



PRIME MINISTER

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1978 SIR ROBERT MENZIES LECTURE

I am honoured by the invitation you have extended to me to deliver this inaugural lecture in recognition of one of my most distinguished predecessors in office.

I congratulate the Monash University Liberal Club for their initiative in establishing this Annual Lecture.

I am sure, over the years, it will add significantly to discussion of great national issues, and thus to the ability of this University to be a forum for the free exchange of ideas.

The free exchange of ideas in an atmosphere of tolerance and a critical openness to different views and perspectives is the ultimate rationale of a university. It is this openness to ideas that has made it possible for universities to contribute to social progress.

As with all the great institutions of a liberal democracy the freedom the university offers will on occasion be abused by a minority of authoritarians.

Authoritarians who seek to impose their views on others not by the weight of argument, but by disruption, by violence, and by denying the freedom of others to speak.

These minorities who seek to silence others by their actions corrode the very foundations of the university. They threaten what is the only basis of the university as an intellectual community, a common commitment to freedom. "Freedom to learn, freedom to teach, freedom to enquire, freedom to express."

I am reminded of an earlier occasion on which I was invited to deliver a formal address at a Victorian university.

The occasion was the 1971 Alfred Deakin Lecture at the University of Melbourne. I recall that I was introduced by Sir Robert himself.

He spoke that night, with the rare combination of insight, eloquence and wit for which he is renowned, of the importance of a continuing and vital debate on the principles of the great liberal tradition of which we are the inheritors.

This was a debate which he had in large part revived in this country in the 1940's through his weekly radio talks to the nation during the dark years of war, and after the war in a series of speeches defining the spirit of liberalism.

It was not only Sir Robert's singular achievement at that time to lead the formation of the Australian Liberal Party, he also instilled in the new Party a coherent, rational and relevant liberal philosophy. A philosophy which continues to sustain and guide the Liberal Party to this day.

One of its basic credos - the credo that guided Menzies from his earliest years, the credo to which he returned time and time again - is the Rule of Law, and justice under law.

The principle of the Rule of Law formed the basis of an essay by Sir Robert Menzies which, as far as I am aware, was the first of his major writings to be published.

This was the Bowen Prize Essay written by Sir Robert in 1917, his final year as a law student, and entitled "The Rule of Law During the War".

Sir Robert was later to define the relationship between the Rule of Law and freedom in a memorable passage in one of his wartime radio talks. The security provided by the Rule of Law, Sir Robert said, is "...not such security as your opponents being in a majority may concede you; it is not something precariously dependent on the whim of a mob; it is that security to which a man may confidently and calmly appeal even though every man's hand may be against him; the Law's greatest benefits are for the minority man - the individual..."

Tonight I wish to speak of the Rule of Law and in particular the threat posed to it by the increasing emergence of terrorist violence.

The doctrine that we have known since Dicey as the Rule of Law, is, no doubt, familiar to most of you.

It received its first expression in the historic document we know as the Magna Carta in 1215, which remains part of the law of Australia to this day.

A king sought to extort money contrary to the Law and was compelled by his barons to enter into an historic undertaking, guaranteeing freedom under the Law, and the due administration of justice.

So fundamental is this document that it is worth recalling the words of two memorable passages from it:-

"No man shall be taken, disseized, outlawed, banished, or in any way destroyed, nor will we proceed against him or prosecute him, except by the lawful judgement of his peers and by the law of the land", and "To none will we sell, to no one will we delay or deny right or justice".

The antithesis of the Rule of Law is on the one hand arbitrary authoritarian power; Government above the Law; and, on the other hand, anarchy, the arbitrary defiance by citizens of the Law.

The Rule of Law, in which justice is impartially administered and enforced is an essential prerequisite of individual freedom.

Without it, there is licence only for the power for few to impose their will on the many.

There is a paradox in the proposition that freedom involves some constraints, but it is only an apparent paradox.

Our freedom can only be real if we are protected by the Law from others violating our liberty.

Even in liberal democracies there is an irreducible minimum of constraint without which society cannot function.

The Law imposes certain restraints and obligations on each of us, for the enhancement of the liberty of our fellow members of society and of ourselves.

It is the protection which the law affords us, both from our neighbours and our rulers, that enables the very best features of our open society to flourish. The Rule of Law confers freedom - it does not diminish it.

The words of Magna Carta have ruled the life of our society. It is still the distinctive mark of our system that counsel may interrupt the business of the court with the words "Your Honour, I have a matter involving the liberty of the subject".

