Terrorism, Law & Democracy[*]

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This is a conference on Terrorism, Law & Democracy, but I think I have probably been brought here to talk about terrorism and that is what I propose to do. Let me begin with a context-setting exercise, because as is often the case when large and emotionally powerful events happen, we have tended to lose the plot a bit over the past 6 months.

First, a question: what have we actually had by the way of further terrorism against American targets since the appalling events of September 11? We have had one rather pathetic shoe bomber. We also had an anthrax scare, but that almost certainly had nothing to do with the perpetrators of September 11. Even the US Government has now come around to the view that the anthrax attacks—which caused a total of five deaths, the equivalent of one bad car crash—were probably a coat-tail operation by home-grown terrorists of the Timothy McVeigh persuasion.

Only one of the hundreds of people under arrest appears to have been directly connected with the attacks on the 11 of September—the man who requested the flying instructor to teach him how to fly but never mind the takeoffs and landings (which understandably aroused suspicion)—and Massaoui was actually arrested in August, before the attack. None of the most senior leaders of Al-Qaeda have been apprehended. One very weak country's Government has been overthrown in Afghanistan, and we are allegedly about to embark upon overthrowing another Government in Iraq (although we have not yet been offered any convincing link between Iraq and Al-Qaeda).

That is the sum of the events of the past six months. We have spent several forests' worth of newsprint speculating about various aspects of the "terrorist threat", some thousands of people have been arrested and some hundreds detained over long periods of time on distinctly dubious grounds, and our various legislatures have passed sweeping antiterrorist laws that substantially abridge normal civil rights—*Bill C-36*[1] here in Canada, the Patriot Act[2] in the United States, and the *Antiterrorism, Crime and Security Act 2001*[3] in Britain—but the sum total of actual terrorist activity against Canada, the US and Britain during these six months would not justify keeping an extra night-light on.

What we need, therefore, is a sense of proportion. Let us begin with the fact that terrorism is not an ideology, it is a technique. You cannot make war on a technique: declaring war on "terrorism" is like declaring war on carpentry.

What kind of technique is terrorism? It is essentially a means of behavior modification, and it comes in two basic forms: state terrorism and non-state terrorism. State-linked terror, in turn, comes in two common varieties. It is often used by a Government against its own population—as in the many police states of the recent past and present where terrorizing the population was a normal tool of Government—or it may be used against foreigners by a Government at war.

Terror against foreigners can assume horrendous proportions when it has the resources of an entire industrialized state behind it. During the last four years of the Second World War, for example, British Bomber Command, made up of mostly British and Canadian crews, was destroying civilian lives and property on a scale equivalent to the World Trade Center losses on half a dozen different nights each month. The American raids on Japanese cities in 1944-45 killed even larger numbers, and the nuclear weapons dropped on Hiroshima and Nagasaki were fifty World Trade Centres at once. Subsequently, the Cold War was all about the "balance of terror," in which our side threatened to drop 20,000 nuclear weapons on innocent Russians and they would reciprocate with

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[1]   *Anti-terrorism Act*, S.C. 2001, c. 41 [hereinafter *Bill C-36*].

[2]   Uniting and Strengthening America by Providing Appropriate Tools required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub.L. No 107-56, 115 Stat. 272.

[3]   (U.K.), 2001, c. 24.

20,000 nuclear weapons on our innocent citizens. State-organized terror as a behavior modification device can be VERY effective.

Terror carried out by non-state actors is a much less effective technique even at the best of times, because their resources are so much smaller. Indeed, the only kind of non-state terrorism which has a good track record of success is that which occurs in the context of national liberation movements. You are among your own people, so recruiting is easy. The targets are very visible and vulnerable: the occupying forces. And you don't actually have to win the war through terrorism, which is practically impossible. You just have to be enough of a nuisance and a drain on the resources of the occupying imperial or colonial power, and keep going for long enough—and eventually your enemy will decide to cut his losses and go home: Israel in 1945-47, Algeria in 1956-62, Mozambique in 1960-75. It is relatively easy for non-state actors in national liberation wars to win through terror, which is why, in the end, men like Archbishop Makarios and Jomo Kenyatta both got to have tea with the Queen.

