

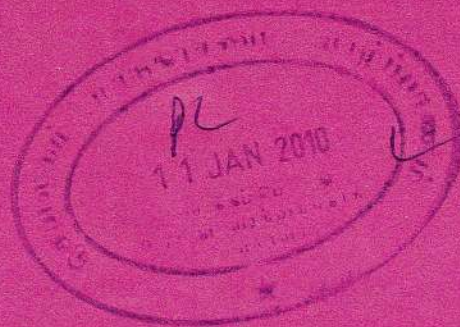
# POLITY

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## ANOTHER PRESIDENTIAL ELECTION, WITH LITTLE SPACE FOR CHANGE

As the year 2009 comes to end, Sri Lanka's politics is showing signs of new contradictions and conflicts. These will unfold with greater intensity during the forthcoming presidential election campaign in which the two main contestants are President Mahinda Rajapakse and his former army chief.

The year 2009 is politically significant for Sri Lanka primarily because of the conclusion of the island's protracted civil war. The war ended in May, with a convincing military victory for the Sri Lankan state and a total defeat for the LTTE. This is an outcome that surprised many within and outside Sri Lanka. However, the government's military success seems to contain within it seeds of discontent between the political and military leaderships. General Sarath Fonseka, who led the ground war against the LTTE and was a key architect of the military solution approach to the ethnic conflict, has quit the military service to enter politics. His goal is to become the commander-in-chief, from being the chief of the Defense Staff. His political ambitions are also being facilitated by the opposition led by the United National Party. The opposition, which has been searching for a winning strategy against President Rajapakse, has found in General Fonseka a winning candidate. The fact that the ex-military chief has no background whatsoever in politics, in democracy, or in governance does not seem to bother the opposition, which seems to be desperately in need of a viable presidential candidate.

Meanwhile, Sri Lanka's post-civil war politics has not so far produced any major outcome in the form of addressing issues relating to the ethnic conflict that produced the Tamil separatist insurgency to begin with. After the military defeat of the LTTE in mid-May, the Rajapakse administration spent several weeks celebrating the victory. Then, after massive international pressure, the government began to think about a program for resettling over 250,000 Tamil civilians who surrendered during the last phase of the war. Herded into military-run camps in Vavuniya, the welfare of these civilians became a massive humanitarian challenge. However, the government's initial approach appeared to be one guided by security concerns. Local and international media began to call these camps in Vavuniya internment camps. Some even called them concentration camps. It took a huge global effort to convince the government that resettlement of the Tamil civilians should be a policy priority. It appeared that the government only after it realized that the threat of international took credible steps to improve the welfare of Tamil civilians in the camps isolation was a real possibility. As the presidential election is approaching, and in response to electoral imperatives, more progress in the resettlement process is taking place.

General Sarath Fonseka's exit from his official position of the chief of the Defense Staff also signifies the

weakening of the war-time coalition which President Rajapakse built to prosecute the war against the LTTE. That was a broad coalition which brought together parties of the ruling UPFA coalition, military, bureaucracy, foreign service, judiciary, JVP, media, Sinhalese nationalist intelligentsia, leading Buddhist monks, sections of

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the Catholic religious hierarchy, anti-LTTE Tamil groups and sections of the Sinhalese diaspora. This was a very broad coalition. It has now cracked from within. General Fonseka and the JVP have now left this coalition, co-headed by President Rajapakse and his brothers. In the heat of the presidential election campaign, these cracks are likely to further deepen and widen. It is too early to say how the continuing contradictions within the Sinhalese political establishment will affect the outcome of the presidential election, which will be held in mid-January.

Meanwhile, it appears that the question of a political solution to the ethnic conflict is no longer in the political agenda of either the ruling party or the opposition. The presidential election campaign is not likely to put forward a political solution as a major theme. In any case, the present regime has successfully marginalized the relevance of devolution to the political debate in post-LTTE Sri Lanka. President Rajapakse secured international support, particularly the support of the US and Indian governments, on the tacit understanding that once the LTTE was militarily defeated, he would move in the direction of implementing a devolution framework. He showed to the world, and the Tamils, the Tissa Vitharana Committee, which was entrusted with the task of formulating constitutional proposals for a political solution, as evidence of an ongoing process of political reform. However, the Vitharana Committee has proved itself to be a veil of deception, used by President Rajapakse to dilute international criticism. Given the fact that the nationalist coalition over which he presided had no commitment to minority rights within a liberal-pluralist framework, President Rajapakse could do very little in the direction of a fair and just political settlement. Besides, powerful forces within the ruling coalition saw the military victory over the LTTE as restoration of the Sinhalese unitary state project. It was patently unrealistic to expect that the war coalition which President Rajapakse put together to fight the LTTE would be a vehicle for a political settlement. During the forthcoming election campaign, the ruling party will try to woo minority votes with promises of a political

solution. However, there are no signs of President Rajapakse reconstituting his coalition in a manner that will enable him to implement meaningful political reforms that will include devolution.

Will the UNP-led opposition alliance, with General Sarath Fonseka as its presidential candidate, be a better alternative? Well, the indications are that it will not. The UNP and its allies are putting forward General Fonseka in a dubious strategy to make him a nominal head of state a few months after the election. The plan appears to be for Ranil Wickremesinghe, UNP leader, to become the caretaker Prime Minister soon after the election victory. Then, parliament will either be dissolved for fresh elections, or a recomposition of the balance of power in parliament will be affected in favour of the new president and the new prime minister. This will follow, as the UNP's plan goes, a constitutional amendment abolishing the presidential system. The entire plan will depend on the willingness of General Fonseka, once elected president, to give up his all powerful position just to become a nominal head of state. The UNP and the JVP might find it extremely difficult to convince the majority of the electorate of the viability of this extremely risky political strategy.

Issues that need to be brought to the centre of Sri Lanka's political agenda at present are democracy, demilitarization, devolution, human rights, governance free of corruption, and normalization of the political process. Resettlement of displaced civilians in the Northern and Eastern provinces, normalization of the life of Tamil civilians, withdrawal of the Emergency and the Prevention of Terrorism Act, release of political prisoners, and expediting of trials against those held without trial are immediate issues linked to the larger agenda of democracy, demilitarization and devolution. But the two main political coalitions that are being formed at present for the coming presidential election are not likely to take up any of these issues with any degree of commitment. Sri Lanka will have another presidential election and a very slow process of normalization. ■



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# NO RETURN TO THE GALLOWS

## CRM Opposes Death Penalty

“**T**he return of executions will diminish and degrade us all,” says the Civil Rights Movement (CRM), in an urgent plea against the resumption of judicial hangings. The state has an obligation to calmly weigh the pros and cons of such an important issue. *The responsibility of political leaders is to lead, to guide.*

Citing a unanimous eleven-judge decision of the highest court of South Africa, CRM says that punishment should be commensurate with the offence but *it does not have to be equivalent or identical. “The state does not have to engage in the cold and calculated killing of murderers in order to express its moral outrage at their conduct.”*

The greatest deterrent to crime, this South African case held, is not the death penalty, but *“the likelihood that offenders will be apprehended, convicted and punished. It is that which is lacking in our criminal justice system.”*

CRM stresses the irreversible nature of the death penalty, and the danger of executing the innocent. The integrity and reliability of police investigation is crucial, for it is here that the evidence emerges on which a man may be convicted. This is why no system of last-stage review by distinguished judges is an adequate safeguard. “Can we say?” asks CRM, “that our investigative, law enforcement and legal system is such that there is no real possibility of innocent people being convicted and scapegoats being hanged?” There is special danger in “high profile” cases where there is public outrage, and consequent pressure on the police for quick arrests. The poor and the disadvantaged are the most likely victims of miscarriages of justice.

The cruel nature of many murders, and appalling suffering of the victim’s relatives, is recognized. But to end a particular individual’s life at a particular place, date and time, as a deliberate and predetermined act of the state, is in turn extreme cruelty. Murders should be categorized, with varying minimum sentences. A parole system should review remissions, and where appropriate the victim’s relatives should have the right to be heard.

A procedure set up in the UK in 1997 to investigate alleged miscarriages of justice had, by end July 2009, resulted in 280 convictions being quashed. In some instances the accused had been hanged; others would have been if not for the abolition of the death penalty. In a separate document CRM summarizes ten such sample cases.

**T**he proposal to resume, after a lapse of over thirty years, the practice of judicial hangings, is a matter of the gravest concern to the Civil Rights Movement.

### Recent horrific murders; the growth of organized crime

**T**he Civil Rights Movement (CRM) is certainly mindful of the horrific crimes that have shocked us all in recent times—the Rita John rape and murder case, the Hokandara murders, the murder of Inoka Sewwandi, the murder of Judge Sarath Ambepitiya, the Lasantha Wickramatunga murder, the Angulana murders, and, preceding these, the rape of Krishanthi Kumaraswamy and the killing of her and her family. These and other gruesome events have hit the media headlines; yet other equally grave crimes of violence against individuals take place with less or no publicity. CRM is also mindful of the problems of underworld and organized crime including large-scale drug trafficking and contract killings. Our organization by no means underestimates the serious law and order problems facing the authorities. But remedies must be sought elsewhere.

### Resumption of hangings no solution

**M**ost people who support the death penalty do so on the assumption, sincerely believed, that it will reduce grave crime. This is an assumption that needs to be carefully examined before embarking on such a serious step as the imposition of an irreversible punishment. In CRM’s view it is no answer to the problem of law and order; it will only serve to divert attention from truly effective measures, and make the national scene more brutal than it already is.

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## Extreme cruelty

The retributive element of punishment has to be included in our penal policy in a responsible way and should not preclude all possibility of rehabilitation of offenders. Admittedly, there is sometimes a demand from some elements of the public for the ultimate penalty. This may be understandable, but that does not mean it should be allowed to prevail over other considerations. Over the centuries, there has been a steady progression away from this type of punishment-away from public executions, mutilations and other torture, inflicted sometimes for comparatively trivial crimes. Society today looks back with abhorrence at such practices. It is the responsibility of an enlightened government to give the lead to this movement towards the adoption of more rational and humane approaches to the ills of society, and to resist a reversion to earlier attitudes. The resumption of hangings in Sri Lanka today would be a retrograde step in the progress of our country.

The absolutely cruel nature of many murders, and the appalling suffering of the relatives, cannot be gainsaid. This does not detract from the truth that the ending of a particular individual's life at a particular place, date and time, as a deliberate and predetermined act of the state, is in turn an act of extreme cruelty. Those who have had personal contact with condemned prisoners and their family members, in the days when hangings *did* take place, have experienced at close quarters the particular horror of this punishment, and feel it is one the state has no right to inflict on any human being. As the Constitutional Court of South Africa pointed out, punishment should be commensurate with the offence but *it does not have to be equivalent or identical*. "The state does not have to engage in the cold and calculated killing of murderers in order to express its moral outrage at their conduct."<sup>1</sup>

Much of the problem is not only that many crimes go undetected or unpunished, but also that, when a death sentence is commuted, a uniform sentencing system applies. Rather than hanging some offenders, the alternative is to categorize murders into various degrees, which carry different minimum prison sentences, coupled with appropriate review mechanisms which take into account the circumstances of the crime. There should be parole boards to consider remissions of sentence; in appropriate cases these might give a hearing to relatives of victims. Such measures would go a long way to satisfy the legitimate public complaint when persons convicted of particularly grave crimes are released after what appears to be an unduly short period.

## The 'deterrent' argument

Nowhere has the death penalty (as opposed to other punishments such as long-term imprisonment) been shown to have any *special* power to deter the commission of crime. An international survey of research findings on the relation between the death penalty and homicide rates, conducted for the United Nations and revised in 1996, concluded that this research "has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment, and such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis."

## Diversion from real need

Reliance on the death penalty diverts attention from the real solution, which is prompt and efficient investigation of crime followed by effective prosecution and conviction. "*The greatest deterrence to crime is the likelihood that offenders will be apprehended, convicted and punished. It is that which is lacking in our criminal justice system.*"

The above is from the judgment of the Constitutional Court of South Africa cited earlier which held the death penalty unconstitutional. The eleven judges were not only unanimous, each wrote a separate and carefully considered judgment. These judgments in their sum set out a comprehensive and compelling case against the death penalty; they merit study and consideration by any person concerned with, and in particular any person involved in decision-making on, this issue.

