

Before September 11—Some History Lessons

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When Canada joined the “war on terrorism” after the attacks of September 11, the decision was not without historical precedents in the postwar world. The Cold War and the October 1970 Crisis in Quebec offer two intriguing parallels to the present situation, with a number of useful lessons to be drawn from these experiences.

I. THE COLD WAR

In the late 1940s, Canada went to “war”, called a Cold War, against Soviet Communism. Just as Canadian troops have found themselves fighting “terrorists” on the front lines in Afghanistan, Canadian soldiers in the Cold War soon found themselves battling Communists in Korea. Both wars include a home front, and the identification of enemies within. Both wars involve Canada in ever closer integration with the Americans, the generals directing the conflicts. Both wars, especially in their initial, anxious, stages, raise issues of individual and group rights in contrast to the demands of the community for security.

September 11 was, as many have pointed out, America’s 21st century Pearl Harbor. As such, it has compelled an immediate and aggressive American response. The Cold War turned out to be an American-led and American-directed conflict, but in its earliest stages, it did not follow the script of December 1941. In fact, the first public notice that the wartime alliance was about to break down into inter-bloc rivalry and hostility came, in of all places, Ottawa. How this small, dull, rather provincial capital became the focal point for great power conflict in 1945/46 is part of Canadian mythology. Igor Gouzenko, the first important Soviet defector, exposed a spy ring operated by Canada’s ostensible wartime ally, the USSR, exploiting the willingness of Canadians sympathetic to Communism to betray their own country on behalf of a higher loyalty to the Socialist motherland. Canada, it was said, experienced a sudden wake-up call, communicated this to its allies, and

then settled in for a prolonged struggle on many fronts with the new enemy, once its senior partner had taken overall charge.

The struggle lasted four decades, and for most of this time, Canada was a very junior partner, toiling in alliance obscurity, very occasionally raising a cautious criticism, only to be quickly cuffed for its temerity. But it is important to understand that when the Gouzenko spy scandal broke, first in secret in September 1945, and then publicly in February 1946, Canada was, in important ways, on its own, without clear models to guide it. It consulted and received advice from its close allies, but it had to work out the details for itself. Its response stamped a distinctive “made in Canada” look to Canadian Cold war security policy.¹

Once the extent of Soviet espionage and Canadian complicity had become apparent from the documents and information Gouzenko brought with him, the Government of Canada acted with what might be called the firm smack of Prussian command. There was a secret Order in Council, known only to three Cabinet Ministers, under the authority of the *War Measures Act*, even though the war had been over a few weeks before Gouzenko defected, empowering the Government to act against the suspected spies with little or no regard for civil liberties, outside the normal processes of the legal system. Armed with this, the Government then bided its time, consulted its allies, studied the evidence, watched the suspects, and waited for the right moment to strike in light of the international scene.

When it did strike, in mid-February 1946, it was with a series of predawn raids by black leather jacketed Royal Canadian Mounted Police (RCMP), who entered homes and apartments without specific warrants, detained a dozen people (more followed in the days and weeks ahead), seizing papers and documents. The detainees were transported to the RCMP barracks in Rockcliffe, where they were interrogated for weeks on end. The detainees were not arrested under criminal charges, were unrepresented by counsel; *habeas corpus* was ignored. Then they were brought before a secret tribunal, a royal commission of inquiry, a formidable establishment body, headed by two Supreme Court justices, with commission counsel being the President of the Canadian Bar Association. They were still without legal representation, told they had no

¹ Reg Whitaker & Gary Marcuse, *Cold War Canada: the Making of a National Insecurity State, 1945-1957* (Toronto: University of Toronto Press, 1994).

choice but to answer all questions put to them, deliberately not informed that they had the right of protection against self-incrimination, and bullied and harried by the commission counsel.

The Kakaesque overtones are captured in an exchange between one detainee (who was in fact clearly innocent of espionage) and the Commissioners. When brought into the room and told he must be sworn in, he fired back: “Before you swear me, would you mind telling me who you are?” “Well”, answered one of the commissioners, “we are the Royal Commission appointed by the Government to investigate certain matters.” “Are you empowered to use physical intimidation?” he persisted. “Not physical intimidation, but we have the power to punish you if you do not answer.” The detainee then turned and tried to leave the room, but was forcibly returned to the witness box.

