

“Going to jail I consider a sacrifice I make for the people of this country. My struggle will continue, wherever I am sent and whatever is done to me. I pledge, and I will not be silenced, I will fight on for freedom and justice and I will never surrender.”

— Anwar Ibrahim, 10 February 2015

16 May 2018: Anwar Ibrahim is released from prison and receives a full royal pardon from the King of Malaysia.

This was an astonishing turn of events for the former Deputy Prime Minister who was serving a second prison term for sodomy, a charge that Anwar has always refuted.

For Mark Trowell QC, who observed the criminal trials of Anwar Ibrahim, the release was as historic as the release of Nelson Mandela in South Africa.

Read about the dramatic twists and turns in the prosecution of Anwar Ibrahim, from when he was first charged with sodomy in September 1998 to his vindication 20 years later. This book covers not only the trials and prosecution Anwar was subjected to and which led to the guilty verdict and sentence of five years’ imprisonment in February 2015, it also recounts the changing political tide sweeping through Malaysia that culminated in his historic release in 2018.



Mark Trowell also presents an exclusive interview with Datuk Seri Anwar Ibrahim. In a wide-ranging discussion, held in May 2018, Anwar reveals much about his time in prison, his new relationship with Prime Minister Mahathir Mohamad and his vision for Malaysia.

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ANWAR
RETURNS
THE FINAL TWIST

ANWAR RETURNS

THE FINAL TWIST

The Prosecution
and Release of
Anwar Ibrahim



Mark Trowell QC

Foreword by The Hon. Michael Kirby, AC CMG,
former Justice of the High Court of Australia

PRAISE FOR

***Anwar Returns: The Final Twist and
Sodomy II: The Trial of Anwar Ibrahim****

“It takes an author of considerable legal experience, discipline, and attention to detail, to recount the astonishing and curious tale recorded in this book. ... Mark Trowell has performed a service for the people of Malaysia and their friends by recording this chronicle and bringing up to date the latest remarkable developments that appear to bear out Anwar’s claim that the ‘light shines’ upon him.”

The Hon. Michael Kirby

Former Justice of the High Court of Australia

“The charges against Anwar Ibrahim for the offence of carnal intercourse against the order of nature, the criminal trial that followed and the strictures with respect to pre-trial disclosure, show us two things: it is high time such an offence is expunged from our statute books, and trial by ambush has no place in the criminal justice system. This book is a timely reminder that justice is a global concern.”

Christopher Leong

President of LAWASIA and former President of Malaysian Bar

“A riveting account of a truly remarkable story.”

Drew Herron

Director of American Institute for Liberty and Justice

**Sodomy II: The Trial of Anwar Ibrahim* was published in 2012

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“A contemporaneous and incisive account of a political trial disguised as a criminal case. A must-read.”

Anil Divan

Senior Advocate and former President of Bar Association of India

“Mark Trowell exposes sharply the flawed prosecution of Anwar Ibrahim — an absolute read for every one interested in understanding how and why this happened.”

Rogier Huizenga

*Head Human Rights Programme,
Inter-Parliamentary Union, Geneva*

“An eloquently analysed process of a case, which barely corroborates the judicial independence and the Rule of Law.”

Akio Harada

former Prosecutor General of Japan

“A gripping tale of political intrigue at highest levels of government and its abuse of the legal system to destroy its opponents. Everyone who cherishes justice should read this book.”

Mark Andrews

Director of Mark Andrews Legal, Perth, Western Australia

“An intriguing and internationally significant book about a monumental miscarriage of justice, that has finally ended with the timely pardoning of Anwar Ibrahim. Expertly told.”

Thomas Percy QC

Albert Wolff Chambers, Perth, Western Australia

ANWAR RETURNS

THE FINAL TWIST

**The Prosecution and
Release of Anwar Ibrahim**

Mark Trowell QC

For Review only

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*To the memory of my late mother,
Patricia Aileen Powell.*

*This book is also dedicated to my friends
Datuk David Yeoh Eng Hock,
the late David Kingsley Malcolm AC QC
and the late Datuk Michael Bong Thiam Joon.*

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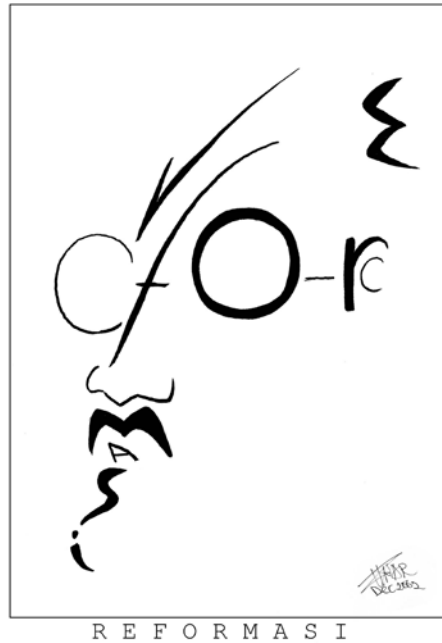
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Foreword

THE HON. MICHAEL KIRBY, AC CMG*

This is a further revised and updated edition of a book on the roller-coaster life of Anwar Ibrahim, a Malaysian leader of remarkable political skills, personal gifts and charismatic personality. When in 2015 he returned to prison, after the imposition upon him of a second conviction for the crime of sodomy, he declared to his political supporters: “I will again, for the third time, walk into prison. But rest assured my head will be held high. The light shines on me.”

So it has proved. On 16 May 2018, Anwar was released from prison. He was granted an audience with the King of Malaysia, the Yang di-Pertuan Agong Sultan Muhammad V, and received a royal pardon. In the general election that preceded these events, contrary to many expectations, the government parties that had ruled Malaysia since independence lost their majority. The Opposition party of which Anwar had become founder and leader won a majority of seats in the new ruling Coalition.

* Michael Kirby is a former Justice of the High Court of Australia (1996–2009); member of the Eminent Persons Group on the Future of the Commonwealth of Nations (2010–2011); UNDP Global Commission on HIV and the Law (2010–2012); past President of the International Commission of Jurists (1995–1998); and Chair of the United Nations Committee of Inquiry on the Democratic People’s Republic of Korea (2013–2014). He is currently Co-Chair of the Human Rights Institute of the International Bar Association (2018–).

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The newly elected Prime Minister, who returned to that office with a commitment to stand aside for Anwar “after one or two years”, was none other than his erstwhile nemesis Yang Amat Berhormat Tun Dr Mahathir Mohamad. The long-time collaborators, once turned deadly enemies, had restored their friendship and alliance. It was Dr Mahathir who had provided the advice to the King to pardon Anwar. From prison, Anwar had watched the doughty campaigner oust Prime Minister Najib Razak to become the world’s oldest serving head of government. Now Anwar waits in the wings for re-election to Parliament, ascension to the post for which he had earlier seemed destined, and restoration of his reputation and dignity.

There are few, if any, equivalent tales of changing fortune, alliances and commitments in the world of politics today. The saga is captured here. If, when it began, in 1998, the tortured course of events had been predicted, it would have been dismissed as an impossible fantasy. However, fact is sometimes stranger than fiction. And the facts of Malaysian political and legal events are sometimes especially strange. It takes an author of considerable legal experience, discipline, and attention to detail, to recount the astonishing and curious tale recorded in this book. Those who predict that the twists and turns of fate have concluded and that there are no fresh surprises still in store may yet be disappointed. However that may prove to be, Mark Trowell has performed a service for the people of Malaysia and their friends by recording this chronicle and bringing up to date the latest remarkable developments that appear to bear out Anwar’s claim that the “light shines” upon him.

There are many precedents for the emergence of charismatic leaders from imprisonment to political leadership, triumph and vindication. Such leaders include Mohandas Gandhi, Jawaharlal Nehru and other principals of the Indian independence movement. They also include Nelson Mandela, who underwent trial for sedition in apartheid South Africa. He was convicted and imprisoned on Robben Island, only to emerge decades later to universal acclaim as the elected leader of a new rainbow nation. These leaders in India and South Africa (earlier remnants of the British Empire) had, like Anwar,

been tried in public courts conducted under the scrutiny of the world’s media, and with the informed observation of their trials, undertaken by experienced lawyers vigilant to detect, record and report any departures from basic justice and due process.

The trials of Gandhi, Nehru, Mandela (and of Kenyatta, Makarios and many others) certainly captured world attention. But none of them were quite like the trials of Anwar.

