

THE RULE OF LAW IN AN AGE OF FEAR

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I mentioned to my spouse, Patricia, that I was giving a lecture at the University of New Brunswick and she said, “say something happy for a change.” I said, “I’m Scottish. We don’t do that.”

The title of my lecture is the Rule of Law in an Age of Fear.

Rule of Law

In discussing the importance of the Rule of Law, I will touch upon a number of themes and hopefully by the end of my lecture I will have challenged you to question whether the concept and practice of justice are being carried out in your name.

There are those who “see the rule of law in negative terms: as a constraint upon freedom and creativity; as a series of traps for the unwary; as a set of rules designed to stifle initiative and enterprise.”¹ Consequently, they might view the *Charter* “as a means of enabling courts to frustrate the will of elected bodies. To some, the rule of law is thought to require the police to investigate, and bring to prosecution”² every aspect of the rule book, no matter how harmless or incidental it might be; but, “[t]his is not what law is about.”³ The Rule of Law restrains and civilizes excessive power.

The two pillars of promoting justice and restraining power are crucial to defending Canadian values and to the survival of democracy.

I am reminded of the play *A Man for All Seasons* where Thomas More states that he would grant the Devil protection of the law, for without law, we are all defenseless.⁴

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¹ See Chief Justice Murray Gleeson, “A Country Planted Thick with Laws” (Lecture delivered as part of the Boyer Lectures, 19 November 2000). Although Chief Justice Gleeson made those comments in the American context with respect to the American constitution, their essence is applicable to the Canadian context as well.

² *Ibid.*

³ *Ibid.*

⁴ Robert Bolt, *A Man for All Seasons* (Toronto: Bellhaven House, 1960) at 39.

Humanist Approach

I wish to approach my lecture reflecting on how we have arrived in this post 9/11 world as members of the larger global family where distrust, bigotry, and violence appear to dominate our everyday life.

In doing so, I acknowledge it is difficult to maintain perspective when it seems everyday the world is turning itself upside down and appears to have lost all vestiges of humanity.

One could be forgiven for believing the world has simply gone crazy and for deciding not to participate, for sitting this one out, and for letting the world pass by.

Dangerous Moment in History

Many of us have grown up feeling that international stability is as natural as the air we breathe. There is a tendency to think that our stable society will always be that way.

For many, their lives “have coincided with the rise of democracy, the spread of market economics and signs that the world has finally subscribed to the United Nations Universal Declaration of Human Rights ... even if much of it is paid only in lip service”.⁵

There is a tendency to think that our stable society will always be that way and that Western liberal democracy will be “the final form of human government”⁶ – that the march of human freedom is unstoppable.

We forget our history where the Rule of Law crumbled; where democratic institutions broke down by extraordinary changes in peoples’ thoughts; and, where systems of power that once seemed invincible quickly collapsed.

What leaps out from the history of the past hundred years is its utter unpredictability. After all, “[h]istory does not end. It is a timeless repetition of human folly and correction.”⁷

Nothing is inevitable, least of all liberal democracy; “[w]e should be particularly wary of the siren song of history...[that] ‘Those who cannot remember the past are condemned to repeat it’.”⁸

⁵ Edward Luce, *The Retreat of Western Liberalism* (New York: Atlantic Monthly Press, 2017) at 8–9.

⁶ Interview of Francis Fukuyama (24 February 2015) on *This American Mind*, The Claremont Institute, online: <https://www.youtube.com/watch?v=HLKwOjllr_4>.

⁷ Luce, *supra* note 5 at 11.

⁸ *Ibid* at 10 citing George Santayana, *The Life of Reason or The Phases of Human Progress* (Auckland, NZ: The Floating Press, 2009) at 312.

It has been 28 years since the fall of the Berlin Wall, with all its accompanied optimism of freedom, but today “[b]elief in an authoritarian version of national destiny is staging a powerful comeback.”⁹ America, for instance, has elected a man who likes big walls and is an avid admirer of autocrats such as Vladimir Putin.

