EXCURSUS 1

Juliet London on
SRI LANKA: FROM FREEDOM TO FASCISM?

In mid-1977, to the acclaim of much of the Western press, the socialist government of Sri Lanka was voted out of office and replaced by a right-of-center administration. The new regime of the United National party had promised a restoration of personal and political liberties, which it claimed had been curtailed by the Freedom party and its leader, Sirimavo Bandaranaike. Mrs. Bandaranaike had ruled this small Indian Ocean island since 1970. Today, however, there are disturbing signs in Sri Lanka that the remedy may be worse than the disease.

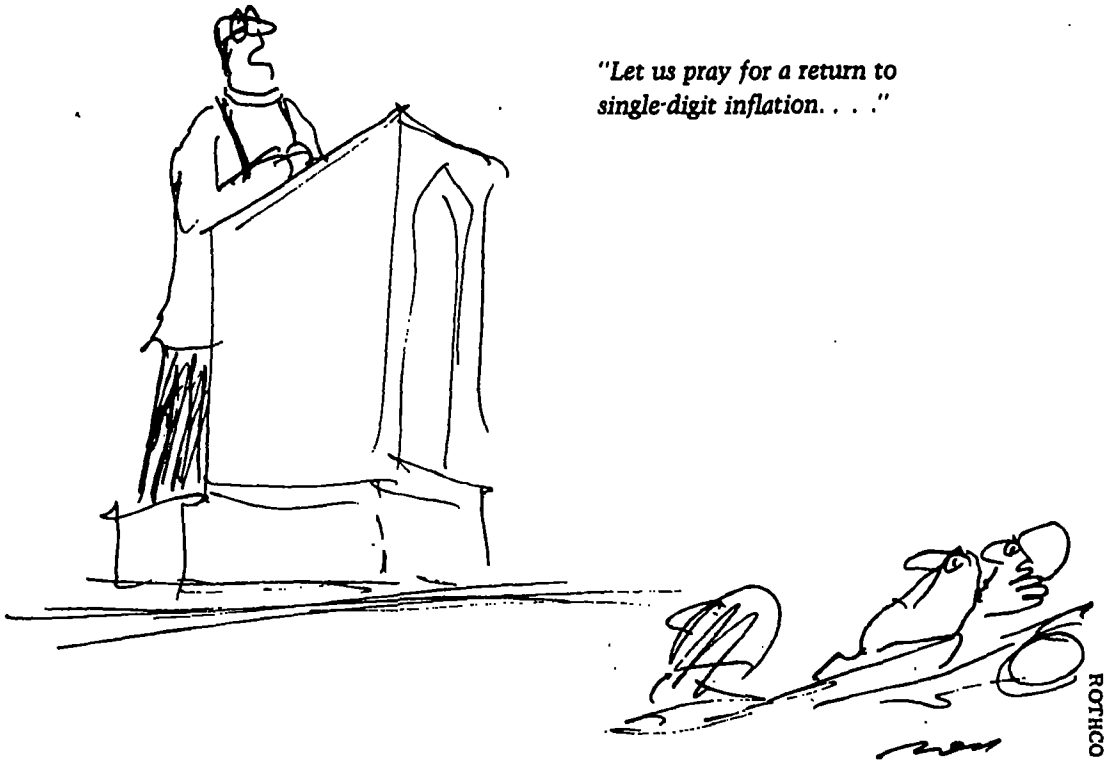
The trappings of democracy appear intact, but they take on an increasingly formalistic character in the face of the accumulating and escalating authoritarian tendencies of the new government. The House of Representatives enacts laws at the whim of the steamroller United party majority; administrative power has been concentrated in the newly created office of executive president, who is not responsible to the legislature; a patronage system, in which over half the representatives enjoy enhanced stipends and titles, ensures continued support of the government; vacancies in the legislature are no longer filled through by-elections but by a nominating process that heavily favors the government in power. These measures and similar tinkerings with the state structure are, in themselves, not unusual in Third World countries—where to the victor generally belong the spoils. In Sri Lanka, with its long and almost unique history of political democracy and personal freedoms, such events suggest a drift away from a tradition all the more valuable for its rarity.

What is particularly unusual in the context of Sri Lankan politics is the way the new constitutional and legislative arrangements are being used to penalize leaders of the Freedom party, most notably the former prime minister. In May, after a long period of threat and innuendo in the government-controlled press, a presidential commission began hearings on government allegations that Mrs. Bandaranaike's administration was marked by corruption and nepotism.

The legislation under which the commission operates was enacted by the United party government in 1978 and contains several retroactive provisions. Before its introduction a citizen of Sri Lanka could lose certain civil rights only by a decision of the regular courts—generally as a result of bribery or corruption—and the accused was entitled to the usual right of appeal. Under the Special Presidential Commission Law these safeguards do not exist. There is no appeal from the commission's decision, and the penalties are heavy. Disqualification from public office and deprivation of civil rights can follow—and such sentences have already been imposed as a result of commission reports. Not only is the process unusual, but the operational mechanism is extraordinary. The chief prosecuting attorney, who was specially appointed for the duration of the commission's life, is a member of the Central Working Committee of the United party and has been active in party politics for several years.

On May 7, Mrs. Bandaranaike appeared before the commission, calling its summons a ruthless attempt to destroy her politically and to destroy democracy in the country. She pointed out that the three commissioners were personally appointed by her principal political opponent, the now president of Sri Lanka, and she challenged the government to bring legal action against her in the regular courts of law if they felt they had any valid reason to do so. Having said this, Mrs. Bandaranaike refused to participate further in the proceedings.