## Irreversibility and the danger of executing the innocent

We said earlier that the death penalty has no proven special deterrent effect above other forms of punishment. At the very highest, its effect is uncertain. *Two things about the death penalty are, however, certain beyond dispute*. One is that it is irreversible. The other is that sometimes innocent people have been convicted and executed. These certainties are another compelling reason why this particular punishment should have no place in our criminal justice system. The most prominent miscarriages of justice in the UK have been for crimes that produce the greatest outrage and the loudest calls for vengeance.

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## Reliability of police investigation; discrimination against the disadvantaged

Can we say that our investigative, law enforcement and legal system is such that there is no real possibility of innocent people being convicted and scapegoats being hanged? It is vital to remember that the process which may end at the gallows begins, not at the trial stage, but at the initial stage of investigation of the crime.

The integrity and reliability of the police investigation is absolutely crucial, for it is here that evidence emerges on which a man may be eventually executed. This is why no system of last-stage review by distinguished judges is an adequate safeguard. Numerous events in Sri Lanka, several in recent times, show it would be unwise to act on the basis that the police will always act fairly, impartially and within the law. Added to this is the pressure the police are under to “solve” and make quick arrests in the case of particularly horrific or other “high profile” crimes. In such cases, when the evidence seems to lead in one direction, there will be a temptation to cut corners, and a reluctance to explore all avenues for possible alternative perpetrators.

CRM is also disturbed by indications that underworld elements appear to have support of politicians who in turn influence police investigation. The poor and the disadvantaged, who do not have the capacity to search for evidence that would indicate their innocence, and who have less access to competent and experienced lawyers, are the most likely victims of miscarriages of justice.

Of course, the danger of wrongful conviction applies equally to crimes punished by imprisonment. But the unique nature and awesome finality of the death sentence places it in a category apart.

### Experience elsewhere

There are a disturbing number of recorded instances in other countries where persons have been found guilty and the conviction has later been found unsafe. In some cases they have been executed, in others they would have been had the death penalty not been abolished. Notably, there have been cases where the police or the prosecution has suppressed evidence favourable to the defence. Persons advocating the death penalty would be well advised to study developments following the setting up of the Criminal Cases Review commission in the UK in 1997 to investigate

suspected miscarriages of justice. This is an independent public body of eleven Commissioners with about 100 staff, and has wide-ranging investigative powers. Where it feels there is a “real possibility” that a conviction will not be upheld it refers it to the Court of Appeal. A quick skim through the results only of murder cases reveals over fifty persons whose convictions have thus been set aside as unsafe, including those of Mahmood Mattan (hanged 1952) and George Kelly (hanged 1950). Many others were fortunate that their convictions were after the UK abolished the death penalty and they could therefore be freed from prison.

As at end July 2009, out of 397 convictions examined to conclusion by this procedure, 280 had been quashed. In one case it was revealed that a culture of corruption and perversion of the course of justice had prevailed at the relevant time in the police station concerned, in respect of which the investigating officer was later jailed for bribery. Other instances included non-disclosure to the defence of relevant material, deficiencies in conduct of the defence including insufficient pre-trial preparation by lawyers, and serious challenge to medical expert witnesses in a series of other cases. Fresh evidence has established psychiatric illness which impaired the ability of the accused to instruct defence lawyers; linguistic expert evidence has shown that an alleged confession was unlikely to have been recorded in the manner claimed by the police. In the case of 19-year-old, illiterate and mentally backward Derek Bentley, the judgment quashing the conviction stressed the particular importance of a calm approach in cases which evoke public outrage. The judge’s summing up in that case was palpably unfair and would have made the jury feel there was no option but to convict. To their eternal credit the jury nevertheless added a recommendation to mercy, but to no avail, and Bentley was hanged.

### Moves towards abolition abroad and at home

There is a clear international trend towards abolition of the death penalty, more than two thirds of countries having abolished it in law or in practice. In 1965 there were only 25 abolitionist countries. By the end of 2008, 92 countries had by law abolished the death penalty for all crimes, and some 46 more were abolitionist in practice. Notable among third world countries that abolished the death penalty during the past 20 years are South Africa (despite its serious problems of violent crime), Senegal, Rwanda, Angola, Mozambique, Nepal, Philippines and Bhutan (where Buddhism was

specifically mentioned as the reason). It is a significant mark of the abhorrence with which the death penalty is now viewed, that life imprisonment is the most severe penalty that can be imposed by either the International Criminal Court, or any of the ad hoc international tribunals that deal with crimes against humanity and genocide.

In Sri Lanka, attempts to abolish the death penalty commenced before independence. In 1928 the Legislative Council adopted a resolution moved by D.S. Senanayake that capital punishment should be abolished. Similar resolutions were thereafter at various times proposed by Susanta de Fonseka of Panadura, Dr A.P. de Zoysa of Colombo South, and MP for Kandy Fred E. de Silva. By decision of the very first Cabinet meeting of the government of S.W.R.D. Bandaranaike in 1956, the Suspension of Capital Punishment Act suspended the death penalty for a trial three-year period, and the famous Norval Morris Commission was set up to examine the issue. However, in the aftermath of the assassination of Prime Minister Bandaranaike the Act was repealed by the caretaker government headed by W. Dahanayake. Executions resumed, but fell into disuse again after 1976. In our country over a long period of time repugnance at the death penalty has been felt and expressed by individuals of varying political colourations, and is a matter that should and can be taken out of party politics.

### **The Responsibility of political leadership**

The state has an obligation to calmly weigh the pros and cons of a question of such importance, without being influenced by uneven moods and sudden passions generated by gruesome murders. This is an issue on which public opinion can easily shift. People may look to the death penalty impulsively when they hear of a shocking crime, but change their minds when its special deterrent effect is shown to be unproved, when alternative punishments

of long prison sentences are suggested, when the danger of conviction of the innocent is remembered, when the widespread opprobrium in which executions are held in other societies is realised, and when the stark horror of an actual hanging comes home to them.

*If, in the yearning we all share for a safe life, some people mistakenly press for the death penalty, we do not blame them. But the responsibility of a leader is to lead, to guide. Our society is complex and contains different strands, some inspiring, some frightening, at times even within the same individual. We have to nurture the good and discourage the bad. The return of executions will diminish and degrade us all.*

### **Unacceptable in any circumstances**

The return of the hangman as part of our public life is, in CRM's view, unacceptable in any circumstances. Defence of life and defence of the state may sometimes justify the taking of life by law enforcement officials, but even in such cases the use of lethal force is constrained by legal safeguards to prevent abuse. Judicial execution, on the other hand, is not an act of defence against an immediate threat to life. It is the premeditated killing of an identified prisoner for the purpose of punishment, a punishment which could take another form.

*There is an urgent need for careful and serious study of crime in Sri Lanka, and of the problems of investigation and law enforcement. CRM urges that executions not be resumed under any circumstances, and that real solutions to violent crime, both short and long term, be identified and meticulously pursued.* ■

End Note

1 State v Makwanyane 1995 (3) S.A. 391.

## **Hangman - Spare that Noose**

By

**Donovan Moldrich**



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## TEN SAMPLE CASES IN UK WHERE CONVICTIONS FOR MURDER HAVE BEEN QUASHED BY COURT

*As at end July 2009, two hundred and eighty convictions had been quashed under this procedure. Over 50 of these were murder cases. This brief note has been compiled by the Civil Rights Movement after reading the judgments. Web link references are given to individual judgments, which are mostly detailed and lengthy. For photocopies please contact CRM. [CRM 4 Charles Circus Colombo 3. tel 2573887 email nad@slt.lk]*

### **(1) KELLY, George, and CONNOLLY, Charles**

[CRM list ref. 32]

Murder over 50 years previously. Joint trial, jury failed to agree so a retrial became necessary. The trials were then severed, Kelly tried first and convicted and sentenced to death. Connolly on his lawyer's advice and after much hesitation in a "life or death" situation pleaded guilty to a lesser charge, and died some time after serving sentence. Kelly's appeal was dismissed and he was hanged.

Connolly continued to protest the innocence of them both. After his release he was working as a doorman in a hotel, and a guest, businessman Mr Santangeli, spoke to him. Santangeli as a teenager had tried to attend the joint trial and had not been able to get in. Connolly told him that neither he nor Kelly had been involved in the murders. Santangeli believed him and felt he had an obligation to do something and started to research the case. He got access to the case papers of the police, did research at the Public Records Office, and in 1994 visited the cells at Walton prison where Kelly and Connolly had been kept in remand awaiting trial. He got interviews with Connolly recorded by BBC journalists, which were available to the present inquiry even though Connolly had meanwhile died. The case eventually ended up with the CCRC which referred it to the Court of Appeal.

Kelly's conviction was set aside on the grounds of non-disclosure of earlier contradictory statement of a witness; the case against him was entirely circumstantial and lacked any forensic support. The Crown agreed that the conviction should not stand.

Connolly's conviction on the lesser charges of robbery and conspiracy to rob was also quashed.

*Connolly's convictions, although the product of pleas of guilt, can themselves be said to be founded in part on the Crown's failure to make proper disclosure of the Graham statement as well as the unenviable position of Connolly who, despite the earlier maintenance of his innocence, had to face up to the fact that Kelly had been convicted and sentenced to death. In those circumstances his own counsel said, in mitigation, that he had advised him to plead guilty on the terms available to him. Had Graham's earlier statement been available, Connolly's counsel's advice may well have been very different.*

Judgment:<http://www.bailii.org/ew/cases/EWCA/Crim/2003/2957.html>

### **(2) MATTAN, Mahmoud Hussein [CRM list ref. 35]**

Mattan was a Somali, convicted of murder of a woman in 1952 in Cardiff, and hanged. Her throat had been cut and the motive was apparently robbery.

Conviction was declared unsafe and quashed by the Court of Appeal in 1998 after having been referred to it by the Criminal Cases Review Commission.

The grounds included that there were matters of crucial importance of which the defence and accordingly the jury were unaware. These included that four eyewitnesses had failed to identify the accused at an identification parade, and one had positively asserted he was not the man she had seen. Mattan was convicted on the evidence of a witness who claimed to identify him in court, not at an identification parade. This witness had made a statement to the police which differed materially from his evidence, and which was not available to the defence. He had also said he thought the man he saw had a gold tooth, which was not the case. This witness was later convicted of attempted murder of his daughter by cutting her throat (the same method used in the murder of which Mattan was convicted).

There was also evidence that another Somali, who had admitted to being at the victim's shop on the day of the murder, and had been interviewed by the police, was two years later charged with murder of a man and found not guilty by reason of insanity and sentenced accordingly.



This man was now known to have been unstable, prone to violence against women, and obsessed with knives. He was also known to have had a gold tooth.

In quashing the conviction the Court of Appeal said:

*We add this. It is, of course, a matter for very profound regret that in 1952 Mahmoud Mattan was convicted and hanged and it has taken 46 years for that conviction to be shown to be unsafe. The Court can only hope that its decision today will provide some crumb of comfort for his surviving relatives. The case has a wider significance in that it clearly demonstrates five matters. Firstly, capital punishment was not perhaps a prudent culmination for a criminal justice system which is human and therefore fallible. Secondly, in important areas, to some of which we have alluded, criminal law and practice have, since Mattan was tried, undergone major changes for the better. Thirdly, the Criminal Cases Review Commission is a necessary and welcome body without whose work the injustice in this case might never have been identified. Fourthly, no one associated with the criminal justice system can afford to be complacent. Fifthly, injustices of this kind can only be avoided if all concerned in the investigation of crime, and the preparation and presentation of criminal prosecutions, observe the very highest standards of integrity, conscientiousness and professional skill.*

Judgment:<http://www.bailii.org/ew/cases/EWCA/Crim/1998/676.html>

### (3) ADAMS, Andrew [CRM list ref. 1]

Convicted of murder by a unanimous jury verdict in 1993, and his appeal was dismissed. His conviction was subsequently examined under the procedure created in 1995 for reviewing possible cases of unsafe convictions. Consequently, in 2007 the conviction was quashed and Adams released from prison. A bench of three judges of the Appeal Court found several deficiencies in the conduct of the defence, no single one of which might have sufficed, but the cumulative effect of which rendered the conviction unsafe. Among the deficiencies were insufficient attention to pre-trial preparation, including failure to examine available material, and insufficient time for preparation when new lawyers took over the case. This latter despite the fact that the new lawyers could have, but had not, requested a longer trial postponement. *"We have no doubt that they did their best. We have also no doubt that they believed that*

*everything that ought to have been done had been done. But in our judgment they underestimated the time needed to complete the work."*

(R v Adams [2007] EWCA Crim 1, case No. 200505169 D5)

Judgment:<http://www.bailii.org/ew/cases/EWCA/Crim/2007/1.html>

### (4) BOREMAN, BYRNE and BYRNE [CRM list ref. 5]

The accused had been convicted of murder in 1998. After investigation and reference by the CCRC, Court of Appeal quashed the convictions as unsafe on ground that had the jury known of the serious challenge to the medical expert witnesses in a number of other cases, and if it had received the opinion of an independent senior pathologist, there is a real possibility they might not have convicted.