In every political generation, there are decisions that history later reveals to be defining of an era. There are watersheds for individuals, as there are watersheds for governments.

Today, established and accepted legal principles and institutions put in place after the Second World War, reflecting the wishes of people at the time to never see such a horror again, are under threat.

Criminal Court of Justice

The International Criminal Court of Justice, set up to prosecute individuals for international crimes against humanity, is under attack with countries threatening to withdraw from the court.¹⁰

European Union

The European Union, with its Western Liberal governments, is under threat from ultra nationalists and populists who wish to withdraw from the once same shared vision of a global collective.

Brexit

The British exit from Europe was the moment when, as Roger Cohen explained, “it became irrefutable that some of the very foundations of the postwar world and the spread of liberal democracy – free trade, more open borders, fact-based debate, and greater integration – had collapsed.”¹¹

⁹ *Ibid* at 11.

¹⁰ See e.g. Somini Sengupta, “As 3 African Nations Vow to Exit, International Court Faces Its Own Trial”, *The New York Times* (26 October 2016), online: <<https://www.nytimes.com/2016/10/27/world/africa/africa-international-criminal-court.html>>.

¹¹ Roger Cohen, “The Age of Distrust”, *The New York Times* (19 September 2016), online: <<https://www.nytimes.com/2016/09/20/opinion/the-age-of-distrust.html>>.

United Nations

Of course, then there is the United Nations (“UN”).

Seventeen years ago, Koffi Anann stood before the UN General Assembly and apologized for the failure of the international community to prevent the massacre of 100,000 Bosnians at Srebrenica. He called it “a horror without parallel in the history of Europe since the Second World War.”¹² He pledged to ensure that the UN would never again fail to protect a civilian population from mass slaughter.

We have seen this inaction before: in Rwanda, in Cambodia, in South Sudan, and now in the Syrian conflict and the tragedy of the ancient city of Aleppo and its peoples.

The obligation to act against evil in Aleppo was no different from the obligation to act against the evil in Sarajevo and Srebrenica.

One reporter indicated that “[f]or months, the bodies have been piling up in eastern Aleppo as buildings have come down, pulverised by [bombs], burying residents who could not flee in avalanches of bricks and mortar.”¹³

We witnessed the pleas for help as Syrians took to videos, Twitter, Facebook and Instagram beseeching us for help to escape the nightmare that was Aleppo. The desperate faces of children and parents staring directly into the camera, helplessly dying, confused at our indifference to the slaughter taking place, pleading for our help, refusing to disappear silently into the abyss.

It is hard to watch and hear these desperate cries without being overwhelmed by horror and by shame.

Describing the war-ravaged Syrian town of Aleppo as a “synonym for hell” UN Secretary General Ban Ki-moon decried the international community as collectively failing the people of Syria and that the carnage there remains a “gaping hole” in the global conscience.¹⁴

Now, the ancient city of Aleppo – 7,000 years old, and imbued with history – is in ruin. As one observer described, “[b]uried under the rubble, Aleppo weeps.”¹⁵

¹² UNGA, *Report of the Secretary-General pursuant to General Assembly resolution 53/35: The fall of Srebrenica*, 54th Sess, UN Doc A/54/549, Nov 1999 at para 506.

¹³ Ben Hubbard, “Assad’s Lesson from Aleppo: Force Works, With Few Consequences”, *The New York Times* (16 December 2016), online: <<https://www.nytimes.com/2016/12/16/world/middleeast/syria-aleppo-assad-autocrats-obama.html>>.

¹⁴ Ban Ki-moon (Press Conference by Secretary-General delivered at the United Nations Headquarters in New York City, 16 December 2016) [SG/SM/18377].

