

## **Public Justice in a Time of (In)Security**

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40 years of Citizens for Public Justice (CPJ). 42 years of Amnesty International (AI). Guess what? Seems we all cottoned on to something pretty fundamental around the same time. And that was: that we are all responsible for the state of rights, freedom and justice on this planet. All of us.

I know from my own opportunities to collaborate with and observe the work of CPJ that AI's four decades of human-rights work and CPJ's four decades of public justice work share similar objectives. Our voices, our power, can and will overcome injustice, and deliver a world in which the glorious promise of documents like the Universal Declaration of Human Rights are reality and not rhetoric and aspiration, for all people, at all times.

I have been asked to talk to you this evening about public justice in a time of insecurity. And there is certainly much to reflect upon. The public-justice issues, the human-rights challenges that we face in what has been described as the new era of "global security" are vast.

It has been said many times since September 11, 2001 – that nothing is the same, the world has changed. It has been said so many times that it is almost starting to lose meaning and significance; it's sounding more and more like rhetoric. Of course, for the vast majority of people in the world nothing has changed since 9/11. They already lived lives full of violence and fear.

But obviously there has been a crucial political change since September 11 – as now the rest of the world has woken up to the reality of insecurity.

What I want to highlight, is that much of the change is about human rights, even though we don't hear a lot about human rights in our post-September 11 world. We hear much about terrorism and about security, about war and its aftermath in Iraq and Afghanistan, conflict in the Middle East, bombings in Spain, Turkey, Indonesia, Morocco. We don't hear much about human rights. But we need to.

What happened in the United States on September 11 was all about human rights, and everything since has been as well. We need to bring basic, universal human rights principles firmly into the centre of debate, into the events shaping how we will live our own lives, how we will treat neighbours and strangers in our midst, and how we will understand and engage with the world. If we give up or waver in our commitment to fundamental human rights – globally defined, globally applied and globally enjoyed – we will have caved in to

terror, given up on justice and ultimately agreed to a world divided, unequal and full of violence.

Let me share with you two simple, but also quite important observations about what is happening to human rights in the midst of the war on terrorism. One, a daunting challenge. The other, perhaps, a profound opportunity. The first arises from fear. The second through awareness.

Fear has encouraged people to give up on human rights. All that matters now is safety and security. Make me feel secure again. And if that means taking away some of my rights – or the rights of my Arab-Canadian neighbours – that's too bad. It's a price worth paying. If it means war in Afghanistan, Iraq, or anywhere else – war in which there may even be civilian casualties – that's too bad. It's a price worth paying to feel safe again.

We've all felt a twinge of this, sensed it among family, friends, classmates, coworkers. Nothing undermines human rights more than when people give up, give in or give over their own precious rights and freedoms. So the challenge is to bring home the message that now is the time to embrace human rights as never before.

Which brings me to the opportunity I have sensed in these past months. For I also hear, all around me, people asking questions about their world. Knowing and feeling like never before that there is much about their world that is broken and in need of repair. And knowing and feeling like never before that it is about them – not just about faraway wars and faraway grievances in faraway lands. It is both global and local, both faraway and deeply personal.

In that awareness I hear people's determination to understand their world in new ways and to find different ways to engage with it. This is a potentially unmatched opportunity to encourage a true global culture of human rights and a global commitment to human rights.

Let me now look at two big and pressing human-rights issues that have emerged over the past eight months. I'm going to approach them as lessons that we simply cannot fail to learn in the days, months and years ahead, lessons that have been sadly neglected to date. The first I call the lesson of justice. The second the lesson of tolerance and respect.

## **Justice**

What happened on September 11, was unquestionably and quite dramatically a serious abuse of the most precious human right of all – the right to life. AI has named it as such and condemned it as such. In fact, we have said it is an abuse of the gravest nature – a crime against humanity.

We have also stressed, however, that the response to any human rights abuse must be justice. Those responsible must be found, charged and brought to justice – in fair proceedings, which do not include the possible imposition of the death penalty. Justice – not revenge, not further abuses, not inaction or silence.

It seems a simple message and a fairly obvious lesson, but it's one to which the world is only now awakening. For unless those who plan, orchestrate or carry out grave human-rights abuses are brought to account, it is inevitable that there will be further abuses. If there is no price to pay, but rather possible rewards of power and wealth – why not kill, torture and terrorize?

