

# The Role of the Opposition in a Liberal Democracy

## *Speech by Anwar Ibrahim at the 12th Dudley Senanayake Memorial Lecture in Sri Lanka on 16th October, 2009*

Salutation to Friedrich Naumann Stiftung für die Freiheit, Sagarica Delgoda, Dudley Senanayake Foundation & Desmond Fernando.

Ladies and Gentlemen,

It is indeed a great honour for me to be here this evening on the occasion of the 12<sup>th</sup> Dudley Senanayake Memorial Lecture. At the same time, I stand before you humbled by the task at hand. So, let me begin by first paying tribute to the memory of Premier Dudley Senanayake. In this regard, I think I can do no better than to laud his political ideals, ideals which still resonate with us, indeed with anyone who believes in freedom and democracy.

May I be as bold as to consider Dudley a Liberal Social Democrat, that is, more 'Liberal' than 'Social.' Nevertheless, there is no question that he was a de facto social democrat in as much as he espoused the principles of social justice and put them into practice. That would include affirmative action for the poor and the marginalized and promoting land ownership and housing for the needy. His economics heralded an era of transformation and his phenomenal contribution to agriculture is legendary. As for his predominantly liberal bent in politics, that would be reflected in our discourse this evening.

Ladies and Gentlemen,

The subject at hand may appear to some as having been flogged to death in as much as the landscape of liberal democracy is considered to be well traversed and the role of the opposition in such a system is self-evident.

Be that as it may, at the risk of being regarded as trying to reinvent the wheel, let me attempt to map out the province of liberal democracy and reiterate the role of the opposition in such a democracy. Let me begin with the doctrine that regards three central values as being foundational for a liberal democracy, and these are liberty, social pluralism and political constitutionalism. These values as we know are also central to liberalism itself but in the context of the discourse on democracy, our concern lies more with fundamental freedoms and the practice of constitutional government.

From Dicey we have the traditional conception of constitutionalism, which places the rule of law as being pivotal. According to him, “...the rule of law is as valuable a principle today as it has ever been. For it means that the courts can see to it that powers of officials, and official bodies of persons entrusted with government, are not exceeded and are not abused, and that the rights of citizens are determined in accordance with the law enacted and unenacted.”<sup>1</sup>

That would appear to be much less a definition than an indictment against executive abuse. By most accounts, the rule of law stipulates that government in all its actions is bound by rules fixed and announced beforehand. This would make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances, and to plan one’s individual affairs on the basis of this knowledge.<sup>2</sup> That is why the rider by Dicey is so central because the coercive powers referred to must be based on laws that meet the criterion of justness.

In other words, the rule of law requires the application of moral standards to legislative output. And this is because every individual possesses rights founded on

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<sup>1</sup> Quoted in Hayek, F.A., *The Constitution of Liberty*, Routledge, London, 1993, p 489

<sup>2</sup> This is paraphrased from *The Road to Serfdom*.

justice which are inviolable. The positivity of law is not sufficient to establish its lawfulness. If laws are unjust then the rule of law itself is in jeopardy.<sup>3</sup>

The rule of law therefore means the exercise of publicly justifiable power. Whether or not it is justifiable, that is the question the opposition must ask and answer. Herein lies a pivotal role of the opposition in a liberal democracy which is to be the voice of public reason and ensure that the “exercise of public political power is fully proper” and it can only be so if and “when it is exercised in accordance with a constitution the principles and ideals of which are endorsed by common human reason”.<sup>4</sup>

Preventive detention laws are a classic instance of the exercise of political power not in accordance with constitutional principles. They offend against human dignity and violate our fundamental rights. Yet such laws and such powers continue to be used arbitrarily even in liberal democracies such as the United Kingdom and the United States. The constitutional principles endorsed by human reason to safeguard our liberties are then violated with impunity by the powers that be. The use of such oppressive laws for whatever reason, let alone for the purpose of silencing political dissent, makes a mockery of the institution of liberal democracy. Clearly, it is incumbent on the opposition to challenge the use of such powers and to work relentlessly to have such laws abolished. In this regard, as the leader of the Opposition in the Parliament of Malaysia, I daresay that we are doing precisely that by campaigning for the abolition of the Internal Security Act.

In a nutshell therefore, the rule of law is the use of law to curb the abuse of law-making power. Upon this principle, power and authority are therefore predicated. It is a powerful weapon, both in legal and political argument, which can be

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<sup>3</sup> This represents the quintessence of the position of philosophers such as John Rawls traceable all the way to John Locke. See Rawls, *Theory of Justice*. Also *The Rule of Law Nomos XXXVI*, Ed. Ian Shapiro, New York University Press, 1994, pp. 65 - 79

<sup>4</sup> see John Rawls, *Political Liberalism*, New York, Columbia University Press, 1993, p. 137

employed judicially in the interpretation of constitutional principles so as to check excesses of the legislative and executive arms of government. Of course, the principle does not warrant that every trivial issue be accorded the process of being litigated all the way to the highest appellate court. Even the administration of justice is subject to the law of diminishing returns.