¹⁵ Lionel Beehner, “America is Responsible for Aleppo’s Destruction”, *HuffPost: The Blog* (18 December 2016), online: <https://www.huffingtonpost.com/lionel-beehner/america-is-responsible-fo_b_13704904.html>.

Aleppo was a microcosm, in a sense, for the entire war in Syria. No peace treaty was negotiated; that didn't happen because Russia and the United States were unable to agree to a temporary ceasefire to allow humanitarian aid to the injured, the starving, and the dying.

Aleppo is no more because the core obligation of international law was pushed aside.¹⁶ But, “[i]nstead of taking steps to end unlawful attacks on civilians, hold perpetrators to account, and stop the flow of arms that was fueling the conflict, the [UN Security Council] sat back”¹⁷, choosing indifference over the injustice and suffering of the Syrian people.

Syrian Women

I was on the Syrian/ Turkish border twice last year.

I recall hearing stories of Syrian women who were refugees from their country and raising their children alone. Mothers and children were living in tents, shacks, garages, and camps. The women were alone because their husbands had been killed in the fighting, were still fighting in Syria, or had simply disappeared in the carnage that was Syria.

Many of these women were frequently denied agency – “some had never left their home without a male escort” and others “had married as young as fourteen years old.”¹⁸ After, “they were thrust into a world so far from removed” from the life they once lived that “the transition was unendurable.”¹⁹

As single women, now without husbands, they are considered to be promiscuous; they are sexual prey for other men in the settlements or camps.²⁰ As Janine di Giovanni explained, “[some women] were afraid to leave their tents, let alone venture into a nearby village to do the shopping in order to feed their children.”²¹ These are the unintended consequences of war.

¹⁶ Anna Neistat, “Aleppo is an alarm bell: the international system has failed”, *CNN Opinion* (16 December 2016), online: <<https://www.cnn.com/2016/12/16/opinions/aleppo-international-system-failed/index.html>>.

¹⁷ *Ibid.*

¹⁸ Janine di Giovanni, *The Morning They Came for Us: Dispatches for Syria* (New York: Liveright Publishing Corporation, 2016) at 160.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

Retrenched into Ourselves

This is a defining moment. It bodes ill for the future of humanitarian intervention, or efforts to protect civilians in conflict, or international involvement in other people's wars. It signals we have moved away from the global village concept and retrenched back into ourselves.

Dramatic Overhaul

The need for a dramatic overhaul of the UN Security Council is painfully clear. It is not working, and one could be forgiven for concluding the UN is heading the way of the League of Nations.

The issue is not whether we can solve poverty, climate change, or income equality. It is whether we can work together and pursue a shared vision for the world we live in. It is only then that the UN will achieve peace and harmony for the world as a stronger and more just international institution.

President Trump addressed the UN General Assembly in September 2017 with his usual confrontational style of leadership, emphasising a selective definition of sovereignty. He stated that the US would respect the sovereignty of countries, whether they are dictatorships or democracies, with the exception of those regimes with which the US has conflicts. He repeated "sovereignty" ten times but only mentioned human rights once and only to criticize the UN's Human Rights Council.²²

His comments that the basic welfare of the world's citizens is solely in the hands of their own governments are contrary to the UN Charter. The UN was meant to be opposite to this way of thinking. The UN's constituency is humanity itself, regardless of any differences.

Refugee Crisis

We are at a critical juncture in world history.

There are currently more people displaced by war, persecution, and conflict than anytime since the Second World War: 65 million people.²³

²² President Donald Trump, "Remarks by President Trump to the 72nd Session of the United Nations General Assembly" (US presidential remarks delivered at the UN Headquarters in New York, 19 September 2017) online: < <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-72nd-session-united-nations-general-assembly/>>.

²³ "65 million people displaced worldwide, breaking all records – UNHCR" *RT Question More* (20 June 2016), online: <<https://www.rt.com/news/347417-un-report-displaced-refugees/>>; see generally "Global Trends: Forced Displacement in 2015" UNHCR (20 June 2016), online: UNHCR <www.unhcr.org/576408cd7>.