As Mark Trowell explains, in the generally dispassionate way that could be expected from an experienced senior advocate, Anwar’s trials were not imposed upon him by the functionaries of a receding imperial regime, seeking to cling to power and to delay the loss of it. Instead, they were unveiled in sober judicial proceedings of a highly personal and politically embarrassing character, by which the accused was twice obliged to answer to charges of the “unnatural” offence of sodomy. After convoluted judicial proceedings, Anwar in April 1999 was sentenced to six years’ imprisonment on a charge of sodomy. This was the trial that Malaysian media has called Sodomy I. Anwar successfully appealed against the conviction and was released from prison in September 2004.

After an interval, there then followed a second charge of sodomy in July 2008 (Sodomy II). This alleged that Anwar had non-consensual penetrative sex with one of his male aides. In January 2012, he was acquitted of this charge. The trial judge rejected DNA evidence that had been tendered as having been compromised and being unreliable. However, in March 2014 an appellate court reversed this acquittal. Surprisingly, it substituted a conviction and Anwar was sentenced to imprisonment for five years. A further appeal to the Federal Court of Malaysia, the nation’s highest court, was rejected in February 2015. Anwar thereupon began serving the sentence. This put him out of the political running and for five years thereafter.

Just as that second sentence was approaching its conclusion fate intervened once again, this time from a political not judicial source. The stunning defeat of the Malaysian Government on 9 May 2018 resulted in the

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restoration of Anwar's freedom, the removal of his impediment in politics, and the opening up of political opportunities that just months earlier seemed like dreams, destined to be unfulfilled.

At the time of Anwar's second conviction in 2014, the Malaysian Bar Council, a vigorous and independent group of advocates for justice and the rule of law, condemned the second sodomy conviction. It claimed that it had been "based on an archaic provision of the Penal Code that criminalises consensual sexual relations between adults". It declared that such charges "should never have been brought. The case had unnecessarily taken up judicial time and public funds."

In a foreword written to an earlier edition of this book, I disclosed a chance meeting I had with Anwar between his first and second sodomy trials. It took place at a conference of lawyers which he attended on the Gold Coast in Queensland, Australia. My task was to chair his session. It provided an occasion to reflect on the lessons to be derived, up to that time, from the course and outcome of his first trial, both for Malaysia and for other countries in the region. I described what happened:

"I took the occasion to urge upon the distinguished Malaysian visitor the need for him to advocate the repeal, or at least significant reform, of the sodomy offence in s377A of the Malaysian Code. I urged this course so, as I put it, that some good should come out of his ordeal. As long as the offence remained in the books, it would be available to be deployed to the scandal of the public, the titillation of the media and the destruction of personal reputations in the future. The fact that any such offence would ordinarily take place behind closed doors would be easy to allege but difficult to disprove, made it important to remove it, lest it continued to afflict Malaysians and their body politic."

Whilst my listener afforded me a polite hearing, he was non-committal. Little did I imagine that, so soon after our conversation, he would once again face a charge of sodomy. And that a second bandwagon of litigation and media attention would begin its journey to a contested outcome.

Many well informed and careful international civil society organisations attacked the charges, and criticised the process and outcome of the second sodomy trial (Sodomy II). They alleged defects in the evidence and political motivation in the prosecution. They criticised defects in the testimony and the selection of a sodomy offence (for the second time) because of the particular political harm that it would likely inflict upon Anwar in the traditionally conservative Malay society where sodomy was viewed as an offence not only against civil, but also religious law.

The curious feature that the alleged "victim" in Sodomy II had admitted to taking KY lubricant to his private meeting with Anwar suggested possible arguments that what had occurred constituted private, adult, consensual conduct. To prosecute such an offence in the present age would appear excessive and has been held contrary to universal human rights by many overseas courts and expert bodies. But consent was no defence for the crime of sodomy as expressed in the Malaysian Penal Code, even if consent could be proved. Moreover, it was not an argument that had any attractions to Anwar, the politician. His defence was always that the crime did not take place and was a political concoction invented by the Najib administration to rid itself of someone whose political star was rising once again.

After all the ordeals he has undergone — the repeated subjection to trials for the crime of sodomy, the humiliation and the incarceration — one might hope that Anwar, flush from his latest victory and apparent vindication, will rid Malaysian law of this colonial relic once he has the opportunity to do so.

The nature of the crime is that it is prone to be invoked so as to shame the accused, whatever the facts. It is frequently easy to assert but difficult to repel. The proper boundary of the criminal law in such private activities should be chartered by the age of the alleged participants and the presence or absence

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of consent. International human rights law, in the decades of Anwar's ordeals, has advanced strongly and firmly to strike down the sodomy crime as contrary, by its overreach, to universal human rights. Even in the socially conservative environment of South and Southeast Asia, moves have been made to remove the crime or to replace it with more conventional criminal offences. In none of the countries of the region which trace their laws to the civil tradition of France or the Netherlands rather than Britain, were such crimes part of the imperial donation. So long as the sodomy crime survives in Malaysia, it will lie in wait to hound public figures, shame their families, risk misuse of the criminal process, oppress sexual minorities, impede the response to HIV, and ignore empirical scientific evidence about the variety of human and other mammalian sexual activity.

Anwar Ibrahim has already enjoyed five political lives. In his previous life in government as Deputy Prime Minister of Malaysia, Minister of Finance and Education Minister, he was to preside (with Dr Mahathir) over an amazing economic era. During his long period spent in prison, often in circumstances of solitary confinement, his high intelligence and sharp mind will have been focused frequently on existential matters. The meaning of life. The purposes of public power. The importance of love, family, kindness and forgiveness. Whatever the human foibles of Datuk Seri Anwar Ibrahim, he had endless hours and lonely days to reflect on these values.

Nelson Mandela, decades earlier, invited me to witness his inauguration as President of South Africa. He did so because my predecessor as President of the International Commission of Jurists had appointed a trial observer, like the author of this book, to attend, to closely watch and to report internationally on his trial. Nelson Mandela believed that the world's scrutiny at his trial had played a part in saving the lives of himself and his co-accused from the capital crime of sedition, with which he had been charged — and in assuring the ultimate arrival of his release, vindication and political re-emergence. But in Mandela's case, his vindication owed much more to his luminous spirit of optimism, forgiveness, kindness to others, and determination to right the

wrong in his country and its divided society.

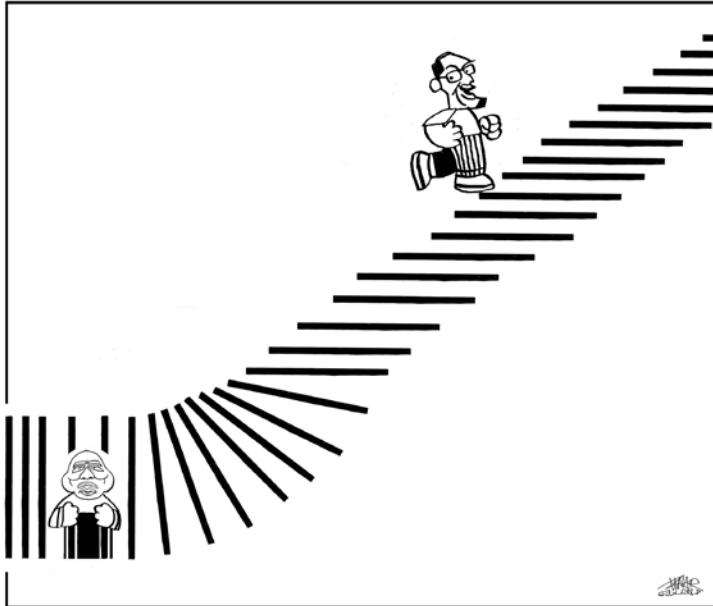
Now the world will be watching to see whether Anwar has derived from his detention and suffering the qualities that Mandela displayed. Those virtues of reconciliation, reform and outreach will be important for Malaysia as it moves into the new, uncharted and unexpected paths of true democracy, institutional integrity and universal human rights that lie ahead. A testing time is now upon Anwar, upon Dr Mahathir, upon civil society and upon the country.

The greatest leaders in world history are not normally merely crafty politicians or successful economists or generals. They are those who capture a particular moment in the life of their nation and embody it with vigour, creativity and, above all, inclusiveness. After a sometimes difficult journey, Anwar Ibrahim may now obtain his long delayed chance. Admirers will hope that he can see over the horizon and take Malaysia in the direction of modernity, non-corruption and respect for the equal dignity of every human being. The last 20 years will surely have taught him the importance of these goals. Now he must express a spirit of the times and display the generosity that his friends and admirers have long believed in. Then indeed the light will truly shine upon him.

