

Parliamentary Inviolability

Speech by John G. Williams
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Mr. Chairman, panelists. Members of Parliament, distinguished guests, ladies and gentlemen.

Let me state my bias up front – I am opposed to parliamentary inviolability. Let me also say that I will be quite candid in my assessment of parliamentary inviolability. And while I will not go so far as to say – ‘listener discretion advised’, some may find my remarks on parliamentary inviolability quite pointed.

I do however support and endorse the concept of parliamentary immunity.

But first, in order to avoid any confusion; let me define what I mean by parliamentary inviolability and parliamentary immunity.

Parliamentary inviolability is freedom from arrest! No matter the crime, you will not do time.

Parliamentary Inviolability came into being during the French Revolution. That was a particularly difficult time to be alive since it was easy to end up dead, courtesy of the King and his guillotine. The King of France did not appreciate criticism, and when such comments came to his attention; it was off with the head. A simple solution for the King who benefited in two ways:

- 1) It reduced the number of people who were critical of his style of government - he was an autocrat of course; and
- 2) It literally put the fear of death into anyone else who wanted to be outspoken enough to criticise the King.

Les députés, the Members of Parliament, were in a difficult position. It was their responsibility to debate and vote on legislation. But how could they debate proposed legislation without presenting arguments for and against the legislation. And the King had a special dislike for people who put forth arguments against his legislation.

The same held true for democratic accountability over the King.

Who was going to stand up and criticise the King and his governance of the country when the King could arrest anyone at will? Not only could the King arrest anyone at will, but the King had

the courts in his pocket too! It doesn't take a rocket scientist to figure out how the courts decided these cases. Guilty before being charged; punishment – off with the head!!!

So the deputies devised a simple remedy to the King's simple solution – Deputies would be declared beyond the reach of the King and his men. Freedom from arrest; not guilty of anything! Innocent in everything!

Now let us compare parliamentary inviolability with parliamentary immunity which had its origin in the English Bill of Rights passed in 1689. Strange things were happening in England at that time. King Charles II had died in 1685 and his brother James inherited the throne as King James II. There were religious differences in the country and some of the English aristocracy invited William from Orange which was part of Holland to invade their own country. William defeated King James II at a battle in Ireland. This deposing of the monarch, was called the glorious revolution, and William and his wife claimed the throne of England, which they ruled as William and Mary of Orange.

But there was a catch. Parliament said if you want to be King and Queen – sign here on the dotted line. They signed, and that document, the Bill of Rights of 1689, established parliamentary supremacy over the monarchy and the government which remains in place today.

The Bill of Rights of 1689 said among other things that the freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any court or place out of parliament.

So there we have it – parliamentary immunity, solidly in place as part of the constitution of the United Kingdom and now, many other countries around the world.

I consider parliamentary immunity to be part of the 'tools of the trade' for parliamentarians. The government has all the powers of the state.

The government has the right to govern, subject only to being accountable to the parliament. And parliament has authority to exercise accountability over the government because their proceedings are protected by the Bill of Rights of 1689.

The government controls the armed forces, has the power to arrest people, has the power to appoint judges, who have the power to sentence people to prison. The government has the power to collect taxes, has the power to regulate business and trade – the list goes on and on.

The government has tremendous power, but that power does not exceed the power of parliament, who can criticise and demand accountability from government, knowing that as they exercise their responsibilities, they are free from domination by the government – guaranteed by the Bill of Rights of 1689.

We protect those who have the power to protect us. We give the police the power to arrest people and use force if necessary. We protect the police in the performance of that duty by giving them the privilege to use such reasonable force. But they do not enjoy such rights when they are off duty.

We give judges the right to fine and imprison people but we demand a very high standard of ethics and integrity from them in return. They do not enjoy the right to fine and imprison people when they are not sitting in court.

We give tax inspectors the right to collect taxes from the citizens for the benefit of the state and they enjoy the protection of the courts in the performance of their duties, but only while on duty, doing their duty.

Our armed forces have the power to use deadly force but only on instruction from the government which is accountable to parliament.

Parliamentary immunity, enshrined in the Bill of Rights of 1689, is the glue that holds it all together. Parliament, accountable to the people through free and fair elections, is the supreme authority in the land. And when the people are fed up with their government and/or their parliamentarians, they can throw them out of office and start afresh. We call it democracy.