The issue was whether death was caused by injuries inflicted by the accused, or by a fire that took place subsequently. Fresh expert evidence on cause of death showed that the medical evidence led at the trial was "fundamentally flawed." Conviction changed from murder to causing grievous bodily harm and sentence varied accordingly.

Judgment:<http://www.bailii.org/ew/cases/EWCA/Crim/2006/2265.html>

### (5) MURPHY, and BRANNAN, John [CRM list ref.38]

Convicted 1992, appeals dismissed 1993.

Brannan committed suicide while serving his sentence.

*There is now no dispute that the appellant Brannan killed Pollitt by stabbing. In our view there was adequate evidence on which a jury could have found, as they did, that this was a joint enterprise in which the appellant Murphy was involved. However, a central issue by the end of the trial was whether Pollitt had had a gun, thus giving rise to a defence of self-defence.*

*In the hearing of this appeal, fresh evidence on that issue has been put before this Court. We have concluded that, had a jury heard both that fresh evidence and the additional evidence put before the Court of Appeal in 1993, they might reasonably have come to the view that Michael Pollitt might have had a gun at the time he was stabbed. In those circumstances the convictions cannot be upheld and the appeal is allowed.*

Judgment:<http://www.bailii.org/ew/cases/EWCA/Crim/2002/120.html>

**(6) ASHTON, Clifford Norman [CRM list ref. 3]**

Murder February 1998

Convicted November 1998

Appeal dismissed June 1999 (full court)

Applied to CCRC October 1999 arguing that prosecution witness's evidence was beset with untruths and inconsistencies. Commission decided not to refer it  
May 2003 submitted a fresh application to CCRC based on fresh psychiatric evidence

Referred to Court 16.9.2004

Decided 15.5.2006

Subsequent evidence of psychiatric illness that preceded conviction.

Following conviction Ashton had been transferred to hospital and had been there ever since. Dr Hopley in a report commissioned by the Crown Prosecution Service gave his opinion:

*With the benefit of hindsight, it can be demonstrated that Mr Ashton's paranoid schizophrenia impaired his ability to consider all available defences to him at the time of his original trial. Mr Ashton's absolute lack of insight at the time led him to instructing his defence team to pursue the defences of self defence and/or provocation. He would have believed with absolute conviction that he was being persecuted and that therefore he had been provoked and/or was acting in self defence.*

Conviction for murder quashed and conviction of manslaughter by reason of diminished responsibility substituted. Ordered that he be treated in hospital under supervision of his responsible medical officer without limitation of time.

Judgment:<http://www.bailii.org/ew/cases/EWCA/Crim/2006/1267.html>

**(7) BROWN, Robert [CRM list ref. 7]**

Murder January 1977, Arrest May 1977

Sentenced to life imprisonment

Renewed leave to appeal refused October 1978

CCRC referred to Court of Appeal June 2002. Court of Appeal decision November 2002

Re a murder that took place in 1977.

Quashed on grounds:

- non-disclosure to defence of evidence that a fibre found on victim's coat could have been from a sweater of another person identified at witness parade

- agreement of two linguistic experts that the alleged confession was "more likely than not" to have been taken down in a manner other than that claimed by the police

- In 1983 Butler, the officer in charge of the investigation, was sentenced to four years imprisonment for attempting to pervert the course of justice and accepting bribes. His conduct had come to light in the course of an inquiry started in 1979. As a result of this inquiry it became apparent

*...that between 1973 and 1979 there was, sadly, at Platt Lane police station in Manchester, a culture of corruption and conspiracy to pervert justice over which detective Inspector Butler had presided in a senior role*

Counsel argued that Butler's integrity was of crucial importance to the trial. He claimed to be the scribe of the interviews and claimed to have been present when the "confession" was made. If jury had known the fact and level of his corruption culminating in his conviction in 1983 relating to his conduct embracing the period when the appellant was arrested, interviewed and tried, that must have had a very serious impact on their approach to his evidence.

Counsel for Crown then said they would have great difficulty in upholding the conviction.

The Court of Appeal held:

*"... in our judgment this verdict cannot be regarded as safe. That is so because we could not possibly be sure that the jury, had they known what we know, would have reached the same verdict. It is, put at its lowest, a possibility that they might have reached a quite different verdict. Accordingly this verdict is unsafe. It is quashed and the appeal is allowed."*

Judgment:<http://www.bailii.org/ew/cases/EWCA/Crim/2002/2804.html>

**(8) NOLAN, Patrick Michael [CRM list ref. 39]**

The conviction was 24 years previously; and Nolan was serving a life sentence for a murder that had taken place in 1980. In quashing the conviction the Court said:

*23. As has been said in other cases of this kind, the courts are more aware today than they were 20 or 30 years ago of the risk of false confession. The procedural requirements*



*introduced by the Police and Criminal Evidence Act were necessary to protect the vulnerable. Expert evidence is often needed to identify those who are vulnerable and assess the reliability of any confession which they make.*

24. But even judged by 1982 standards this was a worrying case. Proof of murder depended entirely upon the confession of the 19-year-old illiterate appellant, made in the course of 9 hours of interviews over three days, without a solicitor being present. These interviews were not fully recorded and in them the appellant made, and then more than once retracted, admissions which included things which were obviously untrue.

25. However judged by modern standards and in the light of the new evidence, we have no hesitation in saying that the interviews were unfair. The Police and Criminal Evidence Act Codes of Practice require that a detained person is advised of his right to consult with a solicitor on arrival at a police station and his right to free legal advice immediately before any interview. Any interview must now be fully recorded. In 1982 the officers' notes of the interviews should have been offered to the appellant for signature.

26. But even without these safeguards, if the jury had heard expert evidence of the kind we have admitted, it would have been bound to affect their consideration of the reliability of the appellant's confession. At the very least, applying the Pendleton test we cannot be sure that they would have convicted if they had heard such evidence. Although the judge gave what we think was, at the time, a perfectly adequate warning about the dangers of false confessions, if expert evidence had been called his warning would inevitably have been stronger, based as it then would have been on cogent expert medical reason.

Judgment <http://www.bailii.org/ew/cases/EWCA/Crim/2006/2983.html>

**(9) BENTLEY, Derek William [CRM list ref.4]**

Shooting of police officer after a rooftop chase in 1952. Craig (aged 16) had and fired the gun. Bentley (aged 19, illiterate, mental age low) had at the time of the shooting been caught by the police and was under arrest. Both were convicted, Craig sentenced to life imprisonment because of his age. Appeal dismissed. Bentley was hanged in January 1953 despite jury's recommendation to mercy. His sister pursued his cause for the rest of her life; thereafter her daughter took it up.

Quashed by CA after referral by CCRC on ground that the summing up of Lord Goddard CJ, who was the trial judge, was unfair and gave the jury little choice.

*The killing of PC Miles had, very understandably, aroused widespread public sympathy for the victim and his family and a strong sense of public outrage at the circumstances of his death. This background made it more, not less, important that the jury should approach the issues in a dispassionate spirit if the defendants were to receive a fair trial, as the trial judge began by reminding them. In our judgment, however, far from encouraging the jury to approach the case in a calm frame of mind, the trial judge's summing up, particularly in the passages we have quoted, had exactly the opposite effect. We cannot read these passages as other than a highly rhetorical and strongly-worded denunciation of both defendants and of their defences (and it contrasted strongly with the appropriately restrained language of prosecuting counsel. Such a direction by such a judge must in our view have directed the jury to conclude that they had little choice but to convict, at the lowest it may have done so...*

*It is with genuine diffidence that the members of this court direct criticism towards a trial judge widely recognized as one of the outstanding criminal judges of this century. But we cannot escape the duty of decision. In our judgment the summing up in this case was such as to deny the appellant that fair trial which is the birthright of every British citizen.*

Judgment: <http://www.bailii.org/ew/cases/EWCA/Crim/1998/2516.html>

**(10) POOLE, Anthony Keith, and MILLS, Gary [CRM list ref. 42 & 37]**

Convictions in 1990. Complicated history thereafter. CCRC first declined to refer. Then there was a second application to the CCRC, which referred it. The Court of Appeal said:

*In the result, we are of the view that both convictions are unsafe for two main reasons. The first related to the evidence of an important eyewitness, White, and the second related to the possibly more influential hearsay use of a witness statement of one who was not a witness, Juke. Both could have had an important influence on the jury's conclusion as to the credibility and reliability of the key eye-witness in the case, Stadden. The non-disclosure of the Neale material*

deprived the jury of the opportunity to test the truth of White's evidence, the credibility and reliability of which were essentially matters for them. As to the hearsay use of Juke's witness statement, we agree with Miss Baird's and Mr Fitzgerald's submission that, to put before a jury a document containing a graphically phrased, inaccurate and damning

and inadmissible account central to the case was improper, and in the way in which the Judge left it with them, was unfairly prejudicial to the defence of both appellants.

Judgment: <http://www.bailii.org/ew/cases/EWCA/Crim/2003/1753.html> ■

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## SRI LANKA AT UNSUPPORTED MORATORIUM ON EXECUTIONS

Sri Lanka voted at the United Nations in favour of calling for a moratorium on executions as a step towards abolishing the death penalty completely, on the two most recent occasions that this issue came up. These votes took place in both the Third Committee and the plenary session of the General Assembly of the UN in December 2007 and again in December 2008.

In December 2008 the General Assembly of the UN adopted a resolution which inter alia reaffirmed its previous call "to establish a moratorium on executions with a view to abolishing the death penalty." The resolution was co-sponsored by 89 states, and 106 states including Sri Lanka voted in favour, 46 voted against and 34 abstained. The vote reflected the world wide trend towards abolition. It was an improvement on the 2007 vote which had 87 co-sponsoring states, and where 104 states including Sri Lanka voted in favour, 54 states voted against and 29 abstained.

The 2007 resolution, which was affirmed in 2008, also declared

... that the use of the death penalty undermines human dignity, and convinced that a moratorium on the use of the death penalty contributes to the enhancement

and progressive development of human rights, that there is no conclusive evidence of the deterrent value of the death penalty and that any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable,.."<sup>1</sup>

The Civil Rights Movement brings the above to governmental and public attention only as an additional reason in support of its appeal that executions not be resumed. *It is our urgent plea that all concerned consider most carefully the major reasons why we find the reintroduction of the hangman to the public life of Sri Lanka unacceptable under any circumstances.* These reasons are set out in our statement of 31 August 2009 [CRM E01/09/2009] and supporting documents, copies of which, if not already sent, or attached hereto again for your convenience of reference, may be obtained separately from CRM. ■

CRM  
Suriya Wickremasinghe  
4 Charles Circus Colombo 3  
Secretary  
Tel 2573887 email nad@slt.lk  
15 September 2009

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### Emergency Law 5

Covering the current period of emergency rule, **Emergency Law 5** is an Annotated List of Emergency Regulations and other notifications made under the Public Security Ordinance during the period 13 August 2005 - 6 November 2009. It has a User Guide, an account of the Legal Basis, Scope and Control of Emergency Regulations, a Quick Reference Index, and a separate list of Amendments to Regulations. Available at Suriya Bookshop and CRM



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# HANG THE DEATH PENALTY !

Yet again, the death penalty has become a hot issue. This debate has reared its head many times in Sri Lanka's legislative and legal history. It was first raised in the Legislative Council in 1928, and was the topic of debate in the State Council in 1936, 1937, 1942 and 1956. In 1936 there was an unsuccessful attempt at abolishing the death penalty supported by reformist state councillors who viewed capital punishment as a legacy of a barbaric, feudal age that had no place in modern society.

These councillors argued, instead, for a focus on the poverty, exploitation and unemployment that led to the crimes committed by those on death row. During the debates in 1937, when their earlier arguments had proved unsuccessful, the anti-death penalty councillors compromised and asked that at least, a person should go to the gallows only if the jury was unanimous in returning a guilty verdict. Even this appeal fell on deaf ears.