Michael Kirby

Sydney, 22 June 2018

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Introduction

The pale, rather slight man emerging from the Cheras Rehabilitation Hospital in Kuala Lumpur where he had been confined after shoulder surgery moved through the large crowd of supporters and media, and stood defiantly on the sill of the black SUV that would carry him for an audience with the King.

He put his finger to his lips in an attempt to silence them, but they kept calling his name and chanting “*Reformasi*” (“Reform”), the slogan of the Parti Keadilan Rakyat (PKR, People’s Justice Party) he co-founded with his wife. He couldn’t silence them, so he gave them the thumbs up and disappeared into the vehicle — and off it drove to the royal palace. He was to meet the King, the Yang di-Pertuan Agong Sultan Muhammad V, who would grant him a full royal pardon.

Speaking at a press conference following the royal audience on Wednesday, 16 May 2018, Anwar Ibrahim thanked the Malaysian people for “standing by the principles of democracy and freedom” and promising a “new dawn” for all Malaysians “regardless of race and religion”. It was an unimaginable scenario. Anwar Ibrahim was a free man. After spending three stints in prison totalling ten years and six months, he was now released to become the prime minister-in-waiting of Malaysia.

This stunning conclusion to a two-decade period of turmoil for Anwar was a long way from that sultry and overcast morning of Wednesday, 3 February 2010 when he sat in the dock in the High Court of Malaysia to stand trial for the criminal offence of carnal intercourse against the order of

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nature. The allegation was that he had sodomised a young male member of his staff 18 months earlier at a private condominium in Kuala Lumpur.

Anwar refuted the accusation strongly and claimed it was part of a political conspiracy to discredit him. Many feared that it was simply a replay of the police investigation and criminal trials of 1998, which resulted in his imprisonment for six years until released on appeal, and another attempt to finish him politically.

Following his convictions for corruption and sodomy, many observers within Malaysia and from the international community expressed concern that the proceedings were patently unjust and tainted by significant errors of law. The prosecution maintained Anwar was not above the law and it was doing no more than bringing to trial allegations of a serious crime.

It was a long trial lasting almost two years and subject to many delays while Anwar's lawyers lodged several appeals relating to issues, which they claimed affected the fairness of his trial, but none of them succeeded. During the trial many events occurred which, although not directly relevant to the proceedings, illustrated that the political impact and ramifications of the trial were complex and significant. It was at times portrayed as a contest between the government and the opposition. It also brought into sharp focus the Malaysian justice system and, particularly, whether the judiciary could act in an impartial and independent way.

Finally, on the morning of Monday, 9 January 2012, Justice Datuk Mohamad Zabidin Mohamad Diah delivered his decision to a packed courtroom on the fifth floor of the High Court complex at Jalan Duta. In a few brief sentences, he announced that he was not satisfied the charge of sodomy had been proved and he acquitted Anwar.

Very few had anticipated an acquittal. Anwar told the large contingent of media outside the court complex that he welcomed the decision, declaring he was "vindicated at last" and that "a decision to the contrary would have put Malaysia in a disastrous light". The government was quick to claim that the verdict confirmed judicial independence.

But Anwar's legal struggle was far from over. The prosecution immediately challenged the acquittal. The appeal process was to last more than another three years until the Federal Court finally delivered its decision on Tuesday, 10 February 2015. It upheld the verdict of the Court of Appeal, convicting Anwar of the offence of sodomy and sentencing him to a term of five years' imprisonment.

Anwar was to spend three years in prison. His family would fail in their attempt to secure his release by a royal pardon. The then King refused to grant a pardon because the Pardons Board had rejected the petition. Of course, the members of the Board were stacked against him. Another King would later pardon Anwar unconditionally without requiring him to accept any guilt.

During his time in prison Anwar was as busy as ever. He would effectively conduct the business of opposition politics by using his lawyers as couriers for his press releases. When they couldn't do so, the prison guards — most of whom supported him — would stealthily avoid the CCTV camera outside his cell and smuggle the papers out of the prison. As hard as the authorities tried to thwart his attempts to communicate with the community by restricting access to him, which included not only his lawyers, but his family as well, it just didn't work.

Anwar would also manipulate the legal system that had so corruptly conspired against him by running a series of court cases that would keep him firmly in the public eye. For the most part it was a deliberate tactic. The court excursions enabled him to broadcast his message publicly through the inevitable media coverage, as hard as that was with the mainstream media being controlled by the government. He was successful in that sense and remained in the public mind.

Prison was especially difficult for him not only because his health had deteriorated, but also because he was deprived of physical contact with his family during the few minutes he had with them at each visit, which was also infrequent. Such was the extent of the deprivation imposed by the authorities.

Yet while he coped with imprisonment, the winds of political change

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were gathering that would sweep from power an alliance that had governed Malaysia since independence from Britain in 1957. Despite every corrupt attempt to steal another election — including gerrymandering electorates, stuffing ballot boxes and getting foreign workers to vote — the governing alliance lost by a landslide in the 14th general election held on 9 May 2018.

What had changed was the defection of Anwar's arch-nemesis, Malaysia's former PM Tun Dr Mahathir Mohamad, from the ruling party, Umno. That had happened in February 2016 when Dr Mahathir demanded that Prime Minister Najib Razak resign because of his role in a growing financial scandal involving the theft of funds from state-owned company, 1Malaysia Development Berhad (1MDB). It involved what foreign authorities have alleged was the illicit transfer of US\$4.5 billion from 1MDB, of which they claimed US\$700 million ended up in Najib's personal bank account.

This scandal is yet to play out with Najib prevented from leaving Malaysia by Dr Mahathir, the newly appointed prime minister; with the police seizing around RM1.1 billion (US\$270 million) in cash, jewellery and luxury goods from Najib's properties; and Najib being charged with corruption.

Dr Mahathir was determined that Najib, the man he had once promoted, step down. He left Umno, the party he had served for more than 30 years, and founded a bipartisan group named Save Malaysia dedicated to remove Umno from power; he formed his own party with ex-Umno senior members, Parti Pribumi Bersatu Malaysia (PPBM, Malaysian United Indigenous Party); he visited Anwar in court in an act of rapprochement; and he joined in an alliance with other opposition parties to defeat the government.

Like Anwar, he got what he wanted — but they couldn't have done it without each other. The old team, after 18 years, was back in business. The men who made it happen were the "old warhorses" and not the young members of disparate opponents of the ruling party. Anwar was 70 years old, while Mahathir was a remarkably fit 92.

Anwar's release from prison paves the way for authentic democracy, and probably changes the political dynamics of Southeast Asia. The man —

described by the United Nations and other human rights organisations as a "prisoner of conscience" — will eventually be prime minister of his country.

It is an amazing story of triumph over adversity. Anwar's courage and vision have won against corruption, fraud and authoritarian rule. Not everyone remembers Anwar's struggle against all odds, but he saw it through and it is a story that must not be forgotten. It is as historic as the release of Nelson Mandela in South Africa.

It couldn't be imagined that it was possible after the way the government and judicial system corruptly dealt with him. Twice he was convicted and jailed on trumped-up charges. But he just kept on going, even when all hope seemed lost. A lesser man would have given up.

Democracy has actually won in Malaysia, not by force, but through the ballot box. Together with Dr Mahathir Mohamad, Anwar has steered a coalition of disparate groups through to electoral victory, and recast Malaysian politics.

It is a joyful moment not only for Malaysians, but also for Anwar's family, who has suffered so terribly over the last two decades. At last, Anwar's struggle has been vindicated.

After 60 years of effectively one-party rule, there will be hiccups in the early stages of government, but everyone should be patient as Malaysia may now look forward to an exciting future of renewed prosperity for all its citizens, not just the few. It will happen under a fully democratic parliament and an impartial system of justice.

This is the entire account of how all of this came about, from September 1998 when Anwar was dismissed as deputy prime minister to his release, 20 years later, in May 2018. This book documents the dramatic and often sensational twists and turns as the trial and appeal process played out in the courts; Anwar's release and full royal pardon; and in his words a "new dawn" for Malaysia. It's a truly amazing story.

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THE RELEASE 2015-2018

Video grab of Anwar Ibrahim as he walks the corridors of Cheras Rehabilitation Hospital towards his freedom, 16 May 2018. His wife, Wan Azizah, holds him protectively as they are met by their daughter, Nurul Izzah.