The principle of the Rule of Law is also fundamental to American democracy. It is summarized in the fourteenth amendment to the U.S. constitution, which provides that no State shall "deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws".

It is the Rule of Law, summed up in the twin principles of "due process" and "equal protection" that have formed the basis of some of the greatest advances in civil rights and liberties in that country.

Throughout this century, scholars have repeatedly drawn attention to the concerted attacks which have been made on the Rule of Law.

As a doctrine, the Rule of Law is of course, anathema to the traditional enemies of democracy, and to the host of others who have aligned themselves against the open society. But within Liberal democracies, the Rule of Law has also faced stern challenges from other quarters.

For the first half of this century, the attack of the Rule of Law was seen to come from what one writer has termed, the "Omnipotence of Government".

Greater government intervention in all aspects of society's affairs has compelled a fundamental change in the role of the individual and Parliament.

The sheer weight of administration has forced Parliament to delegate more and more effective power to bureaucrats who are not responsible to the electorate, and who sometimes appear to exercise such power in an arbitrary manner.

In a memorable statement, Lord Chief Justice Hewart in 1929 denounced this development as the "new despotism".

In his view, a monolithic bureaucracy armed with wide-ranging and loosely defined powers to affect the rights of individual citizens undermined the Rule of Law and subverted basic democratic principles.

The essay Sir Robert Menzies published in 1917 was, in fact, a study of the many infringements of the Rule of Law by an all-powerful government during the First World War.

He conceded that such measures as internment without trial, press censorship, compulsory acquisition without compensation and retrospective acts of indemnity, might be justified in wartime for the defence of the realm if they were temporary and unavoidable.

But he foresaw the great danger to society if such measures continued after hostilities had ended.

This was a theme he was to take up again for he was to fight strongly, and, in the end successfully, against the continuation in peacetime of special regulatory measures imposed during the Second World War. The challenge of arbitrary bureaucratic power to our liberal ideals has not lessened, but governments are now taking firmer action to protect the individual citizen against its worst excesses.

In the past three years, the Commonwealth Government has reformed federal administrative law in an endeavour to enhance the rights of individuals adversely affected by bureaucratic decisions. The Administrative Appeals Tribunal has commenced operations. The Commonwealth Ombudsman has now been at work for almost a year. Legislation was passed last year to simplify procedures for judicial review of administrative decisions. And a Security Appeals Tribunal is to be established.

An Administrative Review Council has been set up to keep under continuing review the adequacy of existing procedures which provide citizens with redress for genuine grievances.

In recent years, the threat to the Rule of Law in liberal societies has been seen to come from another quarter. It has been claimed that such societies may suffer not so much from the omnipotence of government, as from the threat of government impotence.

We all know a liberal democracy such as ours can only function effectively if there is tolerance and respect for others; a preference for moderation and restraint, for reasonable decisions arrived at by reasonable means, a willingness to abide by the Law.

The effectiveness of the law, and thus the protection of liberty can be undermined by a widespread acceptance of the view that an individual is entitled to disobey any law he finds disagreeable.

There are situations in totalitarian societies where conscience and humanity would justify breach of abhorrent laws. The authorization of genocide during the Second World War is an obvious example.

But the attitude that one can pick and chose which Laws to comply with in a democratic society based on freedom and respect for the individual: where procedures do exist for the peaceful repeal or amendment of laws is corrosive of the very liberal ideals on which such a society is founded.

Should a general attitude of disregard for the law grow to a sufficient extent, the ultimate result could be the total breakdown of the Rule of Law and the collapse of democratic government; the collapse of freedom; the collapse of civil liberties.

The opponents of the open society are only too well aware of this possibility. But it is the modern political terrorist, whose barbarity has once again been so manifest in recent weeks in Europe and the Middle East, who has become the most sinister practitioner of a new tyranny.

He sees terror as a most potent method of precipitating the collapse of liberal society. He resorts to violence to gain political ends by fostering fear, anxiety and disorientation. His methods have always been a source of the deepest concern to civilized society. The threat of social dissolution which terrorism has engendered the potential of terrorism to turn society into a war of all against all, has been recognized by governments throughout history. But it is open liberal societies - societies based on the Rule of Law, the concern for individual rights, freedom of association and communication that have a peculiar vulnerability to terrorism.

The reason for this is very clear - they are the very antithesis of authoritarian and totalitarian regimes that maintain themselves by rigidly controlling their society and repressing any signs of dissent. Paradoxically social and technological progress has provided political terrorists with unprecedented opportunities for disruption.