At the end of these proceedings, the commission published a lengthy and widely read report in which it named some two dozen persons as spies and traitors to their country. The detainees were then turned over to the courts, where various charges were brought against them, under various statutes, but particularly the draconian *Official Secrets Act*, which made communication of classified information to a foreign power a serious offence, but did not distinguish between information that might be damaging and information that was harmless, and which laid the burden of proof upon the accused. Despite what appeared to be a stacked deck, only about half of the two dozen eventually charged with criminal offences as a result of the inquiry were ever convicted. Those who had incriminated themselves before the Commission were in all cases found guilty in court. Those who had resisted were mainly acquitted. Nevertheless, with one minor exception, all those acquitted were denied further employment with the Government.

At the time, there was not a great deal of criticism of the Government’s methods. Public opinion approved, by and large, and important sections of elite opinion, especially within the legal community, seemed unperturbed. In retrospect, criticism has been forthcoming. Critics have described the treatment of the suspects as abusive of their rights, and a serious violation of liberal democratic norms. Some have even compared Canadian behaviour unfavourably with the United States, which even in the dark days of McCarthyism, did not round up suspects before dawn, hold and interrogate them incommunicado, and haul them before secret tribunals, which would later officially name them as traitors without legal recourse.

These criticisms are important—I have made many of them myself—but they do not get at the rationale for the Government’s methods. Contextually, this was a pre-Charter (and pre-Bill of Rights) era, and it followed immediately upon a war in which extraordinary state action against dissidents (detention without trial; search and seizure; censorship; even the forcible relocation of the entire Japanese-Canadian community from the west coast to camps in the interior, had been not only tolerated, but sanctioned by the highest authorities in the land. It is not that surprising that in this context, faced with clear evidence of espionage and betrayal of trust, Government should have reached for the most expedient administrative method for protecting national security. Not surprising, but unfortunate, in that a precedent was being set for a relatively low priority on civil liberties in peacetime, albeit the twilight peacetime of the Cold War.

There was more to the Government’s response than context alone. There was a consistent pattern, a single thread that ran through all its planning and execution with regard to how to handle the explosive spy affair. The Government wished to maintain maximum control over the story, to frame it in the most appropriate manner, and to maximize control over its effects, both internal and external. In terms familiar to today’s world, the Government wanted to manage the “spin”. There were good reasons for this. Externally, Canada found itself in a highly exposed position vis-à-vis the spy affair. At a time when the wartime alliance had not yet broken down publicly, a wrong move by Canada might precipitate grave consequences for East-West relations. Canada, or certainly Mackenzie King, wanted no part of such a critical international role. That would be left to the big battalions of the Americans and the British. Thus the Soviet angle of the affair was systematically played down in the Commission report. Others might draw strongly anti-Soviet lessons, but Canada would not. (Ironically, and for similar reasons, the Soviets vented their wrath over the affair at Canada, an altogether safer target than the US or the U.K.)

The other reason for keeping spin control under Government wraps was domestic, and here the wisdom of the Government became apparent only later. In downplaying the Soviet role, the Government also chose to highlight the role of Communism in subverting the loyalties of Canadians. There was genuine shock and dismay at the evidence that some Canadians held a higher loyalty to a foreign power, and were willing to serve that power over their own country. The commission report was an attempt at public education, and public warning about the

dangers of dabbling in extreme left-wing ideas. It could also be seen as an exercise in *political policing*, setting authoritative boundaries on permissible limits of dissent. But this could itself be a dangerous process, spinning out of control as rivals to the party in power sought to exploit the politics of loyalty. Without strict limits, and outside direct supervision by the Crown, the politics of loyalty could become divisive and socially and politically destructive.