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CHAPTER 1

In conversation with Anwar Ibrahim (31 May 2018)



The author in deep conversation with Anwar Ibrahim at the Parti Keadilan Rakyat headquarters on 31 May 2018.

I last spoke with Anwar Ibrahim on 9 July 2014. The interview took place before the Federal Court appeal, which was to result in his conviction and imprisonment. We covered a number of topics in a wide ranging discussion, including the lack of independence of the Malaysian judiciary; the loss of the close-run 2013 general election; the government's use of the law as a means of oppression; whether he had any regrets for a life in politics; the Malays and Islam; and his expectations of the result of the final appeal. It was a relaxed and revealing conversation.

So here we were again — in 2018, at the Parti Keadilan Rakyat headquarters — not more than weeks after the 14th general election, Anwar having suddenly been released from prison and given an unconditional royal pardon, and the country led by a brand new government. He was paler and thinner than before, which was hardly surprising given he had just spent three years in prison and was recovering from shoulder surgery. But he was his old self — charming, patient and always amusing. He spoke passionately about his vision for Malaysia. He credited his old nemesis Dr Mahathir with swinging the election and told how he was prepared to be patient in taking office as prime minister. He spoke of the importance of not being motivated by revenge, and that Najib Razak must be given due process of the law.

Anwar was late for the interview having been delayed by a meeting with the Indian Prime Minister, Narendra Modi, who had called on Prime Minister

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Tun Dr Mahathir Mohamad earlier that day. When he arrived, he embraced me. I hadn't seen him in more than three years, but we had really gotten to know each other over the 14 years or so that I had spent observing his struggles in the courts. He asked for some minutes to freshen up and perform his prayers.

Not long after, we were ushered into his office and took seats at a table to talk. I could see that he was tired, which is hardly surprising given that he had only flown back the day before from Oslo, Norway, after giving an address at a conference.

Mark: You look tired, but prefer to be doing this rather than being in prison, right?

Anwar: Yes. (laughs)

We chatted a little about my last book and what the King said about it.

Anwar: By the way, when I went to see the Agong, the first thing he said was: "Thank you, I read the book."

Mark: My book?

Anwar: Yes. I sent it from prison. I didn't know whether it reached him or not. I said: "Your Royal Highness, this is the book, and it explains..." He said: "I read the book and I am very sympathetic to you." I said to the King: "These are startling things you are saying, I'm amazed you're talking about miscarriage of justice." You know Mark, he said: "Anwar... I see the truth. I know you have a big rally tonight, you can quote me." The King said: "Clearly a miscarriage of justice."

Opposition victory at GE14

The opposition parties had won the general election by a landslide. I was keen to know if the final result was a surprise to Anwar, and whether he had even expected a win.

Anwar: I had expected a win. You know, you look at the performance in 2013, an impressive 52 per cent of the popular vote. What we needed was the additional penetration into the suburban areas and particularly the rural heartland. We were not too successful in the Malay heartland, particularly in the east coast, but we managed to break through, and that is I think because of a major contribution by Mahathir.

Mark: You would have had the support of the city Malays, Chinese and Indians?

Anwar: The Chinese gave us almost total support. We virtually decimated the entire non-Malay Barisan Nasional component parties. The MCA and MIC¹ are almost gone, maybe one or two seats. And we also trounced all the Malay stalwarts, the chief ministers, ministers on the west coast. As I said, we were not able to penetrate into the rural heartland on the east coast. Most of them in Kelantan and Terengganu rejected Umno, but then they opted for PAS.² So I did anticipate a win, but nobody anticipated this huge landslide. Nobody expected that.

Mark: And the government tried every dirty trick? The gerrymandering of the electorates; banning Mahathir's election

1 Malaysian Chinese Association, Malaysian Indian Congress

2 Parti Islam Se-Malaysia

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material; Tony Fernandez of Air Asia even agreeing to cut flights to prevent people returning to vote. Didn't he back the wrong horse?

Anwar: Yes.

Mark: Despite the same type of electoral fraud that happened in 2013, the Coalition won dramatically?

Anwar: That's what I say. This is historic and unprecedented in a way because the protest was registered through the ballot box, a peaceful transformation against an authoritarian regime. You cannot win elections when the election process is fraudulent. You cannot win elections under authoritarian rule. It is extremely difficult and throughout history you have not seen it. Even under dictatorships in the eastern European countries and some other countries, in Indonesia for example, the electoral process was relatively clean, fair and free. In our case it was not. But I think the groundswell, the people, just decided that enough is enough. That secured victory for us.

Mark: I've met people who have not washed their finger to remove the ink used when they registered their vote. It's almost as if it's a symbol of their ability to vote and to change what effectively was the course of history in Malaysia!

Anwar: Yes. I have been to a few places in the provinces. It's interesting. Every time I met someone, they would say "look" [at their inked finger] to show that they had contributed, which was amazing. You know not just because of me, or Mahathir or the party. They say: "I did it." It's this that turned the tide. It is amazing!

The Anwar-Mahathir alliance

An astonishing aspect of the election win was the alliance between Anwar and Dr Mahathir. His former adversary, turned ally, had dismissed him from office as deputy prime minister in 1998 and contrived to have him convicted and jailed. Mahathir had also been the cause of much that had happened in the previous 37 years, yet here they were, working together to defeat the ruling coalition.

Mark: Well, you couldn't have done it [GE14] without Mahathir, could you?

Anwar: Most of our friends say the situation was just so bad, the economic conditions, the price hike, and the scandal surrounding 1MDB. So we could have registered a slight increase beyond what we achieved in 2013, which is quite near, but I think Mahathir worked indefatigably hard and did influence and garnered a lot of sympathy.

Mark: Was that because they refused to let him display his photograph on the election posters?

Anwar: That was too much. But he worked very hard for a man of 92 years at that time. That was a remarkable feat.

Mark: But it's really like the alliance between Mandela and de Klerk? I mean, they weren't friends as such, but they were able to come together to forge an agreement for fair elections.

Anwar: Well, we went beyond Mandela and de Klerk. They established a sort of understanding that there should be fair elections, agreeing to compete, and that there should be reconciliation.

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In our case, we teamed up. We were a team! And there was this understanding that he assumed office and with an understanding again that I would take over after some time. Well, this is beyond what de Klerk and Mandela achieved.

Mark: What is your relationship with Dr Mahathir now?

Anwar: I should say not only cordial, but much better. I had two long sessions with him after the elections. And my interest is just that the reform agenda cannot be delayed.

Mark: He broke the ice first, didn't he, when he came and visited you in the courtroom at Putrajaya in February 2016?

Anwar: Yes.

Mark: Were you surprised?

Anwar: I was very surprised and very uncomfortable. I was trying to be exceedingly polite, but then we were not ready for that, either me, or Azizah, or the children. We were not prepared for it.

Mark: Because of the memories of when all this started in the late 1990s?

Anwar: But later when he said it was a mistake, no he didn't say mistake, he said: "I should not have dismissed or sacked Anwar. I should not have listened solely to the police." Something like that. The more significant is when he said: "I am committed to make amends in the reform of the institutions of this country."

Mark: So that appealed to you?

Anwar: Yes. And to be fair, and to his credit, he has been able to do it, although gradually. In the last few weeks, he has been doing things in that direction.

Mark: When we last spoke in 2014, I asked you, with imprisonment pending: "Who would take over?" You said there were lots of young people who could assume the positions of leadership. But the irony is of course that it's the old warhorses, the old men, who have triumphed, who have brought this together as the youngsters could not have done.

Anwar: Yes. Well, in hindsight I'm not too sure whether the conclusions of those like PKR vice-president Mohd Rafizi Ramli, who disputed some of the projected election figures because of the groundswell of support and the anger against this and the corruption, were correct. The price hike was so severe that it would have lent it some amount of success, but I thought Mahathir's personal contribution did help.

Mark: Particularly, I suppose in attacking Najib and 1MDB?

Anwar: Yes, although this was done since 2010, 2011.

Mark: That's right. So he entrenched the view that this is coming from systemic corruption.

Anwar: Yes, that's right.

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Mark: As we talk about the old warhorses who really saw it through... it's sad, is it not, that Karpal Singh is not here to witness this victory?

Anwar: Yes, he was instrumental in forging first the strength of the DAP³ into a formidable force among the Chinese in the urban centres. And he was willing to, not negotiate, but accommodate the demands of the new coalition partners. And he was, as I said, instrumental in forging the coalition in the initial period of Pakatan Rakyat.