Meanwhile, we are observing much of the world increasingly responding with xenophobia and racial intolerance.

The desire to scapegoat and abuse newcomers has become a virus that has affected many countries despite the fact the refugee crisis is one of the gravest humanitarian crises to unfold across the world in modern times.

86% of refugees today are hosted by poor and developing countries, near war zones or conflict sites, and more than half of these refugees are children.²⁴

A staggering statistic is that one out of every 113 people in the world today is now a refugee, an asylum seeker, or internally displaced.²⁵

Instead of being defenders of human rights – of the rights of children, refugees, religious minorities, and women – we simply stand by and watch passively as many lives are lost needlessly. Was it always that we lacked such commitment and compassion?

We have seen this before.

The situation is sadly reminiscent of refugees fleeing the destruction of the Second World War and the Nazi onslaught. Then, too, most governments, including Canada, turned their backs; and, millions who were trapped, perished.

Indeed, immigration brings challenges, including security risks that are observed with terrorism. Yes, there are economic challenges, with immigrants sometimes displacing low-skilled workers, in particular; but above all, immigrants bring hard work, diversity, and global connections. On a balance, they strengthen our countries. So, in Canada, while we may not have completely open borders, neither should we vilify immigrants nor scapegoat them, particularly as we are all immigrants or descendants of immigrants.

Donald Trump

We are at a dangerous moment in world history. Edward Luce contends that “[p]opulist nationalism is staging a comeback just as global cooperation is most desperately needed.”²⁶

Consider that the political temperature this year has been dominated by populists and European nationalists who wish to tighten borders and restrict the flow of refugees from war torn countries, especially those refugees that are Muslim.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Luce, *supra* note 5 at 170.

Consider how the US Republican presidential campaign that was built on fear, bigotry, and racism, with candidates competing by proposing security policies that are remindful of Nazi Germany.

President Trump's rhetoric on Syrian refugees that "we have no idea who they are" or "where they come from"²⁷ tapped into American anxieties about national security and threats of terrorism. This is further observed by his promise to order the military to kill the families of Muslim terrorists and institute interrogation techniques worse than waterboarding, notwithstanding that torture and retaliatory executions are war crimes under international law.

Senator Rubio suggested the closing down of mosques while Jeb Bush argued for a ban on refugees fleeing the Middle East unless they can prove they are Christians.

What makes such language so toxic is not simply the injury it does to the reputation of Muslims everywhere; it is the injury it does to democracy everywhere. It is an all-out totalitarian approach reflective of Nazi Germany in the Second World War.

Eroding confidence and encouraging fear increases public anxiety along with intolerance, discrimination, and bigotry. Further, now misinformed and fueled by fear, it is not a difficult step for people to accept that drastic measures must be taken in the interest of national security, even if it means the suspension of civil liberties, compromising our values, or ignoring the Rule of Law. Many rationalize that it's for the greater good of society.

The deeper objective of such a strategy is to weaken our democratic institutions as they are obstacles that limit autocratic powers.

What is concerning is the level of support for these policies. A recent poll, prior to the New York primary, suggested that 51% of voters supported these policies.

Canadians have no cause for complacency either. Intolerance exists in Canada. Since 2013, the overall number of reported hate crimes against Muslims in Canada increased by 44%, according to Statistics Canada.

Response to Trump

Contrary to President Trump's rhetoric that we do not know who these people are or where they come from, we do, in fact, know who they are. They are ordinary families with children and relatives no different from our own families.

²⁷ "Transcript from Donald Trump's Immigration Speech", *The New York Times* (1 September 2016), online: <<https://www.nytimes.com/2016/09/02/us/politics/transcript-trump-immigration-speech.html>>.