Then there is the weakest form of terrorism: terrorism by non-state organisations against their own Governments, or against foreign Governments that are not occupying their national territory. That is what the West is up against in its confrontation with Al-Qaeda: terrorism at its weakest. From the anarchists who assassinated numerous heads of state in Europe and the United States in the late 19th and early 20th centuries down to the mostly far-left terrorists of the 60s and 70s and 80s, the Tupamaros and Weathermen and Red Army Factions, this sort of terrorism almost never achieves its goals.

One indication of how weak these movements really are is that they almost all follow the strategy which is best known by the French phrase: *la politique du pire*: the strategy of making things worse. Lacking the strength themselves to overthrow the Government they hate, the terrorists' strategy is to drive it into an ever more repressive posture by their outrages. If they succeed in making the Government ruthlessly oppressive (so the theory goes), then the people at large will finally turn against the Government, unite with the "vanguard" terrorists and rise in their righteous wrath to bring the Government down. This wish-fulfilment dream of a strategy was first codified by the Brazilian terrorist of the 1960s, Carlos Mariguela, who wrote the "Mini-Manual of the Urban Guerilla," and it underlay the strategic thinking (insofar as there was any)

of other Latin American guerilla/terrorist movements from Argentina's Montoneros in the 70s to Peru's Sendero Luminoso in the 90s.

In a more attenuated form, it was also the strategy of the purely urban "guerillas" who proliferated in the developed countries in the same period. From Italy's Brigate Rossi and Germany's Baader-Meinhof Gang to the Japanese Red Army and the Black Panthers and Weathermen in the United States, they all believed that their provocations would "unmask the repressive tolerance of the liberal bourgeoisie" (in Herbert Marcuse's charming phrase), driving the state into more and more repressive actions which would, in turn, drive the population into their arms. In reality, of course, while they frequently managed to make the state more repressive—Latin America is full of examples of that—the state then crushed them. They never win.

I must mention one minor exception to this rule: the campaign of international terrorism waged by the Palestine Liberation Organisation (PLO) between about 1967 and 1985. The reason that succeeded was because its aims were so extremely modest. The PLO wasn't trying to change anybody's Government; it was simply trying to re-brand the Palestinians. The real objective of the campaign was to make the world stop referring to them as "refugees" and begin talking about them as Palestinians—because once you start calling them that, you are implicitly acknowledging that they have a putative right to some part of the territory of the land called Palestine. Once the PLO had achieved that goal, through judicious use of international acts of terrorism and careful manipulation of the media, it stopped. Apart from that single exception, non-state terror directed against a target that is not a foreign occupier, whether operating within a single state or across the entire international community, has no successes whatever to its credit.

Al-Qaeda, to come to our current concern, is an organisation of this last order. We can treat its ideology as largely irrelevant, except insofar as it gives it a larger or smaller pool of potential sympathizers. Whether they are Palestinian nationalists, anarcho-syndicalists, gutter Trotskyites or Islamist fundamentalists, non-state terrorists attacking foreign targets are all similar organisms operating in the same environment, and there are really only three relevant questions to ask about them. The first is: what are they after? Is it a modest, attainable goal like that of the PLO, or the familiar nonsense about world revolution, or something in between? The second question is: how large or small is their pool of potential sympathizers? And the final question is: how repressive

do we need to become in order to defeat these terrorists? Bearing in mind, of course, that you can easily overdo that sort of thing.