Sadly, for years, indeed centuries, justice has not been the response. Rarely have efforts been made, nationally and internationally, to make sure that torturers, architects of genocide, even terrorists, have been brought into a court room, with an eye to having the truth come out and a just penalty imposed. Instead we turn a blind eye while suspected terrorists are tortured and assassinated, or as former soldiers accused of human rights violations are deported to a country where they walk away free.

Justice is a message that we have pressed throughout four decades of human-rights work. Justice is clearly a message at the very heart of what CPJ stands for. But only recently can we begin to see that world leaders are beginning to learn the lesson.

We see it in the Pinochet case. Remember that sparkling, justice-filled moment a few years back when Britain's top court, the House of Lords, ruled that all states have a responsibility to bring all torturers to justice, not only in cases where the torture may have taken place in that country.

We see it in two international courts that are up and running, bringing to justice the masterminds behind atrocities in the former Yugoslavia and Rwanda. And recently, a third, hybrid national/international court has been set up for Sierra Leone.

Most wonderfully we now see it in the recent birth of a permanent International Criminal Court (ICC). The court should be hearing its first cases later this year – likely beginning with the human rights catastrophe that has all but destroyed the Democratic Republic of Congo. The ICC's birth has been a remarkable, truly ground-breaking achievement, in which Canadian involvement – governmental and non-governmental – has been key.

Sadly, our southern neighbours, who speak passionately about a shared global responsibility for justice in the face of terrorism, continue vehemently to resist the creation of the ICC. This poses a significant challenge for us now to ensure that ultimately the ICC is a strong and effective institution, and the new era of international justice truly becomes global in its scope and reach.

The September 11 crisis is a vital example of where the response must be justice. We all waited with baited breath, fearful that the U.S. would rush to angry vengeance – that we would wake up on September 12, 13 or 14 to news of carpet-bombing of Afghanistan, Iraq or Sudan. We urged restraint, called on governments to creatively and determinedly pursue all possible legal, diplomatic and political options before resorting to military means of achieving justice.

Within a month, of course, the military strikes began in Afghanistan, which several months

later tapered off and entered a mop-up stage. Has there been justice? The stated central goal of apprehending Osama bin Laden still eludes. We hear that many of those detained at Guantanamo Bay are members of al-Qaeda, but with little information, and fundamentally flawed and unjust legal processes being applied, it is impossible to have confidence in those assertions.

Clearly the Taliban – who imposed seven years of harsh, repressive rule upon the people and especially the women of Afghanistan – have fallen. Undeniably there is a sense of justice in that. But addressing seven years of human-rights violations in Afghanistan was never the stated military objective. And more than two years after bombs first fell in Kabul, insecurity still reigns, women outside of Kabul have certainly not experienced emancipation, and human rights abuses are commonplace countrywide.

Then there was Iraq. We gather tonight just one year after that war began. A war that was fought in many different names: fought to find weapons of mass destruction, fought to counter terrorism, fought to restore justice and freedom to Iraqis. AI released a report last week to mark that anniversary. What we said is that one year later:

- Most Iraqis still feel unsafe in a country ravaged by violence.
- Every day, Iraqis face threats to their lives and security.
- Ten thousand Iraqi civilians have been killed during the past 12 months.
- Violence is endemic, whether in the form of attacks by armed groups, abuses by the occupying forces, or violence against women.
- Millions of people have suffered the consequences of destroyed or looted infrastructure, mass unemployment and uncertainty about the future.
- There is little or no confidence that those responsible for past or present human rights abuses will be brought to justice.

So yes, there has been much talk of justice since September 11. But will it be more than just talk?

One notable development is that the events of September 11 led to law-reform initiatives around the world. Laws have been put in place to facilitate bringing suspected terrorists to justice. These efforts, though, have been broad anti-terrorism legislation that puts basic rights at risk in a march to security and justice.

Here in Canada, that played out most clearly during the fall of 2001 as the government moved rapidly to adopt Bill C36, the Anti-Terrorism Act. I will return to this law again when we look at the lesson of tolerance and respect. But it is important here when we consider the lesson of justice as well.

On its face at least the new law is justice-based, focused on bringing alleged terrorists to justice and on denying them the financial support that makes terrorism possible. Past Canadian practice when faced with individuals here who may have committed human rights abuses abroad (including terrorism), has been deportation. Get rid of them, no matter what might happen (for instance torture), or what might not happen (for instance no investigations and no judicial proceedings to look into allegations).

New laws making use of the justice system to deal with terrorism are a good thing. But as I'll point out in a moment, we need to bring resources and political will to bear here, for a consistent commitment to justice for any suspected human rights abusers in Canada, be they alleged supporters of al-Qaeda or possible members of a government-run death squad.