In fact, shortly after the Gouzenko affair had been put to bed, anti-Communism in the US threatened just this sort of anarchy. In 1947, the House Committee on Un-American Activities began its Hollywood witch hunt, and by 1950 Senator Joe McCarthy was launching his demagogic anti-Communist smear campaign that gave the English language a dark epithet, “McCarthyism”. Before McCarthyism had run its course by 1954, the integrity of such institutions as the US Presidency and the Army was threatened. In 1946, the Canadian Government did not foresee these developments, but by strictly controlling the Gouzenko story and its effects, they did pre-empt the emergence of potential Canadian McCarthys (one of whom was no less than the leader of the opposition by 1948, George Drew, who tried but failed). How this worked can be seen in later Cold War domestic security policies.

There was a direct link between the Gouzenko affair and the Government of Canada’s Cold War internal security policies. In its aftermath, the security screening system was set in place for civil servants, and for immigrants and refugees, and citizenship applicants. The screening system was also extended to defence industries and even to shipping on the Great Lakes. In all cases, the process was kept as secret as possible, with “security” never being advanced as a reason for limiting a person’s employment, or their admission to Canada or to citizenship. For many years, there was no appeal process for persons denied security clearance.

There were American pressures to step up security. The Americans were evangelical in their Cold War crusade, and from time to time thought it necessary to nudge, or push, their allies to shape up to proper (*i.e.*, American) standards. Sometimes they were particularly insistent upon doing something that the Canadians deemed silly or excessive, and usually the Canadians complied, with weary resignation, on the principle that it would be more costly to provoke them. But by and large the Cold War security policies were made in Canada. Canadians set their own rules for security screening and always sharply distinguished

themselves from the US by pointedly not referring to “loyalty” or “disloyalty”, but only to risk factors. What distinguished the two approaches was the secrecy in which the Canadian policy was administered, and its strict monopolization by the executive branch of the federal Government. With the exception of Duplessis’ Quebec (a distinct society before the phrase was invented), where provincial anti-Communist laws like the padlock law, and provincial red squads operated outside federal control, it was Ottawa that prosecuted the Cold War on the home front, and Ottawa kept its cards well hidden. When opposition voices were raised to demand information, Ottawa tended to respond serenely (or smugly) that Ottawa was taking care of matters, that details were the business of the proper authorities, and that the operative principle was: “trust us”.

Witch hunts wracked McCarthy-era America, at all levels of Government and throughout civil society. But not in Canada. At least not publicly. In point of fact, there were purges, and there were victims. There was a witch hunt at the National Film Board, and scores of people lost their jobs, and saw their careers suffer. But unlike the witch hunt in Hollywood, there were few headlines, and no names bandied about in the media. The Government even denied there was a purge, while behind the scenes they gave the security service and new NFB management what amounted to a blank cheque to remove persons on suspicion. The Canadian position was that the politicization of security issues inherently risked illiberalism, and could point to the US example as confirmation. Some of the victims of these silent purges have different views in retrospect. The Hollywood witch hunt resulted in blacklists and blighted careers, but finally in the public vindication of those purged, who have been transformed from villains in the 1950s to virtual folk heroes decades later. The Canadian victims of the NFB purge received neither notoriety then nor public vindication later. For better or for worse, that was the Canadian Way.

Security screening of immigrant/refugee and citizenship applicants involved Canada in extensive and persistent application of a double standard with regard to potential New Canadians.² Applicants with left-wing backgrounds or associations were security risks, while those with right-wing backgrounds were generally welcomed as anti-Communists.

² Reg Whitaker, *Double Standard: the Secret History of Canadian Immigration* (Toronto: Lester & Orpen Dennys, 1987).

This had unfortunate implications for lax treatment of Nazi war criminals and collaborators—ultimately subject to a Royal Commission of Inquiry and a special section of the Justice department designated for retroactively tracking down war criminals and criminal collaborators who had passed through the security screen. It also meant that Canada put out the welcome mat for refugees from Communism (Hungary in 1956/57; Southeast Asia in the late 1970s), while making it difficult for those fleeing right-wing violence (Chile in the 1970s, central America in the 1980s). Apart from double political standards, Cold war immigration security firmly established a precedent of highly state-centred procedures. Immigration was a privilege, not a right, went the maxim. Risk was determined by the state, and doubt must be resolved in favour of the state, not the individual. Moreover, procedurally, the deck was highly stacked in favour of the Crown, with non-disclosure of evidence and *ex parte* proceedings the norm in deportation cases.