Before trying to answer these questions, let me explain something about the nature and origins of Al-Qaeda. First of all, despite all of the loose talk about Muslims and Islamist extremists, Al-Qaeda in practice is almost exclusively about an Arab phenomenon. Almost all of the members of Al-Qaeda are Arabs and its roots are in Arab politics, not in some broader "Muslim politics." (Frankly, there is virtually no such thing as "Muslim politics": to talk about the politics of the Muslim world is as meaningful as to talk about the politics of the Catholic world.) Within the Arab world, however, there is a very widespread sense of injustice and desperation, and a strong tendency to blame the disasters of the past century of Arab history on the West—a tendency which, we should acknowledge, is not entirely unrelated to the reality of 20th-century history.

All other strategies for rescuing the Arab world from tyranny and poverty having failed, for the past 20 years and more there have been Islamist revolutionary groups in most of the larger Arab countries. Operating under different names in the various countries—the Islamic Armed Groups in Algeria, Islamic Jihad in Egypt, the Ikhwan (Muslim Brotherhood) in Syria, Al-Dawa in Iraq—and not very closely connected to one another, these groups have been trying to overthrow the regimes they live under by stimulating popular revolutions. The target regimes are not all pro-Western (Saddam Hussein's Iraq could never be accused of that), nor are they all secular (the Saudi Arabian ruling family has also come under attack), but most are both secular and pro-Western—and all of them would qualify as "police states." So the Islamist revolutionaries face a large problem: they are too few and too weak to overthrow these regimes themselves, and they cannot persuade the cowed and passive "masses" to join them.

Two decades of low-grade civil war between Islamic revolutionaries and secular regimes in most of the major Arab countries have left hundreds of thousands of dead—the whole town of Hama levelled in Syria, a thousand massacres in obscure Algerian villages, President Sadat assassinated in Egypt, the savage repression in southern Iraq in 1991—but nothing has changed. The regimes are all still in power, the religious militants have become ever more extreme, and still the bulk of the population refuses to come down from the fence. Few Arab peoples

love the brutal, corrupt and incompetent Governments that rule them, but they do not love the fanatics either. Stalemate.

This was already the situation when Oussama Ben Laden came onto the militant scene, and the task he set himself, essentially, was to break the stalemate. What is different about his creation, Al-Qaeda, is that it is an umbrella organization. It rises above the limitations of a purely national base, and aspires to become the link between the pre-existing national Islamist revolutionary organizations in various Arab countries. Money, weapons, ideas and people pass through Al-Qaeda from one country to another, and insofar as there is strategic thinking in the Islamist movement, it is mostly done in Al-Qaeda.

Now we are in a position to answer two of our three questions. What does Al-Qaeda want? In practice, it wants to bring about anti-Western revolutions throughout the Arab world, overthrowing both secular regimes and religious but pro-Western ones like Saudi Arabia's.

It would like to spread this revolution throughout the broader Muslim world as well, but given its almost exclusively Arab membership that seems unlikely. It also dreams of a *jihad* by an alliance of the whole Muslim world, newly united behind its own fundamentalist convictions, that brings the West to its knees, but this is on a par with the fantasies of world revolution of one kind or another that so often help to sustain this sort of terrorist organisation in the long, boring periods between operations. Its major practical objective, however, is not fantastic. Anti-Western revolutions in the major Arab countries, though difficult to arrange, are far from impossible. So Al-Qaeda has to be taken seriously: its key objective, though more ambitious than the old PLO's, is still attainable.

The second question was: how big is its pool of potential support? Again, it is potentially big enough to be serious. In terms of mass support, it does not extend far beyond the boundaries of the Arab world, but that is over 250 million people—and if Al-Qaeda could also call on the support of even a relative handful of activists in the Muslim countries of Asia and Europe and in the Muslim diaspora in the West, then it would clearly be a bigger threat than, for example, the old Baader-Meinhof Gang. But I must stress that this is only *potential* support. Actually mobilizing and harnessing that support is something that Al-Qaeda has not yet achieved. The key step that would enable it to start operating at that level would be

a successful takeover in a major Arab country, and that is therefore where it directs the main thrust of its strategy.