For these ordinary people, “war starts with a jolt”: one day you are busy driving the kids to school, going to dentist appointments, or arranging music lessons, “and then the curtain drops.”²⁸ Often, ATMs don’t work, or mobile phones don’t function, and “[b]arricades go up. Soldiers are recruited and neighbours work to form their own defence. Ministers are assassinated and the country falls into chaos. Fathers disappear. The banks close and...life as people knew it” comes to an end.²⁹

Refugees, like all families everywhere, have a sacred duty to protect their children and to make their way to safety anywhere, whether by boat, by car, by bus, or by foot.

Roosevelt

In 1941, in his annual State of the Union address, US President Franklin Roosevelt spoke powerfully about the fundamental values that lie at the heart of a democracy, which he portrayed as a potent antidote to tyranny. He envisioned a world with “four essential human freedoms” at its core: freedom of speech and expression, freedom of worship, freedom from want, and freedom from fear.³⁰

He spoke with clarity about the serious threats to America from without.

Danger from Within

But today, the most mortal threat to the Western idea of progress we are facing comes from within.

We can no longer assume that our fellow citizens of Western democracies understand the origin of their rights and the importance of liberal democracy.

President Trump, and his populist counterparts in Europe, are but the symptom of the crisis in our liberal democracy. Today, in looking back on the first 16 years of this century, no one can ignore that the political, economic, and financial elites who brought about the Euro Crisis, the Banking Crisis, the War in Iraq, the War in Afghanistan, the Syrian crisis, the Refugee crisis, the Growing Inequality, and of course, Guantanamo Bay, have made very serious mistakes of enduring consequences with startling impunity.

²⁸ Janine di Giovanni, “Life During Wartime”, *The New York Times* (21 July 2012), online: < <https://www.nytimes.com/2012/07/22/opinion/sunday/life-during-wartime-in-syria.html>>.

²⁹ *Ibid.*

³⁰ President Franklin Roosevelt (Annual Message delivered to Congress on the State of the Union, 6 January 1941) [online: < <http://www.presidency.ucsb.edu/ws/?pid=16092>>].

For the Financial Times, Edward Luce noted that “[s]ince the turn of the millennium, and particularly over the last decade, no fewer than 25 democracies have failed around the world, three of them in Europe (Russia, Turkey and Hungary).”³¹

Further, Freedom House, a non-governmental organization that researches democracy and human rights reported that in 2016 “for the 11th straight year, more countries suffered declines in political rights and civil liberties than experienced gains.”³²

As stated by Freedom House, “[a]ll of these developments point to a growing danger that the international order of the past quarter century – rooted in principles of democracy, human rights and the rule of law – will give way to a world in which individual leaders and nations pursue their own narrow interests without meaningful constraints, and without regard for the shared benefits of global peace, freedom, and prosperity.”³³

In a paper published in 2016 in the Journal of Democracy, an article discussed how people in North America and Europe have become “more cynical about the value of democracy as a political system, less hopeful that anything they do might influence political policy, and more willing to express support for authoritarian alternatives.”³⁴

Despite the above trend, the most mortal threat to the Western idea of progress is that the poor are now democracy’s strongest fans, and the rich its biggest sceptics.

In 1995, just six percent of wealthy Americans believed army rule would be a good thing.³⁵ By 2014, that had more than tripled.³⁶ A similar increase has been seen in those who favour “‘a strong leader’ who does not have to ‘bother with parliament and elections’”³⁷.

³¹ Edward Luce, “The siege of western liberalism” *The Financial Times* (5 May 2017), online: <<https://www.ft.com/content/c7444248-3000-11e7-9555-23ef563ecf9a>>.

³² Chief Justice Beverley McLachlin, “The Decline of Democracy and the Rule of Law: How to Preserve the Rule of Law and Judicial Independence” (Remarks delivered at Saskatchewan and Manitoba Courts of Appeal Joint Meeting, 28 September 2017) [online: <<https://www.scc-csc.ca/judges-juges/spe-dis/bm-2017-09-28-eng.aspx#fnb1>>] citing Arch Puddington and Tyler Roylance, “Populists and Autocrats: The Dual Threat to Global Democracy” in *Freedom in the World 2017* at 1.