And that leads us to the position of the judiciary in a democracy. Without a doubt what comes to mind in an instant is the paramount importance of not mixing justice with politics, that is to say, the judiciary must remain independent. Under no circumstances should it be under the control or influence of the Legislature, let alone the Executive. There is a saying that when the law is subjugated to the chicanery of politics, that is, where the judges are subservient to the political masters, the administration of justice becomes farcical and perverse. We have seen what happened in Pakistan not too long ago. We see it happening in sham democracies masquerading as liberal democracies. And of course we see it being played out ad nauseam from where I come.

The opposition must therefore play the role of ensuring the separation of these powers. It is their duty to see the existence of a transparent court system and a process of accountability. No doubt, this is easier said than done. This is because in reality leaders of the opposition are the very people who will be the victims of the use of judicial high-handedness. They will be the first to be prosecuted for political reasons and they will be condemned even before the trials begin.

Instead of being the ultimate guardians of our liberty from executive tyranny, the judiciary is then transformed into principals in the destruction of the very process it was entrusted to protect. Indeed, the undermining of judicial independence by political interference has negative repercussions not only on society at large but on the nation as a whole. Very often the inability to assert independence seems to be inversely proportional to the degree of integrity.

Therefore there is no overstating the role of the opposition in reminding judges of the legitimate expectations of the people as to their competency, dedication and impartiality. In resolving disputes between the people and the government, judges must act impartially. They administer justice, according to law, not according to the dictates of political masters. The rule of law means citizens can enjoy the fruits of liberty and other freedoms without being molested by the arbitrary use of political power. Police officers may not stop and search individuals just so that they may prevent them from attending rallies organized by an opposition party. If they do so, the people can expect the courts to invoke the rule of law to strike down such acts. The rule of law therefore will be seen in proportion to the effectiveness of the judiciary's deliberations against executive power.

Another crucial criterion for constitutional government is that the discretion of law enforcement agencies must not be allowed to pervert the cause of justice.<sup>5</sup> The office of the Public Prosecutor, the police and the anti-corruption agency, all these bodies, play essential roles in the preservation of the rule of law, failing which they are easily used to pervert the law. As absolute power corrupts absolutely, the arrogance of power left unchecked renders these agencies absolutely impermeable to public opinion and criticism. Once again, the role of the opposition as the conscience of the people in this regard is of paramount importance if democracy is to mean anything.

The very root of this problem goes to the question of accountability. We have seen how civilisations collapse from within as a result of corruption and moral decadence, and a disintegration of the institutions of accountability.<sup>6</sup> Thomas Jefferson time and again warned against the abuse of unlimited powers by elected despots and foretold that there would come a time “when corruption in this, as in the country from which we derive our origin, will have seized the heads of

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<sup>5</sup> See Joseph Raz, *The Authority of Law – Essays on Law and Morality*, New York, Clarendon Press, 1979, pp. 210 - 229

<sup>6</sup> See Abdul Rahman ibn Khaldun, *The Muqaddimah* (Princeton: Bollingen Series, 1967).

government, and be spread by them through the body of the people; when they will purchase the voices of the people, and make them pay the price.”<sup>7</sup> In our time these same sentiments were expressed with greater vigour and tenacity by the great freedom fighters, from Simon Bolivar to Sun Yat Sen, and from Nehru, from Dudley and from Mandela.

This links us back to our earlier postulation about liberal democracy and that is that political liberty is the area within which a man can act unobstructed by others. However, we must not forget that at the heart of this political liberalism lies the need for a social contract that enables such liberty. Such a contract, needless to say, must be rooted in a deal that legitimises power and holds accountable all those who exercise it. In this regard, the opposition must demand transparency in all government actions and dealings, leave no stone unturned in its quest for a fair and free media and constantly guard against the rise of despotism and tyranny. The latter as we know go hand in hand with abuse of power and corruption, that being the scourge of most developing countries and emerging economies even without the Corruption Index telling us so.

Certainly there are no simple answers to fighting corruption but the role of the opposition in pushing for transparency and freedom of information laws would certainly be indispensable if we are to make any progress in this regard. Corruption and poverty which engenders great disparities of income distribution must be seen holistically. Here I am again reminded of Dudley’s achievement in being among the first of the Asian leaders to focus on poverty eradication, which today still remains low in the order of priorities. By giving more attention to the agricultural sector and making available greater access to financial resources, as Dudley did, economic growth will get a major boost.

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<sup>7</sup> See Thomas Jefferson, *Notes on Virginia*, 1781-82.

Liberal democracy is all well and good on paper but where hungry mouths cry out to be fed, our discourse will crystallise only into mere historical accounts of intellectual kite-flying and self-serving proclamations of pious platitudes.

That is why talk of a liberal democracy is meaningless without the state institutionalising social safety net programs such as social security or social insurance. As one of the central values of such a democracy as I had stated earlier, social pluralism must warrant that the government of the day take a holistic approach to integrate all aspects of life within a just and equitable system.

In this regard, apart from fighting poverty and redressing other social inequities, we should never lose sight of the importance of supporting strong families, education, and protecting the environment. The paramount aim must be the attainment of a system which allows for a more equitable distribution of wealth, without which it is indeed a mockery to speak of freedom and democracy, whatever hardcore libertarians may tell us.

Thank you.