Mark: And he would be very proud, I think, to see his son as a minister.

Anwar: Yes.

The royal pardon

What interested me as a lawyer was the royal pardon that was granted to Anwar by the King. Usually, a pardon is only granted after the person accepts guilt, but that wasn't the case here. It was reported as being unconditional, which meant that he was not prevented from standing for political office for five years, but could do so immediately.

Mark: I want to ask you about the royal pardon. You know pardons generally follow an acceptance of guilt. There's never been any acceptance by you of guilt. As I understand it, the royal pardon was never given on the basis that you were accepting guilt. Is my understanding correct?

Anwar: I did not apply for the pardon personally. The family did on the grounds of my health, but clearly because of a miscarriage of justice and the conspiracy to annihilate me politically. These were the grounds. And the King, in the first meeting with me, minutes after I was given the royal pardon, made it quite clear: "Look, I'm not doing this because of discretionary power to give pardon, but I'm doing it because I'm convinced that there was a travesty of justice, and I'm doing it to clean the entire record from 1998 to 2018." He went on to say that! In fact, he used the words: "I looked at the chain of evidence, I looked at the chemistry report, and I concluded there was clear travesty of justice, and Anwar, you must make sure that this country, when you take over, does not condone this abuse of the judiciary to settle political scores."

Mark: In relation to the royal pardon, was there ever a time, even for the sake of political expediency, that you were prepared to accept your guilt?

Anwar: No. In fact, under the normal course of Rule 113 of the Prison Act, a person must admit guilt when applying for a pardon. I did not use that. Of course, a prisoner in preparation of a petition for clemency can use Rule 113 to show good conduct. But I did not sign any document to that effect.

Mark: The important difference is that you are now able to stand for a parliamentary seat and will not have to wait five years before doing so?

Anwar: Yes.

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Mark: But now you can stand for a parliamentary seat whenever there's a by-election. Any parliamentary seat in mind?

Anwar: Well, yes, I am exploring some possibilities but there's no urgency, I'm travelling overseas. In a month's time I'll probably have to decide.

Playing second fiddle to wife

I couldn't resist teasing him about being second fiddle to his wife, Wan Azizah, the Deputy Prime Minister, at least for the time being. But his answer was revealing about the dynamics of his family and his non-traditional view of marriage.

Mark: You must be terribly proud of all your family. Your wife is now deputy prime minister. She's your boss. Does that affect the family dynamic at all?

Anwar: (laughs) No! I am not sexist at all. You know, I have six children, and five are girls. They know my position. In that sense, we are more open than most Malaysian families. You know, when we are together there's no priority of the men being first, which is the normal tradition here. For example, when we break fast the men are usually first, then the ladies. No. We break all those rules, all those obsolete, conservative rules.

Mark: So still the firebrand, still the reformer?

Anwar: Yes, I mean you can talk about reforms and then you take a very conservative, traditional line at home — that doesn't make sense! That is why I am quite comfortable with Azizah as DPM.

He then spoke of the event that he had attended that morning to welcome Indian PM Modi, chuckling:

Anwar: When we attend functions, it would be announced: "Arrival of the right honourable deputy prime minister accompanied by Anwar" and everybody would burst out laughing. It becomes standard. People cannot imagine that could have happened in the past. Even the Agong laughed, Mahathir laughed, and this morning Prime Minister Modi, who was here for a function, also laughed.

Reform of the judiciary

Anwar has been scathing in his criticism of the top levels of the Malaysian judiciary. His concern was not only because of the way he had been treated by the courts, but the way in which they had been corruptly influenced to curry favour with the government with the promise of rewards after retirement.

Mark: In 2014, you said the judiciary was compromised because of what's offered to them on retirement, such as lucrative company directorships, and because of that they played to the government. So how do you restore the integrity of the judiciary in this country?

Anwar: Most of them serve on some very key company boards. This has to stop.

Mark: In 2014, you also said that some of the judges at the High Court level were very independent. Judge Zabidin was independent in his decision to acquit you at the end of your trial in the High Court, but you said that it was the judges at the higher level who should be condemned for the way in which you were dealt with on appeal. Do you recall that?

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Anwar: Yes, I do.

Mark: I must say that as a lawyer I was deeply distressed by what I observed, particularly in the Court of Appeal, which was just the most scandalous conduct I have ever seen in a courtroom.

Anwar: You should write that because it is important for the government now to understand what was your impression of what I said — and to name the judges. It's important.

Mark: Well it's a matter of record, and anyway all of them are mentioned in my book.

Anwar: That's good.

Mark: The court judgements were appalling.

Anwar: Yes, they were.

Mark: It was a complete betrayal of the rule of law. I most recall your “never surrender speech”. It was a very dramatic moment. The judges had walked out at that stage obviously because they couldn't take it anymore. But that was an incredible moment when at the same time you could hear the demonstrators outside shouting their support for you.

Anwar: There was no sense of shame.

Mark: But, you can't just sack the judges.

Anwar: There is the possibility they should resign.

Mark: Did the King express any view on the behaviour of the judiciary at your appeals?

Anwar: The King who has the authority to dismiss them said to me: “Look, I'm convinced there was a travesty.” He used that word. “Look at the chain of evidence. Anwar is truthful,” he said.

Mark: So my book actually had an influence on him?

Anwar: Yes. His Majesty's words were clear. “Look at the credit of the witness. It was a miscarriage of justice; a travesty,” he said. He repeated these words in strong terms.

Two weeks after this interview with Anwar in May 2018, Malaysia's two most senior judges resigned from office. Chief Justice Raus Sharif and Court of Appeal President Zulkefli Ahmad Makinudin announced they would step down from their posts on 31 July.

There was controversy about their appointments given that each had exceeded retirement age when that happened. The Malaysian Bar Council opposed the appointments on the basis that they were unconstitutional. Anyway, their resignations happened against a background of a growing list of top officials who had either been removed or resigned from their jobs.

At that moment, I recalled that one of the defence experts at his trial had asked that I pass on his best wishes to Anwar.

Mark: The DNA expert at your trial, Dr Brian McDonald, sends his warmest regards to you and wishes you well.

Anwar: It was an insult to him that the judgement dismissed him as an “armchair expert”.

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Mark: I tell people that Dr McDonald says that it may well have been your DNA, but it could not be the sample taken from Saiful. There was also sperm from another male in the sample that couldn't be explained.

Anwar: The DNA was not so damaging because in the end they didn't talk about sperm anymore, except the judgement. The prosecutor Shafee Abdullah went on about it, but backed away from it when challenged, but the judgement still referred to it.

Whatever Anwar may have thought, the DNA evidence was essential for his conviction. Muhammad Shafee Abdullah didn't so much "back away" from it, as not appear to understand it, saying in his submission to the appeal courts that whatever the defence experts might say, the DNA evidence confirmed that anal penetration had occurred because of the presence of semen.

Dr McDonald testified that the DNA sample presented as evidence of penetration could not have been the sample taken from Mohd Saiful, the man who accused Anwar of sexually penetrating him. The reason was that it was "pristine", whereas it should have been degraded because of the circumstances in which it had been handled and stored. In all probability, it may not even have been taken from sperm cells.

The appeal courts brushed aside the flaws in the DNA evidence by saying the defence experts were just "armchair experts", which was not only insulting, but also simply incorrect.

Revenge on Najib Razak

Much had happened quickly after the opposition's win in the general election. On Dr Mahathir's orders, Najib and his wife were prevented from leaving Malaysia. They were booked on a private aircraft to fly to Indonesia, supposedly for a holiday, but that flight was blocked. Police then raided properties owned by them and found some RM1.1 billion (US\$270 million)

in cash, expensive jewellery, watches and designer bags; both were later questioned at length by the anti-graft investigators.

After being reappointed as head of the Malaysian Anti-Corruption Commission (MACC) by the new government, Mohd Shukri Abdull, at a news conference, launched a scathing attack on the previous government's attempts to cover up the scandal.⁴

At the time of my conversation with Anwar, it seemed almost certain that Najib would be criminally charged, if what PM Mahathir said was true: "We think that within a short while we will have a case against him, we will be able to charge him." Dr Mahathir added that he was facing the problem of "trying to trust people to investigate" Najib.⁵

Mark: You said that it's not a question of revenge now, but rather allowing the law to take its course. That was in the context of what may happen to Najib Razak and others as a consequence of the 1MDB scandal. Do you think that it's important for the country's political health not to be seen to being motivated by revenge?