³³ Arch Puddington and Tyler Roylance, *supra* note 32 at 1.

³⁴ Roberto Stefan Foa and Yascha Mounk, “The Danger of Deconsolidation: The Democratic Disconnect” (2016) 27:3 *Journal of Democracy* 5 at 7.

³⁵ *Ibid* at 13.

³⁶ *Ibid*.

³⁷ *Ibid*.

Of concern is that “[r]esentment has grown steadily over the last two decades, in the US and elsewhere.”³⁸

Former US Supreme Court Justice David Souter talked about America’s pervasive civil ignorance three years prior to Donald Trump’s election.

Justice Souter warned that his greatest fear was not foreign invasion or some catastrophe but the inability of people to understand how government functions. He stated, “when problems are not addressed, people will not know who is responsible, and when the problems get bad enough...some one person will come forward and say, ‘give me total power and I will solve this problem’”.³⁹ This comment hearkens back to Trump’s clarion call that he would “make America great again”.

That is how the Roman republic fell and that is the way democracy dies.

Guantanamo Bay

We only have to consider Guantanamo Bay, approved by the mainstream of American society, to understand how easy it is for a society to lose its way and slip into lawlessness when we ignore the Rule of Law.

Guantanamo Bay has been called everything from an offshore concentration camp to a “legal black hole”.⁴⁰ It is a complex of brutal prisons where approximately one thousand Muslim men from all over the world had been held, beginning in 2002, by the US government under incredibly inhuman conditions and incessant interrogations, all without any judicial oversight or access to a properly constituted legal system.

Slave Ships

These descriptors should come as no surprise to many of us.

It was in January 2002 when we witnessed the first shocking media images of detainees, “hooded and shackled for transportation across the Atlantic” to Guantanamo Bay, Cuba, “much as other human beings had been carried in slave ships four hundred years earlier.”⁴¹

³⁸ Luce, *supra* note 5.

³⁹ MSNBC and Rachel Maddow, “Perils of eroded civil knowledge forewarned by fmr Justice Souter” (20 October 2016), online: MSNBC <www.msnbc.com/rachel-maddow/watch/perils-of-eroded-civic-knowledge-forewarned-790540867791> at 00h:05m:09s.

⁴⁰ “Eight Days in Guantanamo Bay”, *Human Rights Watch* (18 August 2008), online: <<https://www.hrw.org/news/2008/08/18/eight-days-guantanamo>>.

⁴¹ Gareth Pierce, “‘Make sure you say that you were treated properly’: Torture, Secrecy and the British State” (2009) 31:9 *London Review of Books* 9 at 9.

On their arrival at Guantanamo Bay, we witnessed the humiliation of these anonymous beings, unloaded on the tarmac like human baggage to then be transported to open air wire cages that would be their home for many years. This would all be done without access to family, friends, lawyers, human rights organizations, or any semblance of due process or judicial oversight.

International Law

For the watching world, no knowledge of international humanitarian conventions was needed “to understand that what was being witnessed was unlawful”.⁴²

This “was not a manifestation of the *Geneva Conventions* at work”; nor was it an act of deportation or extradition.⁴³ It was “far worse” because “it was the [unlawful] transportation...to a world outside the reach of law, and intended to remain so.”⁴⁴ In that world, crimes against humanity were to be carried out; and, abandoned there by all, for ten years, from the age of fifteen, was a young boy: Omar Khadr.