Security screening has been an important tool for the political policing of Canadian society. The security service, first the RCMP and later CSIS, has routinely used screening as an effective instrument for establishing sources within suspect organizations (the threat of lost employment or, worse, of deportation, is an effective persuader for cooperation). As an offshoot of this and of its preparation of threat assessments for the Government, the security service amassed a remarkable volume of dossiers on Canadians and Canadian civil society. When the McDonald Commission investigated RCMP wrongdoing in the late 1970s, it discovered that the security service held files on no less than 800,000 individuals and organizations—a proportion of the population watched by the secret police that would have done credit to some less savoury regimes abroad. This kind of excess drew so much criticism that by the late 1980s, the Mulroney Government ordered the closure of the Counter Subversion branch of CSIS, with most of its files to be destroyed or transferred to the Public Archives.

There are some general points to be made about Canada's Cold War experience. First, when directly provoked, Canada could act with impressive firmness and resolution. Second, while Americans might be leading the Cold War charge, Canada was quite capable of setting and enforcing its own stiff standards for security. Even when pushed further in particulars than they might prefer by the Americans, Canadian Cold War policy was essentially made-in-Canada, according to Canadian imperatives, and in the end did not look that different from the Americans in content, although it did differ in style. What was most distinctive about

Canadian Cold War security policy was its strict control by the executive branch of the federal Government, and the zeal with which the federal Government guarded its prerogatives. The federal Government had responsibility for external relations, and for peace, order, and good Government within Canada. The differential, and sometimes invidious, effects of national security on individuals and groups in Canadian society were unfortunate by-products, but the security of the state and order in the community normally took precedence over individual and group rights.

II. THE OCTOBER 1970 CRISIS

When Canada faced the aftermath of the horrific attacks of September 11, and the requirement to join in a new global war on terrorism, it was not altogether lacking in historical experience in dealing with terrorists. In October 1970, Canada faced its worst internal security crisis, when cells of the *Front de libération du Québec* (FLQ) kidnapped the British trade commissioner, James Cross, and kidnapped and later murdered the Quebec minister of labour, Pierre Laporte. Canada was thrust into a harsh global spotlight amid a rising tide of anxiety and uncertainty at home, and conflicting calls for negotiating with the terrorists or for staring them down. To make matters more difficult for the federal Government, this was primarily a domestic terrorist crisis (in spite of ineffectual attempts to link the FLQ to wider terrorist networks, or even to Communism), with potentially serious consequences for Canada-Quebec relations. Faced with this mushrooming crisis, Canada acted—swiftly, forcefully, and with not the slightest regard for civil liberties. Invoking the *War Measures Act* under a putative (and never proven) “apprehended insurrection”, the federal Government placed Quebec under what amounted to a state of martial law. Extensive use was made of the power to detain and interrogate without charge, without counsel, and without *habeas corpus*. The media were censored, and the FLQ declared a banned organization, retroactive association with which could land someone in prison. In the aftermath of the crisis proper, the resources of the security service and the Quebec and Montreal police were mobilized to “counter” and negate by virtually any means, fair or foul, the FLQ or its successors. In filling out the blank cheques issued them, the security and police forces so exceeded their lawful roles that their activities were subject to a series of federal and provincial commissions of inquiry.

However controversial the methods employed, the result was clear and unequivocal: the FLQ, and with it, the entire terrorist tendency of the sovereignty movement in Quebec, was eradicated. From the early 1970s on, the sovereignty field was left entirely to the legitimate, lawful, and peaceful form of the Parti Québécois, and the contestation of federalism to democratic elections and referenda. Indeed, in surveying the contemporary history of terrorist movements around the world, the Canadian experience in stopping terrorism dead in its tracks and diverting the political energies that had helped drive the movement into constitutional channels, stands out as a quite remarkable success story. Timing was obviously important: the terrorist movement was crushed at an early enough stage that its repression did not elicit any popular upsurge in support (as for instance with the IRA among the Catholic population of Northern Ireland). Maximum force can work at preliminary stages of the development of an insurrectionary terrorist movement; at later stages, it may well be counterproductive (as witness the current morass of death and retribution in which Israel finds itself enmeshed). The FLQ also self-destructed with its wanton murder of Laporte, an act that disgusted decent Quebecers. Above all, it was the availability of alternative, peaceful means of expression for sovereignist sentiments (the PQ had just entered the national assembly in Quebec elections earlier in the year) that enabled force to be used so successfully against force.