Anwar: Yes, I came out with a strong statement that due process and the rule of law must be respected. It should not be a trial of the media. People took issue with the MACC, the anti-corruption commissioner, when he went on the attack, virtually indicating that Najib was guilty, so I thought there must be caution here. You must respect due process and you must allow him to defend himself with the best counsel he can have — and we must also ensure that the judiciary, particularly the trial judge, is independent and not under duress.

⁴ Reuters, World News, 22 May 2018

⁵ *New Straits Times Online*, "Dr M: Najib could be charged soon", 15 May 2018

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Imprisonment

Anwar was imprisoned three times. The first, after being convicted in 1998 of sodomy and corruption, was six years. The second term was three and a half years; the third sentence included two years under the Internal Security Act. Did he ever think to flee the country to avoid going to jail again? I knew many friends had asked him to do that. Also, how did he cope in prison and was he given special treatment?

Mark: So effectively you spent ten and a half years in prison. And I know there were some approaches to you suggesting that you should leave the country because some people saw that your conviction was inevitable, given how the conspiracy was structured against you. Did you ever consider that?

Anwar: I didn't ever consider it. Certainly, I did take into consideration the concerns expressed by many loyal friends here and abroad, saying that having served at that time six and a half years incarceration, that I didn't need to prove anything. They knew the system was corrupt and that the judiciary worked under the thumbs of the executive. They said: "Just get out and come back at the right time." But, I always argued with them, what do I tell my young supporters? They would say: "Well, Anwar is from the opposition and could be given protection overseas. But we, as his supporters, will we be given the protection?" So I thought I should be able to present myself as credible, and where the young can emulate and take sacrifices and face the music.

Mark: You said to me at the Federal Court — I was seated behind you — immediately after your conviction that it was a good result in the sense that it was "good for Malaysia"; good for Malaysians to see how their system had been perverted by this conspiracy against

you; and that this was a demonstration of the extent of corruption in the system.

Anwar: In 1998, the conviction was a shock. People didn't expect such speedy trials or know how the judiciary worked. They began to learn that the system was rotten. In 2015, they realised it would probably go on until we put a stop to this. There was no debate, no question about my guilt in this case. They were enraged, but I think they were resigned to the fact that nothing can be done given this corrupt judiciary.

Mark: And that's the way things were?

Anwar: So that means that the only way was to vote them out, which they did.

Anwar was certainly a celebrity prisoner. I wanted to know if he had received any special treatment given his status as opposition leader and whether it was more difficult because of health issues. In some countries, a person such as him would have been given special treatment, so did that happen?

Mark: Did you get any special concessions or considerations in prison?

Anwar: No. The first few months I was still on the cell floor, which was worse than before, but later on they gave me the same cell, with the same medical facilities.

Mark: Did that come about because of your poor health?

Anwar: Yes.

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Mark: Not because you were getting any special treatment?

Anwar: No, they did not. Only I think about two months or a month before the elections, they installed a television in the hospital room.

Mark: I saw a video of you watching Mahathir being sworn in as prime minister. Maybe you might have been thinking that could have been you. But it was a passing thought and it must have been a wonderful moment nevertheless.

Anwar: (laughs) Like most Malaysians, I rejoiced in the fact that the opposition had won and Mahathir had been sworn in. Everybody knew it was a matter of time, a week or two, and I'd be released. We know people were surprised that the King wanted me to be released immediately.

Mark: When I interviewed you in 2014, you spoke about how in prison the sounds are magnified, the turn of a key, the slam of a door. You could hear these sounds. Was it different this time?

Anwar: No, it was the same. You get used to the routine so it did not disturb me as much. I was just preoccupied with reading, stuck with books from morning to night.

Mark: Was it easy?

Anwar: It was more intimidating. The keys are loud and they are steel doors, and my room was special because you could count from the gate to the door of my cell — it takes about 12 or 13 steel doors. Just like a maximum-security prison.

Mark: You told me in 2014 that you don't like the doors shut at your home. Is that right?

Anwar: Most of my friends say I shouldn't function from the party office because we welcome foreign dignitaries, businessmen, and they don't feel that comfortable coming to our party headquarters. So they gave me an office and my first reaction was that I disliked the absence of windows and doors. And I have a bit of a phobia about that, although it's more comfortable than being in a prison cell. But I always think that I should have some place where I can see the world.

Mark: What about at home?

Anwar: My house is interesting enough. In 2006, we had the whole entire bedroom all in glass. Although my wife Azizah says it is not practical, I say it doesn't matter. From time to time you can open the windows. There are no grills, nothing, just all glass. I just feel that I'm free. Otherwise I keep forgetting that.

Mark: Was prison made more difficult because of your health problems?

Anwar: Yes. Of course, the old back problem was much better. But then because of the shoulder injury I had before I entered prison, and then a year after, there was this incident when the prison van crashed into a car, and that was just terrible. After that I thought I had no choice but to undergo surgery, and Najib refused to allow foreign experts to look at it, so I had no choice but to undergo surgery at KL Hospital.

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In 2015, the prison authorities imposed restrictions on Anwar's lawyers accessing him while he was in prison. He was limited to one hour's contact with his lawyers each week, and that was at a time when he was involved in 17 different cases in the civil and shariah courts. His legal challenge was unsuccessful. Physical contact with his family was also restricted.

Mark: But you also weren't allowed physical contact with your family?

Anwar: Yes, I was, but it was irregular. And sometimes, if at all, it was the last five minutes or so, but most occasions, no.

Mark: I know that your lawyers were very unhappy that they were getting less and less access time. Your lawyer, Sivarasa Rasiah, was saying it was down to once a week.

Anwar: We had 17 cases, criminal cases to deal with, so they said first, twice a week, then finally it was only once a week.

Mark: Of course, it must be said that you were running your office from the prison cell.

Anwar: That's true. (laughs)

Mark: The lawyers were taking out your press releases.

Anwar: (laughs)

Mark: So they were trying to stop your meddling in politics, but it wasn't very successful?

Anwar: No, the prison guards, most of them were so sympathetic and supportive. So I could send my letters out. There was a problem because there was a camera, a CCTV in front of my room.

Impact on family

The prosecutions against Anwar have taken over 20 years. He has spent half of that time in prison, was deprived of his liberty and denied access to his family and friends.

His children grew up attending all of his court cases, and watching him being taken away into custody. In 1998, his wife and children witnessed his court appearance when he displayed injuries after having been severely beaten by Malaysia's police chief.

When he was first imprisoned, his youngest child was in kindergarten. So he has missed formative years in their upbringing. His wife had to bring up the children alone. She not only supported Anwar, but was an essential part of his political struggle and "minded the store" when he was in prison. I was interested to know what impact he thought it all had on his family.

Mark: In 2014, I asked you about the effect politics had on your family. You said that when you first went to prison the youngest child was in kindergarten. And now, of course, the girls have grown to be young women. It must have been particularly difficult for you to miss their key years?

Anwar: It was tougher initially because the children were still schooling — in kindergarten, primary school, one or two in secondary school. It was very tough.

Mark: Now you have what, seven grandchildren?

Anwar: Nine!

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Anwar shares a tender moment with his grandson at the hospital before being led away.

Mark: I mentioned to you earlier, my first memory of your daughter Nurul was as a young girl, being in the back of the court at your appeal in 2004. The last time was at the Federal Court in 2015, and there she was, a young woman soon to marry the Agong apparently? [The media reported this rumour.]

Anwar: (laughs) Oh my God! Nurul was so devastated by this rumour.

Mark: Well, if she did, he'd have his hands full!

Anwar: (laughs)

Mark: Anyway, your troubles have lasted almost 20 years now. My first involvement was 14 years ago at your Federal Court appeal in 2004. It's a long time. Do you think you have become closer to your children because they have been with you through that fight?

Anwar: Yes, it's true. I am closer to them because of that. Every time I see them, I give them my full love and attention. I mean, you're right, had I been in my old position I would have seen them less. I'm quite close to the family. I make it a point to have lunch or dinner or outings on weekends when we are together. But prison life has affected me so much that I have become more endearing to them. I feel that when you are lost and alone, you need the family much more than you did when you are free.

Mark: So the time you spent with them, although more limited, was very precious?

Anwar: Yes.