Struggle for Justice

Howard Zinn wrote: “The struggle for justice should never be abandoned because of the [seemingly] apparent overwhelming power of those who have guns and money and who seem invincible in their determination to hold on to it.”⁴⁵ Further, “[n]o cold calculation of the balance of power need deter people who are persuaded their cause is just.”⁴⁶

Consider the women’s protest marches around the world sending the message to the Trump administration: “If you try to violate women’s rights, we will stand and oppose you.”⁴⁷

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Howard Zinn, “The Optimism of Uncertainty” *The Nation* (2 September 2004), online: <<https://www.thenation.com/article/optimism-uncertainty/>>.

⁴⁶ *Ibid.*

⁴⁷ “Anti-Trump women’s marches send message to misogynist demagogues: We won’t go back to the bad old days”, *National Post* (22 January 2017), online: <nationalpost.com/news/world/womens-marches-send-message-to-trump-and-misogynist-demagogues-we-wont-go-back-to-the-bad-old-days>.

Guantanamo Bay

I recall my own 15-year struggle fighting for justice and freedom for Omar Khadr, detained in the wretched hell hole of Guantanamo Bay.

As the Rule of Law faded into indifference, I refused to back down to both the US government and the Canadian government. I ignored the voices of those who said I should take care of myself first.

In 2002, I had also been married about 16 years and we had two sons: Cameron and Duncan, ages 12 and 7. And so, when I saw the media images of the Guantanamo detainees, on CNN and other media outlets, in orange jumpsuits, crouched in open cages, cuffed and masked, while kneeling at the feet of US soldiers, I was outraged. I was outraged at their mistreatment, and amongst them was Omar Khadr, a 15-year-old Canadian boy.

I decided to write to the Liberal government of the day to inquire as to the status of Omar Khadr, and to remind the government of its obligation under International Humanitarian law on behalf of youths. My various letters went unanswered.

I then had my secretary make an appointment with my local MP, Anne McLelland, then the former Deputy Prime Minister for Canada. We knew each other well. Her office would not return my calls.

So, I set out to assist Omar Khadr.

Little did I realize that my challenge on behalf of Omar would take up 15 years of my life, eat up most of my savings, and that I would miss the high school graduations of both of my sons. I also did not realize that I would appear in numerous courts, both North and South of the border, including the Supreme Court of Canada and the United States Supreme Court.

Over the first few years of Omar's detention, every Western country, with the exception of Canada, requested the return of their citizens, and it was granted. Canada, however, remained silent with regards to Omar and continued to do so through his ten years in Guantanamo.

I recall my first meeting with a young Omar Khadr in Guantanamo Bay. He was being held in one of the notorious secret prisons, called Camp 5, designated for enhanced interrogation techniques as described by the Pentagon, but namely torture.

Shackled to the floor in a cold, concrete, windowless cell was the tragic figure of a young boy who was blind in one eye and partially blind in his remaining good eye. He was partially paralysed on his right side, and his whole body was suffering from extensive shrapnel injuries. His cell was also purposely kept cold requiring Omar to spend much of his time trying to stay warm and to make the best use of his blanket and mattress pad when they hadn't been confiscated.

By then he had been held in Guantanamo for several years, having received no visits or communication with family, friends, lawyers, human rights officials, or government representatives – simply abandoned.

It was only on entering his cell that I was informed that Omar had withdrawn into himself and had not spoken for some time.

I recall involuntarily gasping at the sight of Omar and I had difficulty in controlling my own emotions. I was not prepared for what I witnessed. He looked like a broken bird. I felt like crying. I was a father. I had young children at the time. I knew my children were at home in safety and comfort with their mother, and here was a young boy, abused and abandoned by all.

All the while, various Canadian governments persisted in misleading the Canadian public that they had been assured that Omar was being treated humanely and would take the United States at its word while the rest of the world heaped condemnation on Guantanamo as an evil place.

Every time I left Omar after a visit, I was aware that the fluorescent lights would remain on twenty-four hours a day; that he would try to sleep the time away, but that the cold would prevent sleep, and that incessant lighting had divested him of his feel for night and day. Over the course of any given month, Omar did not know whether he would get to see the sun or have a conversation with another human being. The cell was deliberately kept freezing to ensure the prisoner was never able to rest.