This brings us to the specific strategy between the attacks on September 11. You will have realized by now that I do not believe in the phrase "mindless terrorism." On the contrary, I think that there was a clearly focussed strategy behind those attacks which sought to further the long-term goals of the Al-Qaeda. The September 11 attacks were intended to cause anti-Western revolutions in the Arab world.

The idea for the September 11 attacks was probably born out of President Clinton's response to Al-Qaeda's attacks on American embassies in East Africa in 1998. You will recall the attacks, three and a half years ago: two suicide truck bombs outside the US embassies in Nairobi and Dar es-Salaam that killed about 240 people and injured over 5,000. American Embassies are pretty heavy fortified places these days, so there were relatively few Americans killed—about two dozen—but the attack nevertheless required a response from President Bill Clinton, who as you may recall had rather a lot on his plate at the time. His response was 75 cruise missiles, fired almost at random at Middle Eastern targets that US intelligence suspected of being connected with Al-Qaeda.

It was atrociously badly done: many innocent people were killed by the missiles, and it is quite possible that *no* members of Al-Qaeda were hurt. It served Mr. Clinton's purposes in the sense that it gave CNN pictures of American munitions exploding in Middle-Eastern-looking environments, which was all he needed to get him off the hook with US public opinion. But I think it also alerted Al-Qaeda to an opportunity they may not previously have considered. They had killed two dozen Americans in East Africa, and elicited a grotesquely disproportionate riposte of 75 cruise missiles that killed hundreds, perhaps as many as a thousand innocent Muslims. What if they went to the United States and killed thousands of Americans in the most dramatic, spectacular way possible?

If the US response followed the Clinton pattern, then they could expect an absolutely massive, indiscriminate and horrendous retaliation against Middle Eastern targets, with not too much concern about getting the targets right. It would kill thousands upon thousands of innocent Muslims (plus, of course, some members of Al-Qaeda, but they are ready enough to die)—and that counter-atrocity could ignite a wave of anti-American anger that would provide the long-missing fuel to boost those

failed Islamist revolutions in the various Arab countries off the ground. After all, if the United States could be suckered into making this kind of blunder, Al-Qaeda's script in the Middle East would write itself from that point on: "Look at your neighbors, dead under their houses, innocent Arab men, women and children killed by American bombs. Now look at your pro-American Government, still in their pockets even after all this. Brothers, sisters, it is time to destroy the rule of these puppets and infidels. Follow us."

In many parts of the west in the immediate aftermath of September 11, the fear was exactly that: that the United States, in its grief and fury, would fall into the trap that had been laid and launch a huge, indiscriminate attack on targets throughout the Middle East that it associated with Al-Qaeda and its sympathizers. If that had happened, I think it is quite possible that an important Arab Government like that of Egypt or Saudi Arabia could have fallen. But the US response in the first months after the attack was virtually flawless.

It did not deliver a massive Clintonian-style retaliation that would have played into Al-Qaeda's hands. On the contrary, for 20 days no American soldier anywhere on the planet fired a shot in anger. The United States stopped, thought about it, saw the trap, and did not walk into it. To what do we owe this good fortune?

Mr. Bush may be a highly ideological and even a parochial man, but he is not stupid. Nevertheless, I think that in this case the credit should go mainly to his senior advisers, Vice-President Dick Cheney, Secretary of State Colin Powell, and Defence Secretary Don Rumsfeld. It is very unusual for an American president to be surrounded by senior advisors who know their way around the Middle East, but all three of these men worked for George W. Bush's father when he was president during the Gulf War a decade ago. They have visited the Middle East many times, they have met the leaders, and they have been briefed on the intricacies and subtleties of Arab politics until their eyeballs were spinning. They were just the right people to see through Al-Qaeda's strategy in September. The consequence was that the United States paused, did nothing foolish—and when it did finally respond, it did not attack any Arab country. Instead, it attacked Afghanistan.