In that watershed year for Sri Lanka, 1956, S.W.R.D. Bandaranaike, who swept to victory on a massive popular vote, suspended the implementation of the death penalty. Ironically, his assassination in 1959 gave way again to the demand for the death penalty to be brought back. It was then operative until June 1976 after which no executions have taken place in Sri Lanka, for which the country has earned international accolades.

## A Necessary Evil?

Those who want to see the death penalty implemented present several arguments. The most common is that the death penalty is a deterrent which sends out a message of zero tolerance to those engaged in criminal activity. Many commentators have expressed the belief that, given the current culture of crime and impunity in Sri Lanka, the implementation of the death penalty would be a strong signal sent out by policy makers that they are serious about stopping underworld crime and violence. This, many believe, would lead to a decrease in murders and stop the impunity the underworld mafia, who are also aligned with certain politicians, currently enjoy. The death penalty, according to

such opinion, is a necessary evil, a first and important step towards cleaning up the Augean stables.

Cat's Eye wrote, exactly ten years ago, on the death penalty when another round of the debate took place. It quoted several reports including one by the Royal Commission on Capital Punishment in Britain. This report, published in 1953, stated that it found no evidence to support the view that the abolition of the death penalty would lead to more homicides, or that its restoration would lead to a fall in numbers. Cat's Eye warned then against blindly supporting the death penalty which, in effect, confers on the state the right to execute. In a prescient move, Cat's Eye quoted George Bernard Shaw who stated that 'murder and capital punishment are not opposites that cancel one another out but similars that breed their own kind.'

## Perpetuating Violence

Some people, while supporting the implementation of capital punishment, also appear to mistakenly believe that adherence to legal processes and human rights standards would only impede the successful eradication of elements deemed to be anti-social, i.e., the LTTE, organized crime, etc.

In this context, how is the concept of justice understood by the state and citizen? Public statements by officials at the highest levels of government disturbingly illustrate a disdain, even contempt, for the rule of law and judicial processes, which are viewed as cumbersome. This reminds us of the line by a character from Moliere's 17th century play *Monsieur Pourceaugnac* who said, "Here [in Paris] they hang a man first, and try him afterwards." Hence, in lieu of systems and processes which are meant to afford protection to citizens and act as checks and balances on the excesses and arbitrary nature of decisions of individuals, in Sri Lanka, decisions are made by individuals based on their personal beliefs, ideologies and prejudices instead of objective and impartial standards. This also results in the erosion of the independence and effectiveness of institutions such as the judiciary and the Human Rights Commission.

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## Vigilantes

Then denied of systems and institutions to which they can turn for remedies, persons resort to a vigilante form of justice where they, like the state, bypass established processes and dispense justice themselves. For instance, in Amparai villagers beat to death a man who had allegedly raped a young girl. This type of 'honour killing' not only perpetuates vigilantism, but also confers on male family members, friends and neighbours the right to defend the family honour. In almost all cases this becomes test of their masculinity rather than about the woman victim herself.

In other cases the police act as the face of justice. The announcement by the government of its war against the underworld by all possible means, even extra judicial ones, and the consequent killing of several gangsters and thugs is a case in point. The belief that only certain persons are deserving of the application of legal standards and processes, coupled with disregard for the rule of law in other instances, has resulted in mixed signals, if not a view that summary violence is acceptable.

## Rule of Law

In such an environment the mere imposition of harsh penalties such as capital punishment is unlikely to curb crime, as a sustained maintenance of law and order is not possible through repression and fear. This in turn will create lawless environments that are conducive to and support the growth of crime. Instead, long-term change is only possible if the value systems within which we operate foster respect for the rule of law and judicial processes. This change should begin at the highest levels of government, with the state taking the lead by respecting the rule of law and legal processes, subjecting itself to scrutiny and holding perpetrators of human rights violations accountable for their crimes.

## Enlightened Views

Many have emphasized over the years that since the death penalty is irreversible, there have been many injustices that cannot be corrected. In several countries persons serving long-term sentences have been released, based on new evidence, but innocent persons have gone to the gallows. The need today is also to focus on rehabilitation in line with new reforms in this area. The feminist movement in Britain has also highlighted the fact that many women on death row were victims of domestic violence for long periods and killed in self defence. This was not argued at the trial, and on retrial these women have been released.

Enlightened opinion the world over is against capital punishment and many countries have abolished it. Even in the US the trend is against the death penalty. One is surprised that in Sri Lanka - a country with a strong Buddhist tradition, the death penalty still remains on the statute book although not implemented for 33 years. Many Buddhist countries, however, have abolished capital punishment. Over a hundred years ago, leading Buddhists - Anagarika Dharmapala, Peter de Abrew, Museaus Higgins and Martinus Perera, who belonged to the Ceylon Social Reform Society of which Ananda Coomaraswamy was president, - opposed capital punishment. In 1928 the colonial government, reflecting British laws of the time, rejected the motion by D.S. Senanayake which passed by 19 votes to 7 in the Legislative Council to abolish the death penalty. In 1955 Dr. G.P. Malalasekera, president of the All Ceylon Buddhist Congress, called for the abolition of the death penalty to coincide with Buddha Jayanthi celebrations. Surely, it is high time Sri Lanka wakes up, rejects its colonial laws and abides by what it says about Buddhism. After all, Angulimala the killer became Ahimsa, an arahat in the days of the Buddha. ■

Courtesy, *Sunday Island*



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## ‘COVERING UP’: CREEPING TALIBANIZATION?

Cat’s Eye has noticed an increasing emphasis on a particular form of morality in the guise of a postwar resurgence of society. This is evident on the part of all sectors of society – not only by those in power but religious leaders, key officials in the police force and leaders of educational institutions, as well as the media. At times, the rhetoric is transformed into action. Take, for example, the continuing censorship of adult-only films (obviously there are some adults/ censors who are more adult than others who have the dubious honor of taking these decisions); images of alcohol consumption, affection and human sexuality in TV program; and the archaic prohibition on women purchasing alcohol (Why discriminate? Why not prohibit men too?).

A dress code is also imposed on women, especially in educational institutions. Apparently, mothers have to wear sari to enter the premises of their children’s schools and mothers who wear even long skirt and blouse are kept out of bounds. Thus, the country’s ‘return to normalcy’ after the war is reliant on a discourse of blaming and shaming, advocacy of self-restraint and responsibility, as well as moral authoritarianism in imposing codes of conformity and so called respectability.

### Back to the Kitchen

This ‘moral’ turn, we are told, is towards building a new, postwar Sri Lanka. It has been a common experience of many communities at war that once the armed struggle is over, there is a scramble to return its women, in particular, to traditional roles. The current peacetime emphasis in the south of the country on the morality and respectability of women is not far in spirit from the diktats of the LTTE. In 2002, during the peace process, the LTTE issued a leaflet proclaiming its ‘ten commandments’ on Tamil women in the East. In the leaflet the LTTE declared that Tamil women should not ‘spoil the dignity of Tamil culture’ by ‘behaving in an anti-Tamil manner.’ They were ordered not to wear housecoats when coming out of their houses onto the road. Married women were asked to wear national dress (presumably sari). Amongst the ‘anti-Tamil’ behaviour proscribed was the consumption of alcohol. Women were warned against ‘mixing with men on beaches after losing their senses with alcohol and drugs.’ The leaflet ended with a

veiled threat: ‘Freedom of women is in the hands of women, and they should think realistically rather than falling into the hands of anti-Tamil movements, which indeed will bring an end to their life and community as well.’

At the time (in 2002) Cat’s Eye wrote strongly condemning the LTTE for its threatening moral edicts selectively directed at women. Cat’s Eye stated that these diktats ‘send a critical message to all those who are concerned about the implementation of the Ceasefire Agreement with respect for human rights and human dignity.’ Cat’s Eye demanded that ‘All attempts to control dissent and individuality, all attempts to impose rules and regulations that deny people the right to choose, all attempts to once more oppress and discriminate against members of marginalized communities, whether they be women, children, religious or ethnic minorities... must be fought against rigorously.’

Thus, in the aftermath of war and political upheaval, diehard traditionalists of all countries use the occasion to whip up cultural frenzy to advocate a return to the past. Local society has always had its share of such old (and young) fogeys with their *bamunu matha*-namely, ‘brahmin’ or obscurantist patriarchal views as reflected in Sinhala and Tamil proverbs against women (‘a woman’s brain cannot think beyond the handle of a spoon’). Even our women ministers often speak of a *nisi thana* (appropriate place) for women which is not far from Hitler’s prescription for women – children, kitchen and church ( *kinder, küche, kirke*). In every era and in every country there has been resistance to such attempts to undercut the political, economic and social gains that women have made over the years.

### Defining Tamil Culture

In the past few months, following the end of the armed conflict between the government and the LTTE, concern has been voiced about the ‘deterioration’ of Tamil culture during the conflict, mainly due to the actions of the LTTE. Most often this ‘degradation’ of Tamil culture is illustrated by examples of the behavior of women who have acted in ways construed to be contrary to accepted norms. These statements however are not made by members of the Tamil community but by state actors of the majority community.

For instance, an official of the Sri Lankan army is quoted as saying that lessons on the traditions and culture of the Tamil community will be part of the curriculum of the rehabilitation process of ex LTTE cadres. Does this mean that these lessons will represent Tamil culture and tradition as understood by members of the majority community? What will be incorporated in these lessons? Will it be only Bharatha Natyam, cookery, and veena lessons? Who then has the power to define culture?

### Defining Buddhist Culture

A Sinhala newspaper recently carried an interview with a Buddhist monk who, supposedly, was speaking on Buddhist values and material ones. Curiously, the article headline read, 'Even 60 year old women come to temple dressed like sixteen year olds' (*Heta pannothe, dāharaṇa kella vāga pannothe enava*). The article further quoted the priest as noting, disapprovingly of a new breed of women devotees (*upasaka palenthiya*) who come to temple with hairstyles (hair piled on top of the head), with painted lips, looking very 'mod'. Not surprisingly, given the current thinking on culture and morality as being the sole responsibility of women, there is no mention of a dress code for men. In fact, no mention of men at all. It seems that whether it is in the field of religion, politics or education, women's dress and personal relationships take centre stage for vilification. Take the sexual nature of the debates and circulating internet images around the recent entry of a young actress into the political field in the South in order to denigrate her. They point to a society reluctant to acknowledge women as persons who can engage with any section of society in their own right, and permit only women who conform to the notion of the respectable (*Sinkala kala kumbava*) as fit to be in positions of responsibility and the public realm.

### Covering Up

While the moral rhetoric about discipline and respectability which women are singled out to embody has risen to a high pitch, the reality is that in every sphere violence, authoritarianism and sexism are condoned. The recent comments of a senior government minister who observed that there are now laws that restrain men especially with regard to domestic violence is a case in point. The politician told comforted the men around him by saying, 'you can hit your wife, but don't hit to hurt.' The inter/intra political violence by candidates at elections

the nasty 'boy's fights' in the south in which the offices of political opponents have been smashed and looted-is another example. So far, we have not heard public condemnation of this sort of behaviour from political, religious or educational leaders.

In a country where the rule of law is under stress, where violence, corruption, crime and sexual harassment of women appears to be at an all-time-high, focusing on women's dress and behaviour is absurd and hypocritical. So what is the real function of this moral address to women? Is it a literal and metaphorical cover-up of what is actually happening in society? If we want to build a true democracy in the aftermath of war, public officials, community and religious leaders as well as we citizens should be focusing on what is really wrong with our society. The denial of freedom of speech/expression- of which access to art, film, forms of dress are a part-goes against the basis of any democratic society. Intolerance of any kind, abuse of the rule of law, use of violence and corruption to get ahead, and archaic attitudes to women, must be highlighted and condemned. Should women lose the civil and political rights that acknowledge their capabilities as professionals/workers (won through hard struggle) to some outmoded medieval attitudes? Are we on the road to cultural Talibanization? ■

Courtesy, *Sunday Island*

15 September, 2009

AVAILABLE AGAIN AT THE SURIYA BOOK SHOP

## Revolutionary Trails

Edmund Samarakkody : A Political Profile

by T. Pectra



## **BUDDHISM DURING COLONIAL RULE**

**Terry C. Muck**

Elizabeth Harris: *Theravada Buddhism and the British encounter: Religious, missionary, and colonial experience in nineteenth century Sri Lanka*. London: Routledge, 2006. 274 pages.

Of all the multifaceted interactions among Buddhists and Christians, the one sure to generate the most heat is mission; Christians spread the gospel, Buddhists spreading the dhamma, Christians preach and Buddhists preach at the same time in the same places. This is the central topic of Elizabeth Harris's *Theravada Buddhism and the British Encounter: Religious, Missionary, and Colonial Experience in Nineteenth Century Sri Lanka*. By throwing light on this crucial encounter, Harris greatly reduces the heat generated by these competing missions and makes greater understanding possible. At least, that would be one hoped-for outcome.