The "sixties" and "seventies" have seen the revival and proliferation of small, fanatic terrorist elements dedicated to blackmail and violence, seeking to strike at the heart of open societies.

In the last five years alone the world has seen 1,800 major acts of terrorism around the world involving 152 deaths, 551 injuries, 363 kidnappings, \$146 million in ransom and \$92 million in bomb damages.

During 1976 more incidents of international terrorism were recorded than in any previous year and although most incidents of international terrorism have so far occurred in Western Europe, the Middle East, or Latin America our region has not escaped.

In the last four years we have seen the assault by Japanese Red Army terrorists on the oil refinery at Singapore, the seizure of the Israeli Embassy in Bangkok, the seizure of the American Consulate in Kuala Lumpur, the hi-jacking of a Japanese aircraft from Bombay to Dacca and a series of attacks and threats against diplomats in the region, including some in Australia.

The tragic event which occurred outside the Sydney Hilton Hotel on 13 February is of a pattern with these acts of international terrorism. But while this was, without doubt, the most appalling incident of its kind in our history, violence is by no means a new phenomenon in this country.

If we are willing to see reality as it is and not as we would like it to be we have to recognise that the history of our own society is not free of violent acts.

In the last fifteen years there have been more than forty incidents involving the use of explosives.

Preliminary assessments for 1977 are that international acts of terrorism continued at a very high level and the latest studies of international terrorism disclose some especially disturbing trends.

The number of terrorist groups continue to multiply. These relatively small trained, mobile violent bodies have no shortage of arms, training facilities or finances.

They have developed world-wide links which permit them to cooperate in planning and executing terrorist outrages and technological progress, the revolution in communication, jet transport and weaponry have provided these groups with unprecedented opportunities for disruption.

It is clear that political terrorism will remain with us and may come to pose ever more serious threats to our open society, our values and way of life.

There are many varieties of terrorists. There are terrorists of the left and of the right. There are terrorists attracted by the act of violence as an end in itself.

Their grotesque aestheticism is exemplified by a Nineteenth Century French anarchist, who asked "of what importance are the victims when the gesture is so beautiful?"

There are the terrorists who resort to terror not merely for its symbolic or dramatic effect but to achieve a specific aim. For instance, to gain publicity, to obtain money or the release of prisoners, or to secure the recognition of a nationalist or separatist grievance.

There are some who resort to terror as a means of bringing about violent and revolutionary change in society.

This kind of terrorist hopes to discredit legitimate governments by using terror to destroy the fundamental consensus between government and people on which open societies depend.

Indeed, Carlos Marighela, a leader of the modern urban guerrilla movement, openly declared that the role of the terrorist was to make life "unbearable" for ordinary people so that they would turn against their governments.

All varieties of terrorists are to be condemned. Terrorism constitutes a systematic assault on the most fundamental of human rights:

the right to live in a physically secure environment and the right to hold contrary views.

Just as the tyrannies throughout history have sought by every means to impose their unrestricted will on the people. Political terrorists seek to impose their will on societies by all forms of blackmail, intimidation, and violence.

Terrorists reject the right of others to hold contrary views; reject the political and democratic methods of solving differences and conflicts; reject the Rule of Law and the social and legal codes which regulate political conflict and provide the structure for political order; reject the politics of tolerance and democracy.

They reject the means by which open societies rule themselves through election, representation, discussion, debate, negotiation and consensus. The terrorist is an extremist obsessed by his own ideas, ready to use any means; impervious to moral scrutiny, criticism or restraint.

He draws no distinction between targets and victims. There are neither innocents nor neutrals. In his eyes no one is entitled to personal security, personal liberty or to any other form of civil right.

It is tragic that the twisted world view advanced by terrorists sometimes enjoys the tacit approval of some intellectual circles. So much so that these circles are disposed, in pursuing the vanities of intellectual fashion, to condone the corrupt, to forgive the unforgiveable.

The transparent myths manufactured by terrorists and the apologists for their crimes against humanity are readily exposed and discredited. They assert, for instance, that terrorists are "sincere idealists". "Idealists" who take the law into their own hands? Who commit acts of horrific violence? Who exploit brutality and human suffering?

As Paul Johnson has remarked: "No political cause is worth the abandoning of elementary morality..."; "Terrorism is always and in every circumstance wrong, it is intrinsically wrong, it is the antithesis of political idealism".

