflicts which prevails in the North and East

has also hardened the Tamil positions further. The limitations demonstrated by the PCs that have functioned in the rest of the country has also resulted in a questioning of the adequacy of this framework. At the moment the Tamil demands seem to be for a Federal system to an amalgamated North/East province.

The analysis presented in the paper with regard to the actual experience of the PC shows again a North/South divide. In actual fact the establishment of the Provincial Council system now in the 'South' came about not because of political developments in the south of Sri Lanka but because of the Tamil militant struggle and pressure from India. In other words there was no broad-based political movement supporting devolution of power in the 'Southern' part of the country. It was imposed on the 'South' as a means of 'selling' the solution to the ethnic problem to the majority population. On the other hand the political demand in the South has been much more for decentralization rather than devolution.

In other words the politics of the Sinhala social formation has been trying to influence the Centre through a process of decentralizing decision making power at the grass root level. On the other hand the demand of the minority is for autonomy from the Centre so that they have a greater freedom to manage their own affairs. While the decentralization demand maintains a link with the Centre, hoping to influence the Centre more, the devolution demand from the minorities has an emphasis on the autonomy from the Centre.

As a result of these antecedents, development and decentralization issues rather than a concern for devolution of political power, have dominated the 'Southern' PCs. Therefore the concerns and the perspective of the 'South' has been closer to the issues of decentralization of administration rather than to the devolution of political power. The fact that all PCs of the South are led by the same political party that rules at the Centre has been another contributing factor for this.

This is in stark contrast to what happened during the short-lived experience of the North/East PC which showed political will to demand power

from the Centre even under difficult conditions. During this period the North/East PC not only attempted to take over power from the Centre within the limitations of the 13th Amendment, but also kept up a continuous critique of the system.

Therefore the 'North/East - South' divide on the question of devolution is still present in Sri Lanka, but in a new form. This divide is partly a continuation of the two process that demanded reduction of the power of the Central government. Now that PCs are there, the 'Southern' PCs seem to look at its problems purely as a 'development' issue. For North/East it is essentially a question of political autonomy. As the paper points out, it is important to keep in mind the tension between these two currents which has an historical antecedent, in order to understand the devolutionary process in Sri Lanka.

Finally the paper points out the need to look at two other important factors in analysing the present exercise on devolution. These are the liberalized economic model followed by Sri Lanka and the Presidential form of government introduced in 1978. In fact, all these three elements, the Presidential form of government, liberalised model in the economy along with the attempt to devolve power, are the major processes that characterize the present Sri Lankan reality. Therefore, it is necessary to see how these influence and interact with each other.

Both these processes have introduced centralizing tendencies in economic decisions making as well as in the political system. Therefore it is becoming a major political and policy issue in Sri Lanka. In this situation the paper argues about the need to look at the central economic institutions much more closely. These institutions cannot function in the same way as before if they are serious about devolution. They need to be reformed keeping in mind the reality of Provincial Councils.

The Presidential system poses much more fundamental issues. Sometime back it was argued even by Tamils about the need for a Presidential system in order to find an answer to the ethnic conflict. The idea was that only a body that is independent of Sinhala dominated parliament will be

able to take steps to solve the problem. This is true to a certain extent. However, as the paper shows the same Presidential system can be used to undermine the Provincial Councils. Therefore this is a major contradiction that has to be resolved in order to make a genuine regional autonomy a reality in Sri Lanka.

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Apart from studies on the changing role of the genders, the new lines of conflict in the seventies and eighties determined the direction of his research. Thus, he has made a comparative study of youth unrest at the beginning of the eighties in Germany, Great Britain, Switzerland and the Netherlands with reference to causes and forms of development. In 1988, Eckert was appointed to the Independent Commission of Inquiry set-up by the German Government to investigate the causes of violence and possibilities of combatting them (Commission on Violence). The Commission submitted its report in 1990.

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