Harris challenges the standard postcolonial critique (SPC) of what happened to Sri Lankan Theravada Buddhism and Sri Lankan Theravada Buddhists when Christian missionaries, riding on the coattails of the Portuguese, Dutch, and British colonialists, invaded the peaceful and pristine island of Ceylon, now Sri Lanka, in the seventeenth, eighteenth, nineteenth, and twentieth centuries. SPC posits Western colonial missionaries gaining power through their political proxies, shaping Western understandings of Theravada Buddhism to fit their Puritan rationalistic preconceptions, and then attempting to destroy this made-in-the-West Buddhism, using aggressive and triumphalistic mission tactics that not only failed, but generated such a backlash that still, today, Buddhist-Christian relationships in Sri Lanka are poisoned almost beyond remedy.

Harris challenges the SPC not by denying the obvious truths embedded in the various elements of this version of the sad story, but by convincingly showing us that the SPC is only one side of a very complex story. The SPC, Harris argues, needs to be complexified by realizing that not all British in nineteenth century Ceylon fit the stereotypical missionary model, that Sri Lanka Buddhists had agency in shaping what became known as Protestant Buddhism in the twentieth century.

### **British Christians**

Harris uses three paradigms to show the diversity of British interlocutors with Sri Lankan Theravada Buddhism and Buddhists. The first paradigm is an early (1796-1830), middle (1830-70) and late (1870-1900) periodization that corresponds to parts 1, 2, and 3 of the book. By means of this paradigm Harris shows that development took place in British understanding of Buddhist precept and practice. The earliest observers made mistakes, even when they based their observations on texts and practicing Buddhist informants. As with most such developments, the changes and depth of understanding were uneven, with later commentators sometimes repeating the howlers and biases of the earliest commentators, even as they in some areas went far beyond them in depth of understanding. Later was not always better, but it usually was.

The second paradigm one might call vocational. The British did not all come to Ceylon for the same reason. Some came as political overseers for the colonial government. Some came as merchants, looking for a way to turn the island's abundant natural resources into pounds in their bank accounts back home. Some came simply as "tourists" looking to find out more about what was in the nineteenth century a very exotic culture indeed to European eyes. Some came as missionaries to spread the Christian gospel story. And a trickle of scholars seeking data for research topics gradually turned into a fairly broad stream by the end of the century. Each of these five groups came asking slightly different questions. Because Buddhism was so ubiquitous among the people of Ceylon, Buddhism was always part of the answer to the different questions politicians, business people, travelers, Christians, and professors asked, but the different questions produced different products: statements of public policy vis-à-vis Buddhism, Southeast Asian versions of Weber's observations about religion and economics, diaries and travelogues, theologies of religion and monographs. Harris does a good job of including all these sources in her observations of the British who conquered and commented, each for their own reasons.

Harris's third paradigm, an implicit one, is evaluative. We might call it the good-the-bad-and-the-ugly paradigm.



Although Harris is a good scholar and does her best to be objective, her preferences show through. She has a great deal more patience with mistakes made by Constance Gordon Cumming than she does with mistakes made by R.S. Copleston. Daniel Gogerly does not fare nearly as well as Allen Bennett, when the only difference in their goals appears to be that Gogerly wanted Buddhists to convert to Christianity and Bennett wanted Christians to convert to Buddhism. As far as their respective understandings of Theravada Buddhism were concerned—well, suffice to say that neither one would receive an A in my world religions course. Harris's evaluative saw seems to boil down to good-natured respect for those who are religiously different from me. Not a bad bottom line, actually.

### Sri Lankan Agency

Perhaps the greatest contribution of this book has to do with the second complexifying factor Harris detects—the recognition of Sri Lankan agency in shaping twenty-first-century Sri Lankan Theravada Buddhism based on what happened in the nineteenth century. SPC blames it all on the British—or more generally on the “West.” While not absolving the British of responsibility for some of what became known as Protestant Buddhism, Harris convincingly shows that much of what others have identified as Western in this movement has its roots in Sri Lankan Buddhism. As evidence, she looks at Protestant Buddhism's views of the Buddha, the Four Noble Truths and meditation. Only in the case of the Buddha can it be shown that the British contribution was significant, and that must be tempered by textual contributions to the view of his historical personage. The Four Noble Truths, although coopted by British missionaries for their use, has strong textual representation, and the changes in the way *vipassana* meditation was viewed had more to do with Burmese influences than Western. In fact, Harris rightly points out that one of the important influences that gets left out in the SPC protocol is the many South-South influences on Theravada Buddhism in Sri Lanka, particularly those from Burma and Thailand.

Harris further differentiates between two important streams of indigenous contributions to Protestant Buddhism, one narrative and one doctrinal. The narrative tradition, as represented by a document prepared by a Sri Lankan, Mulgirigala, probably tended to be the way lay people saw Buddhism, while the more doctrinal tradition, exemplified by a compendium of Buddhist doctrine prepared by a monk, Kitulgama Devamitta, probably was more in line with the way *bhikkus* saw the tradition. Thus, neither can be said

to be the more distinctive way Sri Lankans themselves saw to Buddhism; and both in some form (and as filtered in some cases through British writers) were surely at the root of what became so-called Protestant Buddhism in the twentieth century.

### Reciprocal Missions

Finally, Harris considers the question of what became reciprocal, or dueling, mission efforts in the twentieth century, the back-and-forth between Christian and Buddhist evangelizing. Harris argues that the main influence of the British on the development of Protestant Buddhism was not through the portal of Orientalism, but because of mission: “[T]he key to the development of Buddhist modernism in Sri Lanka was not the stereotypical Western Orientalist but the need of Buddhists on the ground to counter missionary writing and their discovery that the best strategy was to use the arguments of European contesters of Christianity and to counterbalance each mission criticism with alternative material” (187).

Christian critics of Buddhism in Sri Lanka accused Buddhists of being irrational, unscientific and ethically challenged. The instigators of the Buddhist revival then spent an inordinate amount of time attempting to show how rational, scientific and ethical Buddhism was. In choosing to polish these particular facets of the Buddhist doctrinal diamond, the Buddhist reformers were not being unfaithful to their tradition—but it is probably true to say that they were highlighting aspects of Theravada Buddhist teaching that had rarely, if ever, been particularly noticed in the tradition previously.

The Christian mission effort shaped Protestant Buddhism in another way. Christian missionaries introduced mission methodologies not normative to Sinhalese culture. The public debate, for example, was initially seen by Sri Lankan Buddhists as a chance to cooperatively and congenially examine religious ideas from the two traditions in a public forum. It was only after several of these debates that they realized “the attack, belittle, and conquer” character of these presentations. They adapted by learning how to attack, belittle and triumph themselves. Thereafter, these kinds of attacks became standard fare in both traditions' missional portfolios. Another mission methodology, the publication of polemical tracts and monographs, was also initially a Christian methodology, but the Buddhists quickly realized the power of the written word and began to publish anti-Christian tracts and books of their own.

It is unfortunate that neither Christians nor Buddhists seemed to learn from the best of each other's religious traditions. It is not because such were not represented in nineteenth-century Sri Lanka. Harris, in fact, cites men and women representing both. But it is safe to say that the legacy of these reciprocal nineteenth- and twentieth-century mission efforts has been almost totally negative and has created in Sri Lanka today a

very uneasy relationship between the two sides. One could hope that one result of this exceptionally well-done book would be an honest look at what our common history has wrought and the taking of steps to restore a goodwill toward one another that would be more faithful to the best in both traditions than what currently endures. ■

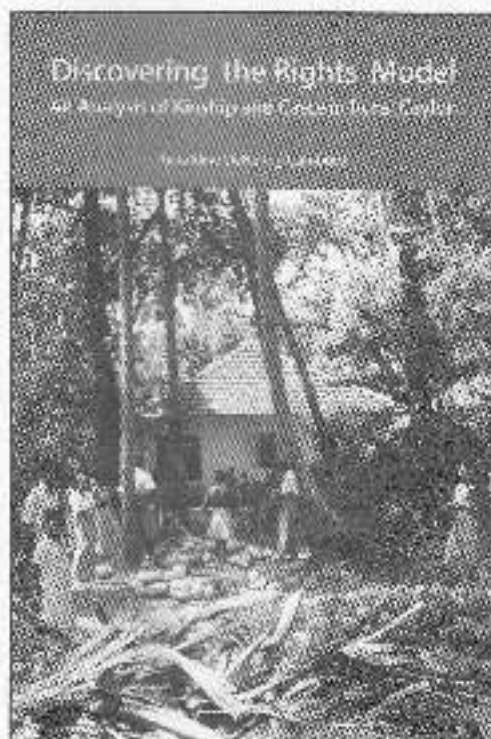
*Terry C. Muck is at the Auburn Theological Seminary.*

## **FORTHCOMING FROM THE SSA**

### **PERPETUAL FERMENT**

**Popular Revolts in Sri Lanka in the 18th & 19th Centuries**

**Kumari Jayawardena**



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# THE MOON IN THE WATER

John Stifler

Ameena Hussein, *The Moon in the Water*, Perera Hussein Publishing House, 2009, Rs. 750, in all bookshops.

For a moment, judge this book by its cover. Whatever model posed for the photo, her navel is too perfectly placed, and the fabric of her belly-dancing costume too perfectly bright pink, to ignore when displayed on a bookshop table.

Most intriguing about the anonymous figure on the cover of *The Moon in the Water*, however, is that the protagonist of Ameena Hussein's first novel is a Muslim woman, but not at all an inhabitant of either the cultural traditions or the classic physical sensuality implied by the illustration. Rather, she is an American-educated Sri Lankan who, at the beginning of the story, lives in Switzerland with her African boyfriend and favors T-shirts and jeans over saris, veils, dancing skirts or the social norms that go with them.

The novel, however, takes place mostly in Sri Lanka, and, given its European opening, it is inevitably a story of homecoming and discoveries (mostly disturbing) about the main character's family. That theme itself is ancient, but the predicaments and at least two of the people in this story are engaging enough to keep the pages turning quickly. More, the book is a sweet, poignant portrait of the country—not vastly comprehensive, as some larger works in both Sri Lanka and India have tried to be, but carefully specific on a small, fine scale, with its constant focus on how a terrorist bomb, a switching of bridegrooms within an arranged family marriage, an old tea plantation and the 2004 tsunami all swirl around the life of one young woman whose father has been blown up and who discovers only after his death that she herself was an adopted child.

Khadeeja, the protagonist, interrupts a romantic sojourn in Spain to fly home when her father dies in an explosion that was intended to kill soldiers in Colombo. She spends part of the story watching her mother—once a feisty, progressive young woman herself—fight against standard expectations of how a widow grieves, and part of it breaking away from the family in order to slip off to an old tea plantation when she discovers her particular role in the family secret.

Enter the other best character in the story, Arjuna, who turns out to be the other half of that secret. Khadeeja sneaks up on her new-found brother under false pretenses, invades his space, and renders him immensely angry when he discovers who she is and how she has concealed the fact. Then, by and by, they form a new alliance in which they further sort out how their respective adoptive families have raised them and tried unsuccessfully to protect them from the poignant truth of their shared parentage.

This story is richly populated with supporting characters: the tongueless servant who tried to stand up to the JVP; the imam who suffered horribly in a seminary in Pakistan, then shrugged off his personal traumas to minister to the poor about him at home; Khadeeja's adoptive sister and brothers, with their memories of childhood and their conflicts about their father's will; Khadeeja's upstanding, warm erstwhile fiancé. The list goes on.

At least one reader in my hearing has complained that the large number of characters and locations and plot events in *The Moon in the Water* is a flaw in the book. That particular criticism applies to many first novels, whose authors seem to overflow with things to say, bringing them in from all directions, piling them on, and scattering the intensity of what could otherwise be a deeper story. In this regard, Ms. Hussein has certainly touched lightly—or, one might better say, delicately—on many experiences, any one of which might deserve more depth of treatment. A different novel could have focused, for example, entirely on Khadeeja's mother's ambivalent position between being married to her cousin (traditional) who has rejected the marriage originally planned for him (less traditional) and being more distressed by the mourning ritual than by the death itself (not traditional). Or on the latent ambiguous sexual attraction between siblings. Or on being torn between independence and family.