Again, they assert that the terrorist represents and acts on behalf of "the people". This assertion is false. The truth is that democratic and open societies have been the prime targets for terrorist attacks.

It is the tolerance and open institutions of democratic societies which actually provide the terrorists with the best opportunity and the freedom to launch their attacks.

There will always be differences and conflicts in any society; some genuine and some generated or manipulated by the enemies of open societies and free governments. But democratic and open societies allow for the representation of grievances. They do not merely recognize the right to dissent and the obligation to correct injustices but are committed to the protection of peaceful dissent and the right to advocate social and political reforms.

Disaffected elements and politically and culturally alienated groups who allege that "the system" and our form of government are intolerable, unjust and repressive have every right to use the many legitimate and lawful procedures available to them to bring about changes in society. They do not have the right to take the law into their own hands.

Terrorist groups are elitist minorities, lacking any political legitimacy or public support. Their resort to terror is conclusive proof of this.

How should we in Australia respond to this new tyranny? Relative to some other countries, the plague of terrorism has not yet become, and hopefully will never become, part of our everyday life.

Yet we would be worse than naive to think it impossible. There is no reason in our history to suggest that we are immune. Clearly we MUST never be caught off our guard. We must first and foremost take whatever measures are necessary to protect our citizens; to expose our citizens to dangers to their lives, their liberty and their rights is an unthinkable and unacceptable option. Moreover, the inability of a democratic government to protect its citizens would not only lead to their loss of faith in democracy but it would unleash authoritarian forces and the very liberal ideals which the terrorists abhor would be the first victims.

A government must fully perform the duty it owes its citizens to protect their lives. At the same time, governments must respond with conscience, even towards those who reject the society's values and seek the society's destruction.

Our reactions must always be guided by reason, good conscience, and an ever-present understanding of the values of Australian society.

This government has acted and will continue to act in ways which will both be effective and accord with the civil liberties which are fundamental to Australian society, which are at the heart of liberalism.

The basic judgements of the Royal Commission on Intelligence and Security have been accepted and are being acted upon.

Last month I outlined to the Parliament several other immediate actions which are being taken to improve security and improve coordination between the Commonwealth and the states in security matters.

Mr. Justice Hope is to undertake a further enquiry on existing protective security measures.

Any legislation the Government introduces, as a consequence of the Hope Enquiry or otherwise, will strike the balance between the need to respond decisively to the threat of terrorism and the imperative of sustaining the democratic freedoms we hold paramount.

One of the terms of reference of the Enquiry by Mr. Justice Hope, who is a former President of the Australian Council of Civil Liberties, is "the overall balancing of the interests of security and the rights of private citizens".

There is also a clear need for the closest international cooperation to rid the world of this political terrorism. Such collaboration may take many forms: pooling intelligence, denial of sanctuaries, cutting off sources of funds, tighter controls on shipments of explosives and greater cooperation in monitoring the movements of suspects.

Australia is a party to all major international conventions designed to combat terrorism. Last year Australia gave effect to the latest of these which rendered acts against internationally protected persons, including visiting heads of government, ministers of state and foreign diplomats a special criminal offence.

Australia has supported the International Atomic Energy Agency's proposal for a convention aimed at strengthening measures against any crimes involving nuclear material or facilities.

We are supporting a proposal by the Federal Republic of Germany for an international convention on the taking of hostages. At the recent Commonwealth Heads of Government Regional Meeting in Sydney, the twelve heads of government agreed to collaborate more closely to counter terrorism in our region.

Ladies and Gentlemen, it is therefore with total conviction that I state on behalf of the Government that: we will not appease those elements in the national or international community who conspire, by acts of terrorism to deny our people their rights, self-respect and dignity; we will not succumb to the tyranny of self-appointed and unelected minorities who seek to inflict their will on the great majority of our people by intimidation, violence and terrorism; we will not permit Australia to be used as a haven for terrorist groups to plan and conduct operations abroad.

Terrorism and the threat it poses to the Rule of Law, is not merely a problem for the Government or the Police or the Army it is a problem for society as a whole.

Our free and open societies have demonstrated a great resistance to assaults against them. They enjoy one profound advantage over dictatorial regimes; the unqualified support of the overwhelming majority of the people and their rejection of violence and terrorism.

There is perhaps no more potent deterrent to terrorist activities, and no more potent guarantee of detection of the perpetrators of terrorist outrages than the wholehearted and concerted determination of individual citizens to assist the Government in its implacable opposition to terrorists and all their works.