What about the approach to justice in the new law? The commitment, after all, must be to deliver justice that is fair, impartial and upholds and safeguards basic rights. There are concerns here, including about provisions for preventative arrest and investigatory hearings that could infringe against the right not to incriminate one's self.

But little worry, the law is not being used. Instead we have a growing number of cases: Maher Arar, Muayyed Nureddin, Ahmad El-Maati, Abdulla Al-Malki, Helmy Elsherife, where very troubling questions have arisen as to whether Canadian practice has become not to turn to Canadian law, but instead to give a nod and a wink to foreign security services – for example, Syria and Egypt – and stand by while they proceed with arbitrary detention and torture. Fortunately, this issue will soon get close scrutiny through the judicial inquiry that has been called into the case of Maher Arar.

That is what Canadian citizens may face. But with non-citizens justice is not the response either. Rather, the notorious Security Certificate process under the Immigration Act is being used increasingly, with individuals being locked up indefinitely, subjected to legal proceedings where they are not allowed to see the evidence against them or question the witnesses who are the source of that evidence. Deportation may very well mean torture or death at the other end.

Looking beyond Canada, other national initiatives also seriously jeopardize basic rights. Let me stay close to home here and highlight some concerns regarding the United States.

In the U.S., Guantanamo Bay is a perfect example. Hundreds of detainees of some 40 different nationalities have been held there for over two years in contravention of a basic tenet of international law – that due legal process should apply. AI and many others have argued that the detainees must be treated according to the Third Geneva Convention regarding prisoners of war.

U.S. authorities have steadfastly refused to follow the Convention, which would require any uncertainty regarding POW status to be referred to a competent tribunal. That refusal is particularly worrisome given that there is no other alternative legal process being followed, especially as it conveys an undermining message about international human rights and humanitarian legal norms – that governments should feel free to pick and choose among the rules as they see fit. That does nothing to achieve greater global security in the end.

So, the lesson of justice is upon us. In some measure we are getting it right. For example, there is increased talk of how important it is to establish global justice institutions such as the ICC. But much is still to be learned, for example, that we simply will not ever achieve justice through law and procedures that are fundamentally unjust, and that we have to be

so very careful when relying on military might to ensure that justice is done.

### **Tolerance and Respect**

Let me move on to the lesson of tolerance and respect. From the outset – the very afternoon of September 11 – it was clear that a major human rights challenge in the aftermath would be guarding against backlash, recriminations and discrimination. Minority groups, particularly Middle Eastern, Muslim and Jewish minorities in countries around the world, would be at risk of vandalized religious buildings, violence, or of becoming police targets because of their faith or ethnic background. Refugees would face further obstacles in their efforts to reach safe haven. Dissenting political voices would be silenced in an increasing anti-other orthodoxy.

Unfortunately, concerns have been proved true on all three fronts: minority groups, refugee protection and dissent. There is an unquestionable need for vigilance in ensuring that tolerance and respect do not fall further victim to the insecurity unleashed by the September 11 attacks.

First, let us consider the plight of minorities. In the weeks immediately after September 11, AI documented numerous examples worldwide of harassment and persecution of minorities:

- A school bus of Muslim children in Brisbane, Australia, was pelted with stones and bottles;
- Muslim ethnic groups in the western Xinjiang region of China face harsher crackdowns as Chinese authorities label any support for autonomy or nationalism as terrorist;
- In Belgium, synagogues have been firebombed, the façade of a synagogue was sprayed with bullets, a Jewish bookshop and delicatessen were destroyed by fire; and
- Calgary police reported that hate crimes doubled in the months immediately after September 11.

Intolerance and racism are wrong at any time and in any form. But now, when the world so desperately needs healing, bridge-building and understanding, we must be even more vigilant against hatred of any sort. And we must insist that our leaders do so as well – at all levels of government, within faith communities, within our schools – and on an ongoing basis.

I also highlighted concerns about refugees being singled out and demonized in this post-September 11 world. We have certainly seen a great deal, here in Canada and elsewhere, of fingerpointing at refugee-protection systems as allowing terrorists in, of calls to tighten up, exclude and make greater use of detention, and of greater willingness to deport, regardless of the dangers that may await people on the other end. The debate has taken hold around the world – what is often missing, though, is recognition that it is the refugees themselves who are suffering most, and who are fleeing in fear of further violence. We must be scrupulously careful, therefore, to make sure new laws and policies do not put genuine refugees at risk.