Does the successful outcome of the affair offer retroactive justification to a Government that in effect put liberal freedoms on hold and declared that the end justified the means? I think there are two answers to this question, and each has significance for how we understand the response of the Government of Canada to September 11.

First, it must be clearly stated that the Trudeau Government during and after October 1970 was less than truthful or above board in its justification of its actions before parliament and the public. There was no “apprehended insurrection”; the failure of the Government to follow up with supporting evidence for its claim in invoking wartime emergency powers was telling, for there was no such evidence, or at least nothing compelling. Moreover, the advice of the RCMP would have been against using emergency powers—if they had been consulted, which they were not. The Government’s retroactive justification leaned heavily on the alleged shortcomings of the intelligence on the terrorist groups provided by the security service that supposedly left them no choice but to round up all the usual suspects and sort them later. This was, I discovered when I had documents on intelligence reports on the FLQ and other separatist

groups declassified,³ a seriously distorted view that was not only unfair to the RCMP, who had in fact done a very competent job of penetrating and reporting on violent separatist groups, but constituted a rather reprehensible example of blaming the servants for the masters' misdeeds. The RCMP had even delivered a very clear warning in the summer of 1970 that the FLQ had adopted kidnappings as their priority tactic, and even specified diplomats and cabinet ministers as their likely targets. Yet the warnings were ignored, and potential targets left unprotected (at the tragic cost of Laporte's life). The lesson here is one often repeated in modern history—"intelligence failures" are as often failures of Governments to listen to their intelligence as of intelligence professionals failing.

The RCMP believed that the crisis was essentially a criminal matter, to be solved by good, careful, patient police work. That was how, in the end, James Cross was liberated, and it might have saved Laporte's life. Instead, the Government, or at least the prime minister and his close cabinet associates from Quebec (who in every instance of debate proved to be the hawks) disingenuously citing an exaggerated threat they knew to be false, chose to perform a *coup de théâtre*, a striking demonstration of the power of the federal Government and the futility of violent resistance to it. From a liberal standpoint, the October Crisis offers a salutary warning about how the state can lie and use pretexts to aggrandize its power and crush opposition. From a Machiavellian standpoint, Trudeau skillfully manipulated a crisis not of his making to effect an end that was in the national interest.

I am not sure how I come down on this choice. I find it difficult to justify the Trudeau Government's actions in misrepresenting facts and in shifting blame from themselves. On the other hand, a terrorist avenue that might have turned Quebec into an Ulster-style battleground was avoided, and the constitutional avenue for the sovereignty movement opened. Moreover, despite dire predictions at the time that the fabric of liberal democracy had suffered irreparable harm from the arbitrary actions taken in 1970, the evidence suggest otherwise. As a long term result of the crisis and its aftermath, the *War Measures Act* was later repealed and replaced with a emergency powers statute that is much more measured and balanced. As a result of the post-crisis countering of the violent separatists

³ Reg Whitaker, "Apprehended insurrection? RCMP intelligence and the October Crisis" (1993) 100 *Queen's Quarterly*, 383-406.

by unlawful and improper means, royal commission recommendations led to the removal of the security service from the RCMP and the creation of a civilian agency with a specific legal mandate about what it is authorized and not authorized to do, and elaborate mechanisms of accountability, oversight, and review attached to its operations. These are very positive gains for liberal democracy, which derive, paradoxically, from the violations of liberal democracy practised during the crisis. History, it should be remembered, does not always move in straight lines.