I recall my promise to him that I would not walk away from him. Had I walked away from Omar, I would have had to lie to myself that he would be taken care of. There are times in life when one can't walk away.

In a major rebuke to the Canadian government, the Supreme Court of Canada ruled that the US treatment of Omar contravened the *International Convention on Torture* and the *Geneva Conventions*⁴⁸ and that Canada had been complicit in his torture.⁴⁹

There can be no greater rebuke levied against a government that purports to uphold the Rule of Law than to have participated in the torture of a youth.

What greater betrayal can there be of Canadian values, when our reputation and good standing in the international community could be sold so cheaply.

Those who would place security over civil liberty could have benefited from the words of former US Supreme Court Justice William Brennan. He said:

⁴⁸ *Canada (Justice) v Khadr*, 2008 SCC 28 at para 21, [2008] 2 SCR 125 (cited to neutral citation).

⁴⁹ *Ibid* at paras 23–25; *Canada (Prime Minister) v Khadr*, 2010 SCC 3 at para 24, [2010] 1 SCR 44 (cited to neutral citation).

There is considerably less to be proud about, and a good deal to be embarrassed about, when one reflects on the shabby treatment civil liberties have received in the United States during times of war and perceived threats to national security...After each perceived crisis ended, the United States has remorsefully realized the abrogation of civil liberties was unnecessary. But it has proven unable to prevent itself from repeating the error when the next crisis came along.⁵⁰

Conclusion

So, as I conclude: despair and apathy are luxuries we can ill afford.

We must recoil from the repugnant spectacle of those promoting their hateful ideologies and speak out.

“Human history is a history not only of cruelty but also of courage, kindness, compassion and sacrifice. What we choose to emphasize in this complex history will determine our lives”⁵¹ and our future. Democracies have a habit of rising to the challenges.

Again, “[n]o cold calculation of the balance of power need deter people who are persuaded their cause is just.”⁵²

Contrary to common belief, “[w]e don’t have to engage in grand, heroic actions to participate in the process of change. Small acts, when multiplied by millions of people, can transform the world.”⁵³

Granted, “[a]nger, vengeance and violence are exceedingly easy to access and almost effortlessly unleashed. The higher calling...is the belief in the ultimate moral justice and the inevitable victory of righteousness over wrong.”⁵⁴ We may not have control of world events, but we do have control over how we respond to the world. We do have control over how we treat each other. So, “[i]n the end, it’s not about policies that work. It’s about forging consensus and fighting cynicism and finding the political will to make change” and to find the character to open our hearts to one another.⁵⁵

⁵⁰ William J Brenner Jr, “The Quest to Develop a Jurisprudence of Civil Liberties in Times of Security Crises” (1988) 18 *Israel Yearbook on Human Rights* 11 at 11.

⁵¹ Zinn, *supra* note 45.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ Charles M Blow, “A Week From Hell”, *The New York Times* (8 July 2016), online: <<https://www.nytimes.com/2016/07/11/opinion/a-week-from-hell.html>>.

⁵⁵ President Barack Obama, “Dallas Memorial Speech” (Speech at Memorial Service delivered at the Morton H Meyerson Symphony Center, Dallas, Texas, 12 July 2016), [online: <<http://time.com/4403543/president-obama-dallas-shooting-memorial-service-speech-transcript/>>].

Sometimes courage is the little voice at the end of the day that says “I’ll try again tomorrow”.⁵⁶

⁵⁶ This expression has been coopted by many, but it is inspired by the poem originally written by Mary Anne Radmacher. See Mary Anne Radmacher, “Courage Doesn’t Always Roar” (23 June 2016) *Mary Anne Radmacher Inspires* (blog), online: <www.maryanneradmacher.net/apps/blog/show/44046084-courage-doesn-t-always-roar>.