To give Al-Qaeda some credit, its attacks did succeed to this extent: they created a situation where the US Government had to attack somebody. After September 11, American public opinion was so aroused that it was politically imperative that the United States retaliate militarily against some country: otherwise, Mr. Bush would be facing impeachment by now. And if you had to have a war somewhere, Afghanistan was the ideal target. It was a legitimate target, because Al-Qaeda did have its headquarters there and the Taliban regime was too obstinate to hand him over. There was general international support for a US attack on Afghanistan: every great power signed off on it and the United Nations Security Council duly authorized it. Most important of all, it would be a short, cheap war, because the Afghan regime was possibly the most incompetent on the entire planet and the Taliban army was certainly the worst trained, worst led, and worst armed in the entire region. It took the United States only 10 weeks to bring the Taliban regime down. There is a bit of mopping up still going on, but the war is over, and hardly any American lives were lost.

So down to the 31st of December, the United States did not put a foot wrong on the international front. Metaphorically speaking, it should have declared a victory and gone home at that point. I'm not suggesting that it should literally have pulled out of Afghanistan on January 1 (though the sooner the better, really), but rather that, having achieved everything that could be usefully achieved by military force, it should have reverted to a peacetime footing and concentrated on the diplomatic, police, and intelligence work that would actually help to avert future terrorist attacks. We are therefore confronted with the question of why the Bush administration has instead declared an unending "war on terrorism" and discovered an "axis of evil"—none of whose alleged members have any discernible links with the Al-Qaeda attacks.

I cannot answer to these questions. The fact that a major attack occurred on American soil, after a period of generations when the United States was blessedly exempt from the disasters that other nations experienced, has certainly created a sense of outrage in many Americans, quite possibly including the President himself, which fuels a response that is disproportionate to the real level of threat. One can make an analogy with the aftermath of a burglary: the fact of trespass and the sense of violation is often more upsetting to the home-owner than the actual losses.

However, the nomination of Iraq, Iran and North Korea as an "axis of evil" that must be expunged does suggest that there is also an element

of political calculation in the administration's post-December policy. None of these states was implicated in the September attacks on the United States. Indeed, none of them has been implicated in any acts of international terrorism outside the Middle East for at least a decade (though Iran and Iraq both gave aid to various South Lebanese and Palestinian groups fighting Israel). Despite a great deal of Bush administration rhetoric casting aspersions on these three countries, there is not the slightest evidence that any of them has even contemplated support for future terrorist attacks against the United States. Their selection as targets seems to be driven largely by pre-existing official American dislike of their regimes.

They are quite popular targets with American public opinion, however, being familiar villains whom the US public believes to be capable of dastardly deeds of every kind. And the stately pace at which Washington has been moving towards actual military action against the designated first target, Iraq, gives reason to hope that the whole enterprise is really a temporary political expedient. Actually attacking Iraq would be a hugely costly and risky enterprise for the Bush administration. With no bases in the Arab world and no local armed opposition available to spare the US from having to commit troops on the ground, American military losses could quickly exceed the level that the US public is willing to tolerate. Moreover, there would be absolutely no guarantee that the US military could capture or kill Saddam Hussein even if it occupied the entire country: remember Oussama Ben Laden and Mullah Omar.

Threatening to attack Iraq, on the other hand, is a virtually cost-free exercise which keeps Mr. Bush's "wartime" popularity high and offers the possibility of useful political returns in the November midterm Congressional elections. One need not even assume a deliberate cynicism in this approach; a simple decision to postpone any decision on further military action until next winter allows the administration to reap the continuing benefits of national solidarity behind the Commander-in-Chief in "wartime", without committing it to any specific action at a later date. We should hope that this is actually what is going on, since an attack on Iraq would entail throwing away much of the benefit that the United States has gained by its hitherto carefully modulated military response, and could even unleash the anti-American upheavals in the Arab world that were the original goal of Al-Qaeda's strategy.