1MDB

Some pundits thought that the 1MDB financial scandal was the undoing of Najib and the ruling coalition. Despite attempts by the government, using every means available to it, to contain and suppress information leaking to the media, they just couldn't keep the issue under cover. Najib's problems increased once the investigation was taken up by foreign prosecutors and press coverage went international. The opposition, joined by Mahathir, kept up a relentless attack on Najib, who attempted to simply brush the matter off as bad judgement, and claiming the US\$700 million deposited into his personal account was no more than a political donation by Saudi royalty. It was alleged to be theft on a grand scale, which would ultimately be exposed.

Mark: The 1MDB scandal. Did Mahathir launch the attack on Najib or did that come from elsewhere?

Anwar: No, we started it in a big way in Parliament in 2011. Najib took it very personally.

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Mark: In Parliament, you described it as a fund that was unaudited?

Anwar: Yes, unaudited. It was extraordinary that a sovereign fund would keep funds in the Cayman Islands, and then there were dubious deals. PetroSaudi, which was a Saudi Arabian oil producer that received funds, was not a credible company. We raised this in Parliament in 2012.

Mark: What was the government response?

Anwar: Of course, at that time, those in Umno, including Mahathir, were against us, so they were all defending it in the 2013 elections. So I think after me, then MP Rafizi focused daily on 1MDB and he went up the ladder, and the international media took it up. Then by the time Mahathir launched his attack against Najib and 1MDB, I think that was the end.

Mark: And that's clearly filtered down through the community.

Anwar: The people were angry with Najib knowing money was stolen.

Mark: Was that the key issue?

Anwar: The key issue was still economic.

Mark: Which is an issue that Mahathir is pushing very hard. There seems to be an economic emphasis to include the scrapping of the high-speed rail link to Singapore and other projects?

Anwar: Yes, what Najib did, which I can't understand, is to announce huge projects, but it's quite hypocritical for a country to just announce hundreds of billions every year. That's what he did. Work with the Chinese, with everybody, just spending money.

Mark: How much?

Anwar: We now realise this is one trillion ringgit, but how do we finance them? Or how do you sustain the economy? So I think there's no choice, either to defer some of these projects or to cancel them, particularly if you know they're dubious deals to keep huge kickbacks to cover up the 1MDB fiasco.

Mark: I remember in 2004 driving through Putrajaya on the way to the Federal Court to observe your appeal and seeing all of the construction that was taking place — and now it's everywhere. There was some suggestion that there had been kickbacks in relation to that development. So cronyism is a long tradition in this country?

Anwar: Yes, of course. It's not new. It has been exacerbated, or increased, under Najib particularly because he has spent all the billions on mega-projects.

Mark: How do you change the economic culture of the country?

Anwar: Institutions such as the anti-corruption agency have got to be given wide powers, but as always, when you give wide powers to the MACC or the police, there is always the danger of abuse. That's why their work has got to be more transparent and they must be made more accountable.

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Mark: Well, we've seen what the police can do when the government has control over key institutions and is minded to prosecute someone. You know exactly. The photograph of you on the cover of my first book shows you with injuries after being assaulted by the Inspector General of Police. Those images are still powerful today.

Anwar: Yes, I have backache until now, even after surgery.

Transition to government

As Anwar points out, history suggests that coalitions don't last indefinitely. The competing views and ambitions of a diverse group of separate parties need to be satisfied. The euphoria of victory soon gives way to the hard reality of governing. So how easy will the transition to government be, and can the unity and discipline shown by the opposition be maintained in government?

Mark: The transition to government has resulted from the bonding together of a whole lot of disparate groups. But you've won the election. Now you have to govern, which is not so easy, particularly after Barisan Nasional has been in power for 61 years. But of course, you were in government and so was Mahathir. So is the transition going to be easy?

Anwar: As I said, to Mahathir's credit his number one task is to undertake some major reform including investigating the 1MDB fiasco. But he has done it. The media should be relatively freer, although the media has not been that free in the sense that they have been used by the old regime for far too long. They have been guarded, and you don't know about their state and their future, but certainly there is more space. Even Najib's statements and criticisms against the government have all been aired on television.

Mark: Looking at the *New Straits Times* this morning, it's a different newspaper than I recall when it was effectively under the former government's control. Obviously, there'll be a few stumbles along the way with ministers finding their feet.

Anwar: Yes.

Mark: Is it going to be easy to balance the different interests of all the groups comprising the coalition?

Anwar: Well, it will be a major challenge. It won't be easy, Mark. You know coalitions in a post-evolutionary phase have never been that successful. Of course, this is something known to the coalition partners. Throughout history, coalitions cannot be sustained, but then if we realise that is the verdict of history, then we have to do more to overcome that.

Reforming the laws of oppression

The government under Najib used the Sedition Act to crush political dissent and to silence the media. In 2014, it unleashed a series of prosecutions against its opponents. It was a major crackdown intended to stifle dissent. Najib had at first promised to repeal the sedition law, but "flip-flopped" when confronted with significant opposition from conservative members of his own party.

In Mahathir's time, the Internal Security Act (ISA) was the favoured means to silence opponents, by providing for indefinite detention without trial. But a sedition conviction had the potential to result not only in a sentence of imprisonment, but also for members of parliament the prospect of being banned from public office for five years. Veteran lawyer and senior opposition MP Karpal Singh was successfully prosecuted for sedition and sentenced on 11 March 2014. Had he lived, he would have been disqualified to sit as a member of parliament. His prosecution and its connection to

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Anwar's conviction is detailed in this book. Najib had claimed that the law was necessary to protect the sanctity of Islam and to prevent insults to other religions, but that's not how it was used. In a sleight of hand, Najib abolished the ISA, but effectively replaced it with more draconian anti-terrorist laws.

Mark: Well, the legislative mechanisms of control were contrived to favour the former government. For example, Najib abolished the Internal Security Act, but really repackaged it into the anti-terrorist legislation.

Anwar: Which was far worse.

Mark: The sedition law was also used as a weapon against the opposition. Are these laws going to be dismantled?

Anwar: Our position is that all draconian laws, including the Anti-Fake News Act, must be repealed. Of course, we have to wait for Parliament to resume towards the end of the month [June 2018], and to consider it from the angle of combating terrorism.

Mark: Every country has that type of legislation.

Anwar: Yes, but then it is abused. Here anti-security laws are more geared towards the opposition.

Mark: Is it best to do this in this early stage when there's this euphoria of victory?

Anwar: Yes, but there's always this debate. If you want to have a reason for reform, you should have a proper plan and take into account all considerations. But if you're realistic enough to

understand the euphoria may not last, it's better that you facilitate the work and do as much as possible in the first 100 days.

Repeal of Section 377A of the Malaysian Penal Code

Section 377 of the Penal Code is another colonial relic, as was the ISA. It is based on a similar provision in the Indian Penal Code, which was introduced in every British colony. Described as "carnal intercourse against the order of nature" including between consenting adults, it is known as "sodomy". Most people understand the offence to relate only to the penile penetration of the anus, but it also covers the act of fellatio. That includes consensual anal and oral sex performed by heterosexuals. In 2007, Singapore modified its sodomy law to exclude heterosexuals who commit these acts, but that hasn't happened in Malaysia.

Despite what has happened to him, Anwar has always been non-committal on whether this offence should be repealed. His own party has mixed views on the issue, which has been dressed up in a religious argument on the basis that it is consistent with Islamic values shared by the majority of Malaysians.

Mark: What about Section 377 of the Penal Code, which is the offence of sodomy, and which was used so effectively against you obviously because it was the offence that would most humiliate you in the eyes of the Malays? What are your views on that? Should those colonial offences in the Penal Code be repealed?

Anwar: I've said this piece of legislation is archaic, obsolete, introduced by the British, and a separate law of the past that is certainly not feasible nor relevant anymore. Now do I say that you should decriminalise sodomy? But here the issue is the public display of the act. It is not the duty of the government to penetrate every single room.

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Mark: Michael Kirby is very strong on this, as are many others including myself, and you know that the offence doesn't only apply to homosexual acts, but also applies to heterosexual acts of fellatio, of oral sex, and anal penetration. It means every Dato' in Malaysia would potentially be guilty of that offence.

Anwar: (laughs)

Mark: But is there hope for reform or repeal of that offence?

Anwar: I think any study of it should be comprehensive. Obsolete legislation must go, and so must draconian acts of parliament. Also things like the reference to sexual misconduct, if deemed misconduct, even if introduced to protect the sanctity of marriage in the country, must not be used for political interest because, as you know, the legislation is archaic. Even if we introduce some sort of legislation on the pretext of protecting public morality and to support the sanctity of marriage, you still need to have laws that can protect the interests of people. But here, you know with the Islamic religious squad, they go to one area where they will find homosexuals and lesbians and just haul them up without conducting a proper investigation. These people have very little defence to this happening, and I think this has to stop.