Then, too, the elements of this plot seem to surprise the characters more than they surprise the reader. Yes, discovering that one is adopted is often traumatic—but the experience is widespread and well known nowadays. Yes, if you're on a beach when a tsunami hits, your chances of survival are small. Yes, it's strange to meet a relative one



did now know one had. And yes, yes, yes. New generations in Sri Lanka have grown up in times of terrible uncertainty and political danger. (But yes, too, that theme is urgent and likely to remain so, given its recurrence in any number of contemporary Sri Lankan writings of every genre.)

On the other hand, what gives shape and strength to *The Moon in the Water* is precisely Hussein's ability to interweave these and other themes into a tight latticework of a plot. Her technical execution is still developing, and in places she explains more than she needs to, noting in the narration what is already clear from her concrete description or her characters' own words. In this regard, she shares a quality of redundancy that continues to mark much contemporary Sri Lankan prose, both fiction and non-fiction.

Yet nothing seems to have been thrown into the mix gratuitously, and nothing seems to have been inserted out of self-indulgence. A few moments could be stand-alone pieces – Khadeeja's memory of climbing the lighthouse at Galle Face in the days before security patrols is one example – but Ms. Hussein ties them snugly into the larger story, the deeper exchanges between Khadeeja and Arjuna. We see each of these two people separately, often, but one of the best things about the book is the scenes they share. Indeed they do not know each other well, having only just met, yet their affinity is immediate and natural, and their crisscrossing lives are the backbone of the novel.

Hussein's plotting is sure-handed and well paced, with elegant, subtle shifts of point of view. A particular example: Sitting on Galle Face Green, Arjuna talks to Khadeeja about the political violence of 1989. His narrative is conversational, with pauses where he struggles to remember a detail precisely, but then he recalls a threatening letter that circulated at the hand of a patriotic Sinhala youth front. His recollection comes in the form of the entire letter verbatim, in italics on the book's page, rather than pieced together from memory as he talks. The point of view shifts from Arjuna's face and voice to the awful words as if on a separate sheet of paper, cinematically taking up the whole screen.

Note: Western and subcontinental audiences alike will sooner or later find themselves watching a good Sri Lankan story turned into a film. ("Elephant Walk" in the 1950s was entertaining, but it doesn't count.) If *The Moon in the Water* becomes such a piece, its delicate and revelatory

quality should put it in the category occupied by Mira Nair's adaptation of Jhumpa Lahiri's "Namesake" – and not at all in the slick Hollywood/Bollywood style of "Slumdog Millionaire."

It must be possible to write a good Sri Lankan novel that does not refer to the past three decades of political horrors, but the main characters in *The Moon in the Water* are too socially awake for Ms. Hussein not to have included that enduring, sad, necessary theme. Some conversations – notably one between Arjuna and a young English woman, a volunteer teacher in a village – are indeed recognizable as political musings transferred to fiction, but Hussein makes them natural, not didactic or polemical. Arjuna's reflections on violent elements of recent Sri Lankan history enhance the scope and depth of the novel while keeping it a good story. In a modest way, this quality of the book recalls something of *The Long Day Wakes*, a late-60s novel by Anthony Burgess ("A Clockwork Orange"), set in Malaysia in the last years of British rule there. Burgess's novel is much longer, but, like *The Moon in the Water*, it offers intense romantic relationships, loss, and atmospheric color, combined with many characters whose own stories are told briefly and whose lives illustrate real history.

Near the end of *The Moon in the Water*, the tsunami hits. Hussein's description of the calamity is superbly understated and utterly local – just one spot on the beach at Unawatuna – and it includes three pages of the nervy arrangement of one drowning character's last thoughts into a series of spirals of distorted print. Such visual tricks in writing usually seem like gimmicks, cheap imitations of late 19th century French poets (the cubist poet Guillaume Apollinaire is a prime example), but Hussein gets it exactly right, and the effect is moving.

Having lived in Sri Lanka since December, and feeling what I hope is an understandable measure of self-consciousness combined with fascination for this place, I can see handing *Moon in the Water* to an American who has never been here and saying, "Read this. It will answer many of the questions you ask me about what Sri Lanka is like." At the same time, Amreena Hussein's novel is not at all a sociological study but rather, most gratifyingly, a piece of contemporary craft and art, sketching in clean, distinct lines some moments of life that lie beyond either politics or passion. The effect is deeply beautiful. ■

*Alexander F. Galloway, Professor of English, University of California, Berkeley*

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# POVERTY AND PEOPLE'S POWER, SELECTED WRITINGS OF G.V.S. DE SILVA

Nimal Sanderatne

The reissuing of the selected writings of G.V.S. de Silva by the Social Scientists' Association will enable a new generation of readers to be acquainted with the writings of one of the country's finest economists and social scientists. This book was first published by the Social Scientists' Association in 1988 under the title, *The Alternatives Socialism or Barbarism*. It was edited by the Late Charles Abeysekera. The present volume contains three additional essays. Given the quality of his writing, it is indeed a pity that he wrote little. Most of his important writings are contained in this volume.

G.V.S. de Silva expressed his ideas with a simplicity that characterized his style of living and demeanour. He subscribed to the philosophy of simple living and high thinking. His simplicity of life was exemplary. He was an economist and statistician who preferred to be considered a social scientist as he approached economic issues in a political economy perspective. His life's work was characterized by an overriding concern for people's welfare, especially the well-being of the rural poor. He was a theoretician who was able to think outside the box, challenge conventional wisdom, apply theory to particular contexts and adapt these to specific conditions. He applied his theories in social experiments and contributed to policy formulation.

I was privileged to have been a student of G.V.S. de Silva. He was one of the best teachers of economics. His clarity of thought and precision of expression is without equal. In teaching economic theory he never confused students with extraneous diversions, nor mixed political ideology with economic principles. His lectures were always systematic and logical expositions. As a teacher he was humble, would never pretend he knew everything and was willing to admit to his students that he was not well-versed in any particular aspect that they may question him on. He was always prepared to explain any particular aspect of his lecture that a student required clarification on or discuss issues after the lecture.

His clarity of thinking, logical development of an argument and simplicity of expression are illustrated in the first chapter of the book, "The Economics of Devaluation". The lucidity and simplicity of his exposition of the devaluation of the rupee in 1951 is a classic analysis of an economic mechanism without the use of economic jargon such as demand and supply elasticity. The analysis is broader than

the conventional economic analysis as his primary concern was the impact of devaluation on the well-being of people. His application of economic theory in the specific trade and economic contexts of the country is not limited to the narrow confines of its impact on the external trade performance and balance of payments (that he does) but extends the exposition to cover its impact on society and concerns of social justice. His ultimate criterion was whether "it is injurious to the economic well-being of the major section of the people of the country." This has indeed been the touchstone and objective of his writings and his life's work.

His 1973 monograph "Some Heretical Thoughts on Development" (chapter 3) was a seminal work that is one of his important contributions to development thinking. Although at the time of its publication the ideas may have been heretical, there has been greater acceptance of these with the recognition that conventional development strategies have been unable to alleviate poverty and inequality and achieve household food security.

The central theme of this work was the advocacy of a reversal in the urban bias to development strategies. His revolutionary perspectives advocated a virtual abandonment of the city that he characterized as a parasitic one incapable of being really productive. His strategy was to subordinate the town to the village for the emancipation of both; the elimination of the urban-rural dichotomy and the overall development of the country. He proposed that all developmental resources be moved to the rural economy. He conceived the problem of development as "leaping out of the morass of endemic stagnation. It is the problem of changing an archaic mode of production, and releasing our productive forces from the shackles that bind them." (76). The rural-based development strategies he advocates in this and other chapters are forcefully expressed.

The detailed analysis of "Bhoomi Sena: A Struggle for People's Power" (Chapter 6) provides an insight into G.V.S.'s conviction that rural development cannot be achieved by democratic governments with vested interests in urban development supported by a bureaucracy similarly biased. The essence of this analysis is that the tribal adivasis relied on people's power for their development. People's power became a corner stone of his thinking on rural



development. This is clearly evident in the earlier cited work *Some Heretical Thoughts on Development* and more so in his theory of social change that he put into practice. Social change, he believed, could be effected, not through governments, but the countervailing collective actions of the people.

In "Social Change" (chapter 7) G.V.S. re-examines Marxian theory in the light of the experience of communist countries and puts forward his conceptualisation on how social change occurs. In this essay he re-examines the experience of communist countries to evolve a theory of social change. This is perhaps his most theoretical piece of writing.

G.V.S. was however, much more than a theoretician. He was very much a practising economist and social scientist with a social conscience that guided his actions. Not satisfied with being a theoretician, he devoted his time and energy to set up an experiment in the processes of change to confront the social relations of production in the Sri Lankan countryside. He played a leading role in the formation of the Participatory Institute for Development Alternatives (PIDA) in August 1980. PIDA and its "Vision for Social Development" (chapter 8) reflects on the early results of their countervailing power interventions. PIDA's social experiment explored the possibility of the poor organizing themselves in the societal space available to them to fight for their own interests. In this chapter he outlines the manner of using People's Power as a countervailing force for self-development of the rural poor.

PIDA's vision was to bring out the creativity and the potential of people as the means as well as the end of development. "It is essentially an endogenous process which stems from the heart of each society" (204). It is one "that cannot be delivered to the people as a package from outside." (204). This strategy argues that, "Development can acquire its full meaning only if rooted at the local level and in the praxis of each primary community." Development, it contends, is primarily a people's endeavour and must commence in the first instance at the local level where they work and live.

It makes the important point that no development model is applicable universally and that "the richness of development consists in its variety and plurality of patterns deeply ingrained in the culture and tradition of each society." Self-reliance, participation and countervailing power are central components in the development process as conceived by PIDA social activists. The process of development envisaged by PIDA requires that the disadvantaged, oppressed and

poor people "investigate, analyse and understand the socio-economic reality of their environment, in particular the forces, which create poverty and oppression and build up the confidence and capacity through organised efforts to contend with such forces."

This volume contains three papers not included in the earlier volume. These are two articles he wrote for the *Daily News* and one that was published in the *People's Bank Economic Review*. The chapter on New Incentives for the Paddy Farmer is a proposal to improve the terms of trade to paddy farmers in favour of farmers by a new currency that would be more valuable than the rupee. The paper also brings out his intellectual humility when he concludes, "In this brief outline many questions are bound to have been left unanswered (some probably not even thought of). This is only a suggestion and not a blue print."

The final chapter contains the third paper a challenge to the conventional definition of economics as the science of economising scarce resources made popular by Lionel Robbins. He argues that such a perspective is shallow and inappropriate and that the earlier concept of political economy was a more appropriate and holistic approach. This perspective implicitly also reflects G.V.S.'s thinking, not as an economist as such but more broadly as a social scientist, who viewed problems of society not within the narrow confines of a single discipline but as issues that had to be approached from a humanistic perspective.

His foremost contribution to policy was the drafting of the Paddy Lands Act of 1958. This was a revolutionary piece of legislation. It embodied principles that ensured security of tenure to paddy farmers, provided incentives for the adoption of improved technology and methods of cultivation and a framework for the organization of paddy cultivation, through cultivation committees. It was too revolutionary a change in the social and political milieu of the time. It was flawless in concept and detail, yet the success it achieved was partial owing to the limited political will, violent opposition from vested interests, feudal nature of society and limited administrative capacity of the government.

This volume reflects the vision of G.V.S. de Silva as a social scientist who was always guided by his social conscience. Even though there have been vast economic and social changes since these papers were written, their clear exposition and broad vision make it a must read to all those who are interested in developmental issues. ■

*Special Publication: Twenty-Sixth Anniversary of Sri Lanka and National Day - September 1998. Volume Twenty of Essays on  
Reforms and Direction of National Development - 1998*



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# THE CONTRADICTIONS OF RELIGIOUS PRETENSIONS

Asoka Ekanayaka

Kandy the so called “sacred city” resembled a fortress recently with armed sentries swarming all over the place protecting a powerful foreigner beloved by our government who was also honoured by being allowed into the inner shrine room of the Dalada Maligawa. The contradictions implicit in this drama illustrated the hypocrisy and humbug of religion in Sri Lanka these days, with its shallow outward show of sanctimonious piety, interminable ritual, and irrational phobias about religious conversion. The visitor so lavishly hosted and rigorously protected was not a revered religious dignitary, entertainer, inventor, sports icon, or for that matter any kind of international celebrity. He was no other than the Myanmar tyrant Than Shwe, whose military junta has ruled that country with an iron fist for 37 years suppressing all dissent and evoking international condemnation and sanctions for its gross violation of human rights.