Here at home, September 11 has pushed the Canadian and U.S. governments towards a shared approach to refugee protection. Within a few months it is expected that the new

Canada/U.S. safe-third-country agreement will become operational. At that time, any refugee who passes through one country on the way to the other, and who makes a port of entry claim for refugee status, will be told to make their claim to the first country. In practice this will have dramatic significance for the approximately 50 percent of refugees who pass through the U.S. on their way to Canada, largely because there is no other way to reach Canada. Now they will be told to stay in the U.S. That would be fine if the U.S. refugee system met international standards. But it does not, particularly in the widespread, lengthy and arbitrary detention of refugee claimants in isolated centres alongside criminal convicts, and the frequency with which refugee claims by women, based on human rights abuses such as honour killings, domestic violence and dowry deaths, are turned down. The agreement should not go ahead without safeguards to ensure that returning someone to make a claim in the U.S. will not lead to human rights violations.

A final worrying challenge to tolerance and respect rests in the degree to which voices of dissent have been silenced or penalized in the new climate of counter-terrorism and security. Groups such as AI, and individuals, have in some countries been attacked and even killed, and in others sharply criticized and intimidated. As a result, the concerns of human rights activists, and even among the general public, range from a noticeable caution to outright terror about what they might normally want to say or do, and how it will be perceived and received.

Yes, I support moves to improve security, but I would also like to see action taken to improve human rights.

I think, for example, of Colombia. I was in Bogota on September 11, 2002, a powerful place to be on that first anniversary of the World Trade Tower attacks. At every turn I heard that every time Colombia's brave, creative human rights activists insist the parties in Colombia's armed conflict commit to human rights, they put their lives on the line. What is happening in Colombia is nothing more than a crude effort to silence important independent voices, using the rhetoric and emotion of anti-terrorism and security.

Neither our current legislation here at home nor what takes place in countries like Colombia can be the way ahead. Our responses to terror must scrupulously protect, tolerate and respect the right to free expression, including dissent and disagreement. If we cave in here, and settle for complacency and passive agreement, we risk losing the most basic freedoms we cherish. The "new security" cannot be allowed to erode our right to disagree.

Let me return to the theme – the challenge of safeguarding human rights in the era of fighting terror. Human rights have faced a double assault over the past year. Clearly, the cold, cruel logic of terrorism is a vicious and very public attack on basic rights. But the sweeping logic of counter-terrorism also challenges rights, and the challenge can be even more insidious and invisible.

The answer has to lie in rejecting the sacrifice of human rights in the name of security – and embracing instead the simple truth that the two are wholly and inescapably interlinked. Security that is not grounded in human rights will always be precarious, and

human rights will remain tenuous if security is not assured.

Let me end by offering words that were shared with me recently by the Director of Human Rights in the Foreign Affairs Ministry of the new Afghan government. We spent considerable time talking about the enormous human rights difficulties the people of Afghanistan face. And he ended by pointing out that the world would never have turned its attention to Afghanistan as long as it was only the security of Afghans at stake. The challenge he put before me was to press my government to recognize that in our global community when there is insecurity for any of us, anywhere, we are all insecure. That is precisely the challenge that has been at the heart of CPJ's work these past four decades. I look forward to our combined efforts to rise to that challenge in the years to come.

## Alex Neve

Alex Neve has been Secretary General of Amnesty International Canada since January 2000. He has been a member of Amnesty for over fifteen years and has worked for the organization nationally and internationally in a number of different roles, including research missions to Tanzania, Guinea, Mexico and Ghana.



Alex is a lawyer, with a Master's Degree in International Human Rights Law. He has practiced law in Toronto, privately and in a community legal aid clinic, primarily in the areas of refugee and immigration law. He has taught international human rights and refugee law at Osgoode Hall Law School in Toronto and has been affiliated with the Centre for Refugee Studies at York University.

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### **Public Justice Resource Centre**

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PJRC, founded in 1963, is a research and education organization that responds to God's call for love, justice, and stewardship in the understanding and discussion of core values and faith perspectives in Canadian public policy debates. It works closely with its sister organization, Citizens for Public Justice.



### **CITIZENS for PUBLIC JUSTICE**

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CPJ is a national, non-partisan organization that promotes justice in Canadian public affairs. CPJ responds to God's call for love, justice, and stewardship through research, education and advocacy. CPJ works closely with its sister organization, the Public Justice Resource Centre.

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