Repeal of death penalty

Anwar's views on the death penalty are probably no different to most Malaysians. True it is that it has rarely been exercised, but there have been recent occasions, mostly relating to drugs, where the death sentence has been carried out.

Mark: MP Ramkarpal Singh in this morning's *New Straits Times* is quoted as supporting the repeal of the death penalty. I know this is a contentious issue in most countries. For example, the reason Australia will not repatriate the fugitive policeman Sirul Azhar Umar to Malaysia is because he faces the death penalty. Is this part of the body of laws that will be reviewed?

Anwar: The consensus in Malaysia is that the death penalty should continue, but there is a strong argument against it for drug addicts and pushers. It is different for the offences of murder or robbery that cause severe injury to victims or even death, and people think that only under those circumstances should it apply.

Mark: Malaysia has sparingly enforced the death penalty in the past 10 years, hasn't it?

Anwar: Yes.

Mark: I am sure those who conspired against you would, if they could, have sentenced you to death.

Anwar: (laughs)

Mark: But seriously you still have to play the majority as well, don't you? While it's a good idea to have reforms both on economic and social issues, there is still the need to balance the interests of the Malay heartland, which you are very good at. It is a powerful base that helped elect you?

Anwar: That's true.

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Affirmative action policies for Malays — still necessary?

Malays make up the majority of the population in Malaysia. They comprise about 61.7 per cent of the overall population, while the Chinese are 20.8 per cent, and Indians 6.2 per cent.⁶

The “special position” of Malays is recognised in the Constitution of Malaysia, in particular Article 153, and over the last 60 years they have received “benefits” not available to non-Malays. These include quotas reserved for them in the public service and admission to universities, as well as discounts on houses and property. Umno in recent years increasingly “played the race card” to preserve its rural base support. Najib himself stirred racial and religious fears by painting his opponents as anti-Malay and anti-Islam.

On the other hand, the opposition included all races. So, had electoral victory changed the way race and religion is being seen? Was it time to treat all races equally?

Mark: When I interviewed you in 2014, you said that Barisan Nasional presented itself as the great protector of the Malays but did nothing for the average Malay. It was purely for the benefit of the ruling elite, which benefitted financially and otherwise, but meanwhile the ordinary Malay got nothing from them?

Anwar: So the *Bumiputera* policy was used to protect the ruling elite. That was my point. So why do you need to continue to protect that? Then there is the liberal view that you need to dismantle all or you ensure that UITM⁷ meant for Malays should open up to everyone. I told them we have just obtained power and these decisions are subject to negotiations. It’s not good to impose these conditions.

⁶ CIA The World FactBook, 12 July 2018

⁷ Universiti Teknologi MARA (MARA University of Technology)

Mark: The restaurant manager at the hotel where I am staying at the moment was born in Malaysia, worked in Singapore, and he is Indian. He told me that he just wanted an equal playing field. He thought what was critical was education.

Anwar: Yes.

Mark: I know many young people of all races have left this country in the last decade because under the past regime they saw no future. So what future does Malaysia now offer? What can you offer these young people to prevent the brain drain from the country continuing?

Anwar: We have to reassure them that there is a future for everyone in this country, which is why I mentioned the announcements made by the Minister of Finance.

It was obvious that Anwar was very tired, and said so, which is hardly surprising given his hectic schedule. He asked for a minute to wash his face to freshen up. When he returned he seemed more animated.

Anwar: This is the only time I can sleep! When I was on Channel NewsAsia, I nodded off. My son, who is in New York, texted me: “Papa, please don’t ever do that.” I said: “What?” He said: “Don’t sleep during an interview.” What do I do, interviews from eight in the morning, one after another?

Mark: I thought it was just my questions?

Anwar: (laughs) I’ve waited for you three years! Can’t you give 20 minutes? That’s what everybody says! We’ve voted for you for

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years, now can't you just give us 20 minutes! Yes, but there's 101 people waiting.

Mark: I know.

Anwar: But it's good, Mark, you did a great job. We are very appreciative.

Mark: Thank you. This book completes the circle. It is important.

Was Anwar's prosecutor paid money from 1MDB?

Shafee Abdullah was a controversial appointment to prosecute Anwar at both appeals to overturn his acquittal in the High Court. Firstly, he wasn't a member of the prosecution service and secondly, he was a prominent Umno lawyer. In fact, he was a confidante and personal lawyer to Najib and many of Umno's senior politicians and major supporters.

Coincidentally, he was at Najib's house on the night Mohd Saiful came calling to reveal that he had been sexually assaulted by Anwar. When I asked Shafee Abdullah about that, he denied meeting or speaking with Mohd Saiful that night, and said that he was there only to advise Najib's wife on an unrelated matter.

On 31 May 2017, online whistleblower site The Sarawak Report claimed that it had obtained documents showing that Shafee Abdullah had received RM9.5 million (US\$2.4 million) in two transactions from Najib's personal account, which was claimed to have been from 1MDB funds. The second transaction of RM2.5 million was paid into Shafee Abdullah's account on 17 February 2014, just a fortnight before the Appeal Court overturned Anwar's acquittal. The timing of that alleged payment raised questions of whether it was a reward for prosecuting Anwar. According to the report: "Quite apart from the illegality of the source there are also potential glaring conflicts of interest."

Mark: What about the payments made to Shafee Abdullah?

Anwar: I told my lawyer Gopal Sri Ram that we have to take it up using this window of Shafee getting 9.5 million ringgit. Now I'm waiting for some evidence from the 1MDB files of it being paid to the prosecutor. That we know. But from the 1MDB files we understand that 30 million ringgit was transferred to him the day I was convicted. Now we are just waiting for that.

Foreign policy

Mark: I want ask you about foreign policy. Do you have any views about the way Malaysia should now be seen by the rest of the world?

Anwar: Mahathir has been there for a long time, you know. There is clearly no dispute on foreign policy.

Mark: Nothing really changes?

Anwar: So because of his stature as a former prime minister people come to him. That is not the tradition. Singapore, Brunei and now surprisingly the PM of India have come to congratulate him.

Vision for Malaysia

Mark: What is your vision for Malaysia?

Anwar: A peaceful, multi-racial, democratic and just economy. I have strong views about inequality and the fact that economic experts talk about promoting growth but very little about abject poverty and inequality.

Mark: When the money filters down then the poor can be educated.

Anwar: Trickle-down economics isn't an impressive argument. In reality, unless you have a definite, firm, effective, affirmative set of action policies it will not work. What I prefer is to dismantle the New Economic Policy because it is race-based. The poor and underprivileged must be assisted.

There were many topics that we hadn't covered, but we had exhausted our time. We had kept an Indian TV crew waiting in another conference room for more than an hour, and Anwar's staff kept prompting him to end our interview, but he ignored them.

What I then asked him to do was sign some of my books for the staff of the publisher, who had sat in on our discussion. He agreed without hesitation, and just as quickly quipped, "Ten dollars per book. I'm unemployed!" which made everyone laugh.

I then said to him: "Did you give the King the copy of the book I signed for you?" He answered: "Yes."



I asked him: "Do you want me to sign another for you?" He replied: "Of course." I said: "Ten dollars please". He chuckled.

After signing books, he rushed off for another interview, saying: "You see, I had all my peace in prison."

About the author

Mark Trowell is a leading Australian criminal lawyer. He was appointed Queen's Counsel in 2000. He has been a defence lawyer for most of his career, but has also prosecuted criminal cases for the Director of Public Prosecutions. He has appeared as counsel at two Royal Commissions. In December 2006, he was appointed by the Australian Government to undertake a review of the legislation governing the *Australian Crime Commission*.



He is co-chair of the criminal law standing committee of LAWASIA. In recent years, he has been an international observer reporting for several organisations at the criminal proceedings against veteran Malaysian advocate the late Karpal Singh, Minister Rishad Bathiudeen of Sri Lanka and UDD Leader Jatuporn Prompan in Thailand. He has also represented the interests of the Geneva-based Inter-Parliamentary Union at the criminal trials and appeals of opposition leaders Anwar Ibrahim in Malaysia and General Sarath Fonseka in Sri Lanka.

Mark is the author of two bestselling books, *Sodomy II: The Trials of Anwar Ibrahim* and *The Prosecution of Anwar Ibrahim: The Final Play*, published in 2012 and 2015, respectively.