The military dictatorship has shown its undisguised contempt for democracy by keeping the Burmese heroine and Nobel Peace Prize winner Aung San Suu Kyi under house arrest, and refusing to allow her party to govern despite winning a landslide election victory 19 years ago in that country’s first multi party election. Instead, the miserable legacy of poverty and social and economic degradation left by harsh military governance is epitomized by a single statistic. In 2006, according to WHO the life expectancy of the average male in Myanmar was 57 years one of the lowest in the world. The average Sri Lankan male can expect to live at least 12 years longer! It would seem that despite its Buddhist pretensions the ruling junta cares little about reverence for life which is a core value of Buddhism.

Consequently, it was hardly surprising that when cyclone Nargis, the worst natural disaster in the country’s modern history, hit Burma in 2008 killing nearly 150,000, and severely affecting 2 ½ million others, the world watched aghast, for according to Human Rights Watch, ‘while deaths mounted, Burma’s ruling generals were slow to react and flatly refused to accept foreign aid ... for several weeks after the cyclone had struck, the US amphibious assault ship USS ESSEX was moored 60 nautical miles off Burma’s southern coast, while the French naval vessel ship Le Mistral waited in the same waters. These ships sailed to the area on a humanitarian mission. Tens of thousands of gallons of drinking water, ambulances, heavy trucks and medical teams could have reached Burma within hours by helicopters and landing craft from the Essex. Le

Mistral carried a cargo of 1,000 tons of food, enough to feed at least 100,000 people for two weeks, as well as thousands of shelters for the homeless. But the Burmese authorities refused to let them in ...”

However, what ought to outrage Buddhists in Sri Lanka more than all this is the military junta’s brutal persecution of Buddhist monks who in 2007 provided inspiring leadership for the masses agitation of a beleaguered population desperately crying out for basic living conditions and freedoms. According to a major to a major Human Rights Watch publication released this September monks have been shot, arrested, beaten and abducted. Hundreds of monks continue to be imprisoned and thousands remain fearful of military repression. Many have left their monasteries or sought refuge abroad, while those who remain live under constant surveillance. Monasteries have been raided with monks being subjected to abusive interrogation and arbitrary detention. It would appear that many monasteries today have only a fraction of the monks they had two years ago.

There is no comparison whatsoever between this horrible scenario and some fuzzy poorly documented incident recently in Sri Lanka where a Christian pastor is supposed to have peacefully prayed over two terminally sick people who had later passed away in hospital. Yet over this little local incident militant enraged Buddhist mobs violently smashed a Christian prayer centre while members of an extreme Buddhist political party including monks were caught in camera in the thick of the riot. Why are these religious fanatics who radiate an ugly attitude of hate, aggression, insecurity, and bitterness ostensibly in defence of Buddhism (but in total contravention of the letter and spirit of the teachings of its compassionate founder), so silent and indifferent when the government embraces the head of a ruthless military dictatorship that has brutalized Buddhist monks in Myanmar? Nor has the Buddhist establishment in Sri Lanka generally shown much concern (let alone moral outrage) about the cruel treatment of monks in Myanmar, compared to its current phobic obsession with and frenzied reaction towards peaceful religious conversions in Sri Lanka. Otherwise, public opinion would have forestalled the government from inviting the military dictator.

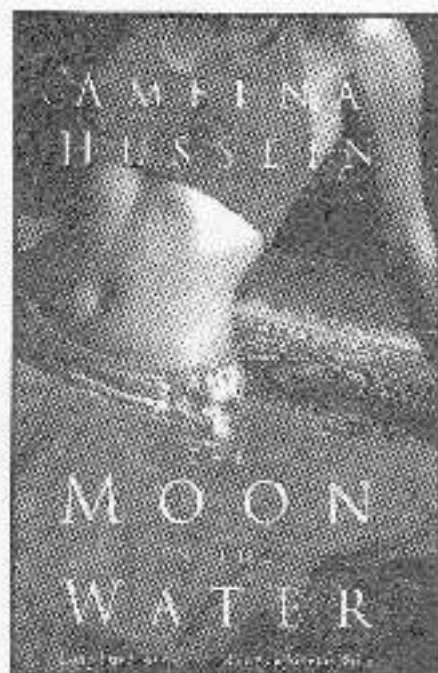
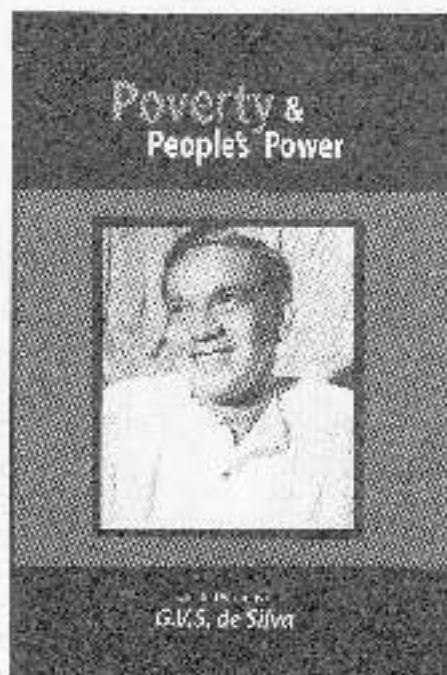
Going by responsible media reports there have been at least 225 attacks on Christian churches, pastors, and worshippers

since 2002. They have included mob violence, stoning, grievous assault and beatings, desecration and destruction of property, arson, death threats, abuse, throwing of excreta, robbery, grenade attacks, interference with worship, and even obstruction of funerals, among other forms of persecution. The irony of it is that the aggressive perpetrators who probably seem themselves as 'defenders' of dhamma, don't seem to care a dime when the dictator whose jackbooted underlings hammered the Sangha in Myanmar is warmly welcomed in Sri Lanka! Perhaps for most Sri Lankans religion is a matter of

being satisfied, so long as our government and those like the Burmese junta are seen to comply with the outward trappings of ceremony and empty ritual that constitute formal religion. Such are the inconsistencies that underlie the hypocrisy of religion when pristine doctrine has been distorted by nationalism, and corrupted by the world. Where true religion is dead, the pretense of outward piety abounds. Sri Lanka is a case in example. ■

Courtesy, *The Island*, 25 November, 2009

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*Upali Cooray, the tireless crusader for the rights of all the down-trodden, especially the Tamils of Sri Lanka, passed away recently in London. As a young recruit to the LSSP in the early 'sixties, he cut his teeth as a Trotskyist in the fight against the LSSP's turn to coalition politics in 1964. He was a founding member of the LSSP (Revolutionary). He remained active in the Trotskyist movement in both England and Sri Lanka for the next several decades. As a lawyer and also a militant, he intervened again and again, often at considerable personal risk, to defend the rights and lives of the Tamil minority in Sri Lanka, for which he had to endure imprisonment and harassment.*

## UPALI COORAY (1939-2009)

Charles Wesley Ervin

Upali Cooray, a Sri Lankan Trotskyist and tireless social activist, died in London on 21 August, 2009. He had just recovered from a dangerous *Streptococcus Pneumonia* infection but started to have difficulty breathing and was taken to the hospital on 20 August. He died the next morning. He was cremated after a funeral service in London on 3 September. His coffin was draped with a red flag bearing the hammer and sickle emblem.

Born in Sri Lanka in 1939, Upali joined the Youth League of the Lanka Sama Samaja Party (LSSP) while still a student. After completing his education he taught at Kaudeniya Central School in Galle. In those days the LSSP was a mass-based Trotskyist party which fought hard against the anti-Tamil policies that were being fostered by the MHP coalition government, which had been swept into power in 1956 on the rising tide of Sinhalese Buddhist nationalism.

Within a few years, however, the LSSP tired of swimming against the tide, and in 1964 a majority of the party voted to seek a coalition government with Mrs. Bandaranaike at the head. Upali supported the revolutionary Trotskyist faction of the LSSP, led by Edmund Samarakandy, Bala Tampoe, V. Karasingsham and Meryl Fernando, which split and formed the LSSP (Revolutionary). Upali was elected to the central committee of the new party. But this group proved to be unstable, due to political differences, not to mention personal rivalries among the leaders. The LSSP (Revolutionary) soon splintered.

Upali emigrated to Britain, entered the London School of Economics, and joined the International Marxist Group

(IMG), the British Section of the United Secretariat of the Fourth International. He became secretary of the Vietnam Solidarity Campaign. He eventually earned a BSc in Economics and LHB from London University and MA in Business Law at London Guildhall University. He was called to the bar at Middle Temple in 1974.

In 1971 the radical Sinhalese JVP staged an ill-starred uprising against the coalition government. The LSSP and Communists supported the vicious police repression of the youth. Upali went on an international tour to campaign for the release of 80,000 political prisoners held in detention in the aftermath of the failed JVP insurrection of April 1971. He was arrested and detained by the police in Sri Lanka in 1972 for these activities.

In 1975 Upali returned to Sri Lanka and joined the Revolutionary Marxist Party, the Sri Lankan section of the United Secretariat of the Fourth International, which was led by Bala Tampoe. He worked closely with leading activists of Tampoe's Ceylon Mercantile Union. In Colombo he established a legal practice but devoted his services solely to trade unions and workers.

Faced with the rising tide of Sinhalese chauvinism, Upali defended the principle of self-determination for the Tamil minority in the North and East of the island. In July 1979 he was a founding member of the Movement for Inter-racial Justice and Equality (MIRJE). He co-authored the first MIRJE publication, *Emergency '79*, which was the first publication to expose the atrocities in Jaffna that began on the first night of the Emergency rule.



In 1983, during the "Black July" pogrom against the Tamil people in the south, he courageously protected individual Tamils from attacks by Sinhalese thugs. When the Jayewardene government enacted repressive laws to crush the Tamil separatist movement and the trade unions, Upali actively defended the rights of the Tamil people and workers' rights. He always fought the cases that others would not touch. He was known for defending the rights of workers, the poor, and the victimized in immigration, employment, criminal, housing and family cases.

Upali also was an ardent champion of equal rights for women. He initiated alternative institutions to organize and educate women workers in the Katunayake Free Trade Zone. He set up a Women's Centre and a Legal Advice Centre and helped to publish *De Bindu* and *Nirmali* to raise awareness of women's issues. He set up a Resource Centre in Bulungoda as a meeting place for tea plantation workers. For these activities he was jailed for six months. He also initiated *Janaganada* and *Fenara*, Sinhala language newspapers to counter capitalist media, war mongering and anti-Tamil propaganda in the Sinhala media. He wrote a series of booklets to explain legal jargon in simple language for the benefit of worker activists.

In the late 1980s Upali returned to Britain, where he continued to campaign against disappearances and assassinations

during the reign of terror in Sri Lanka. In 1988 he formed the Committee for Democracy and Justice in Sri Lanka. He opposed both state-sponsored violence and the terrorism of the Liberation Tigers.

Upali looked for ways to build bridges to the splintered and marginalized remnants of the Old Left in Sri Lanka. He renewed his contacts with old comrades, including Edmund Sumarakkody, Heeror Abhayawardhana, Osmond Jayaratne, Prins Rajasooriya and N. Sarmugathan. Upali thought the Left in Sri Lanka had reached a dead end and had to return to its roots. In an open letter to his grandson he wrote: "We must build a new and a bold movement that could unite all those who have been exploited, disadvantaged and marginalized. Like the Suriya Mal Movement and the LSSP, which spearheaded the fight against caste oppression and British imperialism in the 1930s, today we need a new movement to spearhead the struggle for modernity and to drag our country from the economic and political quagmire that the failed prophets of the yester years have led us into. Unfortunately, the LSSP lost its clout and its mass base by entering into an opportunist alliance with the SLFP. We must learn the lessons of that debacle and make sure that the poor and the oppressed will always maintain its political and organizational independence." ■

*Charles Wesley Brown is the author Terrorism is Our - The Trotskyist Movement in India and Ceylon*



Kandasamy commemoration by the government clerical services union (GCSU).

See page 28

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# 1947 GENERAL STRIKE-A FLASHBACK

T.B. Dissanayake

Remember the day when the remains of our dear departed colleague Velupillai Kandasamy, a fellow striker in the Health Department, were taken in a massive procession of workers from the General Hospital, Borella, to the Fort Railway Station.