The commission has since held somewhat empty hearings, based essentially on one-sided presentations by government lawyers; its report is expected soon. Under the Special Commission Law the president and his political group in the House of Representatives will determine



"Let us pray for a return to single-digit inflation. . . ."

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the punishment—in essence, whether or not to disqualify their principal political opponent from holding public office. Should this occur and Sirimavo Bandaranaike is banned from civic life, there will be serious questions about the future of Sri Lankan politics. Will the price of political opposition be too high? Can democracy function in such an atmosphere? What are the next steps to more arbitrary rule?

Mrs. Bandaranaike is probably the most distinguished citizen of Sri Lanka. Entering politics upon the assassination of her husband, Prime Minister Solomon Bandaranaike, she was elected premier in 1960, becoming the world's first female head of government. Defeated at the polls in 1965, she returned to power in 1970. She is one of the founders of the nonaligned movement of Third World nations, and her international reputation stands high—especially among the newer nations of the Third World. At sixty-three Mrs. Bandaranaike has many years of political life ahead of her; penalties imposed by politically inspired investigations will be ill-received all over the world.

Above all there are three considerations at issue. First, actions of this type put an unbearable strain on one of the few democratic political systems remaining in the Third World. Second, the aura of vindictiveness that always surrounds such policies lingers and initiates a cycle of bitterness which poisons the body politic of a nation. And third, these actions detract from several positive accomplishments of the United party government.

In an era when political liberties and individual rights are contracting around the world, Sri Lanka has stood fast against this trend. If its dignity is to be surrendered to expediency, the world will be disappointed and freedom itself diminished. Thus, for reasons larger than national events and personalities, Sri Lanka is of vital importance at this time—and its present rulers are accountable to global public opinion and to history.

Juliet London is a freelance writer specializing in international politics.

EXCURSUS 2

Thomas M. Franck on SNAP JUDGMENT ON SNEPP

These are dangerous times, and many Americans are tired of seeing the CIA get kicked around. They suspect that if the agency hadn't been effectively disemboweled in the early '70s by politicians, journalists, and malcontents in its own ranks, perhaps the world wouldn't be treating us now with such cocksure contempt. This touching rebirth of public faith in the CIA has made life hard for the whistle-blowing industry. Even editors, publishers, and booksellers are queasy about exposés by former agents.

The Supreme Court has captured this mood in its decision to discipline ex-agent Frank W. Snepp III for publishing a kiss-and-tell memoir. As Snepp and his defenders in the ACLU and Harvard Law School have lectured their way around the publishing circuit, pointing out the dangers of the *Snepp* decision to those who live by the First Amendment, they have been welcomed with folded arms.

And this is odd, because the Supreme Court, in teaching Snepp a lesson, has framed a pretty horrendous law that may well affect anyone who can read or write. The Court seems to have upheld a prerequisite for CIA employment that requires some applicants to waive their constitutional right of free speech. Such a waiver, the Court maintains, can be enforced.

When Snepp wrote *Decent Interval* in 1978, he failed to submit the manuscript to the CIA's censors, thereby violating his employment contract. The Supreme Court responded by impounding Snepp's royalties and enjoining further publication. Upholding the sanctity of the contract, it sternly warned that the "continued availability of [foreign undercover] sources depends on the Agency's ability to guarantee the security of information that might compromise them." Further, the CIA has a right to impose "reasonable restrictions on employee activities that in other contexts might be protected by the First Amendment....The Government has a compelling interest in protecting both the secrecy of information important to our national security and the appearance of confidentiality so essential to the effective operation of our foreign intelligence service."

But this, too, is odd because the government admitted that Snepp had used no classified information. Not only did Snepp endanger none of our sources, but he convincingly charged the Agency with recklessly endangering its Vietnamese employees in abandoning them in the scramble to evacuate Saigon.

The *Snepp* case is rooted in two characteristic American peculiarities. Almost alone among nations the U.S. has no Official Secrets Act to criminalize unauthorized disclosures by government employees or ex-employees. And, in the First Amendment, we have a constitutional guarantee of free expression, which the courts have interpreted as prohibiting the censoring or banning of publications except when they pose a clear and present danger to the public safety. Thus the CIA is left with insufficient means to protect its secrets. There are espionage laws, of course, but these are directed for the most part against persons who deliver secrets to a foreign power with intent to injure the United States. They are of no help, since it has become the fashion nowadays to confess secrets to the media rather than to Moscow, and the dominant motive is to absolve oneself, not aid the Politburo.

Nevertheless, the U.S. code does fasten on the director of central intelligence an awesome—and seemingly impossible—responsibility for protecting "intelligence sources and methods from disclosure." With newspapers, TV, and publishers licensed by the First Amendment to lionize the indiscretions of ex-agents, how can this responsibility be discharged? The Agency's hapless answer is "the contract." The version Snepp signed commits him not to publish or divulge, without prior Agency approval, any information "relating to the Agency, its activities or intelligence activities generally."

Almost everything about this contractual approach is absurd. If Snepp had breached national security, the remedy—an injunction and seizing of royalties—would hardly have put the toothpaste back in the tube. But there was no breach of security, and Snepp was penalized for doing something the Constitution regards as useful: criticizing the government. If the intention in suing Snepp was to deter others from circumventing the censors, it seems elementary that a real villain would be little affected by the prospect of losing his book royalties. Evading this dilemma, the Supreme Court in its *Snepp* judgment relegates the entire, crucial First Amendment issue to a superficial footnote. While treating the contract as decisive, the Court fails to scrutinize its constitutionality.

That constitutionality is far from self-evident. In a comparable context the Supreme Court has at least twice held that an employer may not require an employee to waive a