Meanwhile, the third question: how repressive do our societies need to become in order to counter the threat of further attacks by Al-

Qaeda? It is here, above all, that a sense of proportion is needed: the distortions we accept in our own free institutions will depend, in large part, on how big we assess the threat to be. So how big is it?

The loss of life in the attacks on the United States on the 11th of September, horrifying though they were, were only slightly bigger than the average monthly US traffic fatalities at any time over the past 60 years. In fact, about as many Americans were killed by gunshot wounds (accidental, self-inflicted and hostile) during the month of September, 2001 as died in the Twin Towers. And whereas the traffic and gunshot tolls recur every month, the terrorist attacks of last September may have been a one-off.

Even if there were recurrent terrorist attacks on this scale every six months or so (which seems highly improbable), the losses would not be remotely comparable to what happens in real wars. During the four years of the First World War, Canada, which then had a population of only 9 million, lost well over a thousand killed a month: the equivalent of six World Trade Centres a year in a country with the population of New York City. During the Second World War, the United States lost around 7,500 dead per month for 4 years out of a population half the present size.

That is what happens in real wars, even to countries that shelter behind vast oceans and see no fighting on their own territory. If your geography is less fortunate then the numbers get dramatically worse: between 1941 and 1945, the Germans lost around 200,000 dead a month, and the Russians lost a million people a month. So think about the curbs on civil liberties that we accepted in those emergencies, and then scale them back to the level appropriate to a "crisis" that threatens to kill a few thousand people a year.

But then there are the alarmists who claim that this is only the start. Next will come chemical attacks, or biological attacks, or radioactive "dirty bombs", or even real nuclear weapons smuggled into cities and exploded. Without going into excessive detail, I would just point out that the probability of attacks of this sort is exactly what it was five years ago, or ten, or even twenty. It was very small then, and it's very small now. If anything, the risk of a terrorist attack with a nuclear weapon has actually decreased since the early 90s, when the chaos following the collapse of the Soviet Union briefly created a serious possibility that one might fall intact into unauthorized hands.

That probably didn't happen, because we would probably know by now if it did. It's hard to think of a reason why terrorists in possession of a nuclear weapon would wait ten years before using it, and equally hard to believe that a nuclear weapon that has gone ten years without expert maintenance would still work. But let me go even further: even if there was a substantial risk that some group of terrorists, somewhere in the world, would actually detonate a nuclear weapon in some city at some point in the next ten years, how much should we up-end our world in the hope of diminishing the probability of that event?

The World Trade Center attack happened once. Nothing of that scale may ever happen again: we may never lose a thousand people to terrorism again in a single event. But even if we do one day face the risk of losing a quarter million people to a terrorist attack with a nuclear weapon, is some small hope of lowering the odds on that happening worth the cost of restricting the civil rights of six thousand million human beings, or even just 275 million Americans?

The problem is all in the public's lack of perspective and its inability to understand risk levels. I know smokers who worry about terrorism. This ignorance opens the way for all of the usual suspects to nose up to the trough, eager to inflate the apparent risk because there is some employment or profit in it for them. They will say that the risks are enormous, and that shrinking them even a little bit justifies a major expansion of the security services and major curbs on civil liberties.

I would argue that the risks are manageable, and best dealt with through the normal intelligence and police agencies (with some reinforcement and reform, perhaps), without any need for limitations on our normal rights as free citizens of a democracy. And I would remind you, finally, of what Georges Clemenceau said after a long career in French politics, ending up as prime minister, in the course of which he was the recipient of a great deal of bad and self-serving advice: "If you believe the priests, nothing is holy. If you believe the doctors, nothing is wholesome. If you believe the soldiers, nothing is safe." That is called *déformation professionelle,* and it applies to the terrorism experts too.