The route along McCallum Road (now Wijewardena Mawatha) was thronged with crowds. Workers from offices, factories and workshops from the capital and its suburbs of Ratmalana and Kollonawa had joined the vast concourse of people to pay their homage to a martyr, a government clerk who hailed from Jaffna. The coffin was borne aloft by strikers. In batches they took their turn as pallbearers. Kandasamy's final journey began on the train to Jaffna. Policemen who were thick on the street during the strike had mysteriously disappeared from sight. There was Walpola Rahula Thero standing tall in a jeep, directing the crowds. It was an unforgettable sight!

Turning to a couple of days earlier -on 5 June a procession of several thousands of strikers, for which permission had been duly obtained, was proceeding with N.M. Perera at its head, when a large force of police barred its passage at Dematagoda and baton charged the strikers. The LSSP leader was knocked down and beaten while on the ground. The police also fired 25 rounds into the demonstration: one killed and 18 injured, including Percy Nanayakkara. (Thereafter he earned the endearment, "Undaya," and had to endure lifelong a pellet embedded in his body. Medical specialists advised against surgery to remove the pellet.) The cruel act of repression by the police had roused the resentment of the working class.

The General Strike of May-June 1947 is one of the most significant events in the history of the working class. It was the biggest strike organised up to that time. At its height fifty thousand workers in the public and private sectors participated. At the head of the strikers stood the Public Services League (PSL), Ceylon Federation of Labour (CFL) and Ceylon Trade Union Federation (CTUF).

Public service trade unions who had been clamouring for full trade union and political rights, and the right of affiliation with trade unions of nongovernment servants, decided to call a mass rally of public servants at Galle Face Green on 29 May 1947. Dr. N.M. Perera, Philip Gunawardena, Pieter Keuneman and G.G. Ponnambalam were among the political leaders who also addressed the meeting. The rally also demanded swaraj immediately, and the recall of the Governor Sir Henry Monck-Mason Moore.

The next day saw the colonial government dealing a frontal attack on the right of the labour movement to champion causes on behalf of the workers and the oppressed by interdicting sixteen leading members of the PSL who had signed the notice convening the rally. Workers were quick to react to the government's union busting move by coming out on strike in their thousands. Government clerks also joined the strike under the leadership of the GCSU. This was the first time middle class employees had joined workers in industrial action.

The other demands put forward by the strikers included: amalgamation of the general clerical class and executive clerical class with the initial salary raised from Rs. 840 to Rs. 1440 per year; rent allowance to be increased from Rs. 7.50 to Rs. 20 (married men) and from Rs.3.75 to Rs.15 (bachelors); and absorption of all temporary clerks with two years service and more into the permanent service. A strike bulletin released by the GCSU demanded the immediate withdrawal of the ban on the GCSU and the withdrawal of the letters of interdiction issued to convenors of the rally of government servants on 29 May 1947.

The British Raj was alarmed. The troops were brought out; the Royal Navy paraded the streets. The display of military might was meant to intimidate the working class. It only served to anger the militant workers.

A Public Security Bill giving the colonial government sweeping repressive powers was rushed through the State Council in its



dying days. The Council had been elected in 1936 and had long ceased to be representative of the people.

Sir Henry Monck-Mason Moore who was governor of Ceylon (1944-48), referring to these events in a published article on his tenure, states: "In 1946 [sic] an attempt was made by the Clerical Service to engineer a general strike in preparation for the general election under the Soulbury Constitution ... It illustrated the unwillingness of the Board of Ministers to face up to their responsibilities. Despite the threatening situation, they were conspicuous by their absence. I was in Kandy at the time and Mr. George E. de Silva urged me to take immediate action. I went to Colombo and met the Ministers, who all urged me to declare a state of emergency and exercise dictatorial powers. Somehow or other they had come to know of the existence of such an instrument, though it was highly secret.

"I then pointed out to them that they had full powers to pass legislation of the same character in the State Council and that if they considered the time had come to take such action it was their plain duty and responsibility to take the necessary action themselves. If they did so I would of course support them in every possible way and they could base their legislation on the draft in my possession. Eventually they did so, and indeed provided more severe penalties than in the original draft in my possession. It was quite obviously an attempt to leave me holding the baby if such strong action was criticized." (*British Governors of Ceylon*, H.A.J. Hulugalle, Colombo: Lake House, Colombo, 1983, 232).

In the previous year (1946) the country had witnessed the first General Strike of government workers. It occurred "at the tail end of a stubborn two months old strike of bank workers", a labour historian has recorded.

Government workers struck on 15 October. The railway strike soon extended to the harbour, the Gas Company, Colombo Municipality and various private firms. According to the official figure, 24,000 had stopped work. But the real figure was about twice as large. The government refused to negotiate. Many establishments were at a standstill. A central strike committee was formed consisting of representatives of the participating unions and parties to give effective leadership. When the stoppage continued the acting governor of Ceylon

on 21 October agreed to meet a deputation of the Government Workers Trade Union Federation (GWTUF). The deputation was permitted to bring along one adviser and the Federation chose Dr. N.M. Perera for this function.

A delegation went to Queen's House to meet the acting governor but refused to come to a settlement in the absence of the LSSP leader Dr. Perera, who had been arrested by the police. It was Pelis Serasinghe, the government factory workers' leader who insisted that the LSSP leader should be released in the first instance. Dr. Perera was released and he along with the workers' deputation negotiated a settlement of the strike.

The government made several important concessions. But some of the promises were not honoured and workers joined the second General Strike the following year.

In the 1947 General Strike the workers held out, but in the end the strike petered out. According to a labour historian, "the strike was not only a defeat, it was a smash up." Thousands of workers in the government and private sectors were victimized.

The General Strike had radicalized sections of the working class. Dynamic young and energetic leaders to spearhead the public sector trade union movement had emerged. It would be invidious to single out a few but some names come to mind: T.B. Illangaratne, Bala Tampoe, who is still with us, G.H. Perera of the GWTUF, Gladstone Amarasekera and A. Chickera of the Customs Union, S.R. Yapa of the Surveyors' Union, K. Vaikunthavasan, A.R. Asirwatham and Geoffrey Gunanayagam of the GCSU, and Jim Mortimer of the Government Stenographers' Union.

Prins Rajasooriya (later secretary of the CFL) who also joined the strike, was then attached to the then Petrol Control Department. He recalled that I. J. Wickrama (who became a leader of the GCSU in the 1950s and 1960s), standing on an office table, addressed the strikers. K.M. Karunaratne who also later became a GCSU president later, was attached to the Puttalam Kachcheri and joined the strike. Last but not least, I would like to mention that Richard Adhihetty, now 86 years old, then attached to the PWD, was also a participant.



Many victimized workers joined the campaign trail during the 1947 elections. They actively supported left candidates. "The wounds of the strike have been healed but the scars remain," as one leader reflected.

A strong contingent of the left parties was represented in the new parliament. Workers in the constituencies in the western seaboard and on the plantations had voted to elect 18 left MPs. A campaign for the reinstatement of victimised workers in the General Strike figured at the hustings. By the early 1950s workers were on the rise again. They cast off their passivity to

forge vigorous trade unions. This resurgence was reflected in a shift to the left by the unions.

A makeshift memorial to Kandasamy was erected at the Albion Road roundabout at Dematagoda. But during the violent incidents in the mid-1950s the monument was demolished by communal miscreants.

In a reference to the 1947 incident at Dematagoda, Premier S.W.R.D. Bandaranaike said, "The shot that killed Kandasamy sounded the death knell of British Imperialism!" ■

*T.P. Dematagoda was a 24-year-old undergraduate at the time of the 1947 general election. From 1948 to 1951 he served as president of the C.S.S. He rose through the ranks to become an assistant divisional officer (A.D.O.) before his retirement in 1981.*

## TSUNAMI

### "The fountains of the great deep opened up" (Genesis, chapters 6-8)

It's a sunny morning  
A new day.

Aftermath.

Kites soaring high in the air  
with dazzling wings  
borne on trapezes of eddying wind.

At our gate a young boy stands, smiling,  
green trap net in his hand  
to capture the rebel bird that has escaped  
from our neighbour's pet shop

How long will its freedom last,  
this leaf camouflaged budgerigar  
nestling among the throuling epiphytes  
that choke and strangle the rough barked  
Bottle Brush tree nosing its torso and  
branches with thick, twining lianas  
of strong hemp-like ropes.

Will the smiling boy capture the bird?  
Will it go back into its prison?  
Will the babel of bird cries down the  
Single note of piercing grief?

The bird climbs higher and higher,  
its tiny wings carry it to the upper  
branches, hidden within the recessed shadows.  
Disappears.

"It won't last long on its own,  
predators will destroy it," the searchers say.  
Frail, vulnerable bird its fate to us humans

unknown, our own instincts for survival  
blunted.

Frail bird, frail children, frail beings,  
For some the yawning sea bed a revelation,  
a gap between life and death,  
reminders of Israelite exodus when the wall of  
waters submerged the dry land, the horses,  
chariots, the horsemen, the Egyptian host  
all living beings left dead upon the shore

For others, entangled in vast steel nets of  
waves it was the hungry oceans abundant  
catch, gorged on, ingested, sucked in,  
swept away, beyond, beyond, beyond all retrieval

The subtle treason of poetry  
deceives our senses, colours, sound, movement  
circum endless metaphors for the sea,  
now the azure wave clamps down  
clutching with strong tearing talons  
the tender flesh cleaving to life,  
the strand slipping away  
into the breathless seas.

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Wiped of the face of creation,  
a world of lost maps, lost islands  
lost lives, lost minds, blot out existence.

Those who are left escape into a void of  
nothingness, walk distraught on nowhere  
roads to nowhere destinations,  
bedlam echoes on our quiet shores and sanctuaries,  
lost faces blur on vanishing horizons

each face tattered wrinkled flag,  
pennants of defeat in nature's conquest,  
limp bodies spangling the branches of  
weeping trees.

pinned down, beneath the fallen walls  
the mangled forms of children

Every pore, every crevice of the waking  
consciousness overcome by odours of  
putrefaction where once this tragic flesh  
was warm, instinct with breath and life  
Gigantic plumes of surf rise,  
stun the air,

Waves swoop down to clutch  
the writhing bodies so soon breath-quenched,  
the winding sheets of waves are torn  
apart, tattered limbs exposed to sun, to wind,

Now the long slow dinge begins,  
the mourning of the bereaved waves  
keen on and on,

spewed out upon the grooved sand  
ridged with bodies, new furrows appear.

The air is alive with invisible ethereal  
wings of hovering spirits weighing down  
our leaden souls,  
beneath our feet, the surf-edged  
waves stampede, ride over a fissured land,

trees, branches, roots plucked up  
with manic hands torn and twisted,  
piled up the tumult of crushed debris.

Deep trenches close over mass graves  
concealing limbs tangled with the  
hopeless plunge of riven flesh,

blood seeps into soil,  
what plants, what trees, orchards and  
fields will grow to feed the pastured  
kine and all this orphaned breed.

We alone are left  
in this aftermath of Armageddon.

Our Mourning will not cease  
In a surreal landscape  
massed behind the skyline  
lighting up the macabre darkness  
the leaping fires of burning pyres,  
wrecked boats, twisted rails, carriages  
flung haphazardly, all awry,  
with sundered bridges.  
an eerie silence hangs its pal  
over a voiceless night.

## THE WAVE

This wave was not the perfect blue calligraphic  
swirl of Hokusai's woodprint, each water-strand  
throbbing with a force and energy all of its own  
overpowering the peerless sky as it invaded the land,

there were no signs of buried wrecks,  
no wrench of bodies torn asunder too puny  
to grapple with the towering wall that  
crushed the fallen bodies,  
no lullabies from Whitman's cradles of the deep  
and Paumanok's shores,

mountains of waves uprooted from quakes  
and upheavals thrusting out to grasp and sweep away  
each living being to unknown mysterious destinations,

bodies that will surface one day with their  
messages like all those chance bottles thrown  
into the sea, those silent voices scrolled on  
parchment seeking out the solitary watcher  
on the shore bearing portents and predictions  
we ignore.

On the east coast they are burning the  
bushes with bodies entangled in thorn trapped  
twigs and splintered branches.

Piled up, dead fish, limp bodies, wrecked  
boats, sculptures of desolation in landscapes  
of timeless ruin.

Gone, all gone, the shells and corals  
enticing children in play, gone, the scuttling land-crabs  
with eggshell china shells, transparent, blue-white,  
the algae and feathery sea weed trails, sea anemones,  
mother-of-pearl shards, starfish, the flotsam  
and jetsam that's flung on the shore  
the castaways of the ocean.

*Jean Arasanayagam*