But parliamentary inviolability crosses the line.

It means: ‘No matter the crime, you will not do time.’ It not only protects parliamentarians while they exercise their responsibilities, it protects them at all times and from being accountable for any crime committed. This can not be tolerated!

Parliamentary inviolability undermines the rule of law.

In countries where parliamentary inviolability rules; parliamentarians are exempt from the rule of law. But no one – not even parliamentarians – should be above the law. In the words of J.P. Joseph Maingot and David Dehler: “having rid our thought of the divine right of kings, we ought not to now tolerate the divine right of legislators or the divine right of the state”.¹

Parliamentary inviolability fosters a moral hazard. Those who enjoy parliamentary inviolability are more likely to abuse of their privilege because they know that they will not be accountable under the law.

Parliamentary inviolability is a breeding ground for corruption.

Where democracy is weak it is not uncommon for people to run for public office to shield themselves, and their illegal activities from the law.

¹ <http://abovethelaw.ca/>

Politicians and senior bureaucrats have stripped their nations of public assets which has happened all through Russia and Eastern Europe. That is where the billionaires come from. Bribes and kickbacks from public tenders have inflated the price of goods in countries that cannot afford basic necessities.

Foreign aid which is intended to help the poorest of the poor fails to be delivered because of corruption. The rich and powerful get more rich and more powerful while the poor become destitute.

There is an inverse relationship between democracy and corruption: less democracy and accountability; the more corruption takes its toll.

By some estimates, Nigeria – an oil rich country mired in poverty – has lost USD 400 billion in oil revenues to corruption since the country's independence in 1960.² Over 80% of Nigeria's oil export revenues goes to just 1% of the population.³ Nigeria has a population of 162 million people of which 70% live on less than one dollar a day.⁴ That is over 100 million people!

The resource wealth is being stolen from Nigerians by unscrupulous corrupt people with too much power and money, who use that power and privilege to continue to rape and pillage the country's coffers. That story repeats itself many times in many different countries.

I know that parliamentarians in the lesser developed countries argue that they still need the protection of parliamentary inviolability, in order to protect themselves from a corrupt government. But that is nonsense.

Corrupt governments and lesser developed countries exist because too many parliamentarians want to keep it that way – so that they can continue to reap the riches of corruption with impunity.

There is a simple concept that when people have the authority to write rules and legislation, they will ensure that the rules and legislation provide better protection for themselves than to others; that is why parliamentary inviolability continues today.

I do not buy the argument that only parliamentarians are at risk in fragile democracies and under developed states.

² <http://dailypost.com.ng/2012/08/31/nigeria-lost-400bn-oil-revenue-corruption-since-independence-ezekwesili/>

³ <http://dailypost.com.ng/2012/08/31/nigeria-lost-400bn-oil-revenue-corruption-since-independence-ezekwesili/>

⁴ http://www.unicef.org/wcaro/Countries_1320.html

I think of a young girl - a fourteen year old girl – with no immunity whatsoever, who has been demanding since she was eleven years old, education for herself and other girls in Pakistan. Who was protecting her when she was shot twice in the head on her way to school last week?

Who was standing up for her? Who was giving her immunity when she criticized her government? The answer is – no one, and she did not need protection or parliamentary inviolability, because she was prepared to put her young life on the line, and had the courage of her convictions to take her government head on – all by herself!

If parliamentarians are so concerned about protecting those who criticize their government, who is protecting the young girls in Pakistan?

Why are jails in many countries full of political prisoners who have no rights and no protection from imprisonment; with or without conviction? Why are allegations of torture so rampant in the world today? Who is protecting them?

Human rights trump parliamentary rights every time; and it is time parliamentarians passed legislation to protect all their citizens, not just themselves, from corrupt governments.

Our interconnected electronic world ensures that injustice brings international condemnation. That is the beginning of protection against corrupt ruling classes who hide under the mantle of parliamentary immunity, while raping their treasuries, killing their economies and even their own people.

Tyrants and dictators surround themselves with sycophants who give them the trappings of legitimacy. In return parliamentarians receive parliamentary inviolability to enrich themselves with corrupt ill-gotten gains at the expense of the destitute.

Parliamentary inviolability has no place in any country that says it is democratic and respects the rule of law.

No one votes for poverty, and parliamentary inviolability contributes significantly to ensure that the 1.5 billion people in this world who are destitute today will stay that way.