AFTER SEPTEMBER 11: SOME LESSONS IN CONCLUSION

The War on Terrorism is the new Cold War. In certain key ways, it is a war that is likely to enlist and retain public support more effectively than the Cold War. September 11 was an attack on civil society, indeed it was designed to spread fear among other potential victims, who could be anyone, anywhere in North America. The Cold War was mostly about states and elites; the threat of Communism was abstract and unreal to most people, hardly touching their real lives. Moreover, however repulsive it may have appeared to most, Communism was in effect an offer on the table of an alternative way of life. Al-Qaeda does not offer an alternative. Ben Laden has made this clear: Westerners are infidels, and he and his troops will smite them.

This is by way of saying that mobilizing popular support for a war on terrorism is not brain surgery. Governments have had, and will continue to have, relatively free hands in organizing their societies. This is especially the case in the US, which is, after all, the primary target of Islamicist terrorism. Already, there are very serious questions being raised by critics about the turn toward authoritarianism in American society under the regime of Attorney General John Ashcroft. Americans are once again in another era very much like that of the early Cold War years, only, in some ways more illiberal, given that the technology of surveillance and repression is so much more sophisticated now than then. Moreover, most Americans appear quite unconcerned about these trends.

Unlike the two historical cases cited here, when Canadian security was threatened directly, Canada is slightly more disengaged from today's terrorist threat. Of course Canadians shared Americans' pain, and support both the military contribution and the internal security measures considered necessary. C-36 and the other antiterrorist legislative changes contemplated have strong public backing, despite the voices of critics. Yet if we compare Bill C-36 with the *USA Patriot Act* and with the British antiterrorist legislation rushed through Westminster, an objective reading

indicates that Canada is proceeding with greater care and circumspection, and greater regard for liberal procedural safeguards. For instance, unlike the US and the U.K., Canada has not provided for the indefinite detention of non-citizens on suspicion alone.

The main impact of the war on terrorism on Canadian sovereignty and security is felt in border issues with the US. Pressures for perimeter security and harmonization of security rules are being felt both externally and internally, from president Bush, homeland security czar Tom Ridge, and the ubiquitous Ashcroft, but also from the Canadian business community, frantic to reduce the costs imposed by post September 11 border controls. Canada has been here before, except that today the pressures are more insistent, the capacity for resistance diminished. History teaches Canadians an ironic lesson: threats to Canadian security and sovereignty, whether in the Cold War or in the war on terror, are met by diminishing Canadian sovereignty through greater integration with its allies, especially of course the USA.

The Liberal Government is today engaged in the same delicate and difficult negotiation that its Cold War era counterparts also faced—how to comply with American pressures for harmonization and integration without losing Canadian sovereignty altogether. Lester Pearson recalled in his memoirs the rough patch he endured trying to broker a peace in Korea against US wishes. It was, he wrote a difficult negotiation between “General Acheson and Corporal Pearson”. His successors, facing an extension of the war to Iraq and on, can appreciate the bittersweet irony in Pearson’s words. At the same time, it should be remembered that Canadian interpretation of who and what constitutes threats to security are not in the end all that different. The trick is to convey, to Americans, Canadian insistence that they be permitted to arrive at these conclusions on their own.

The lessons Canada can draw on from its own recent history are complex, but in a sense also reinforcing. The Chrétien Government, despite critics on its right, has responded to September 11 in conformity with past performance: low key rhetoric matched to action to keep the situation firmly within under the control of the executive branch of the federal Government. Although easily attacked as typical Liberal arrogance and one-party domination, this approach has the manifest advantage of discouraging divisive and destructive behaviour spreading through the society (in this case, anti-Islamic bigotry and violence, actually combated in the hate provisions of Bill C-36).

At the same time, Canadians have learned from past experience that too heavy a reliance on authoritarian measures is ultimately damaging to the fabric of the free society they wish to preserve. The effects of the Cold War and the October 1970 crisis have, in the end, strengthened the rights-consciousness of Canadians, and put in place more barriers to arbitrary state actions. Canadians are willing to temporarily shift the balance between freedom and security in the face of serious threats, but only within a framework of the rule of law. At the end of the day, it is precisely that moderate Canadian middle way that we seek to preserve against the aggressive drumbeat of American nationalism and unilateralism, even as we line up as willing coalition partners in the war on terrorism.