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Liberal vs. Liberal, grown-up vs. child

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In



the continuing furor over the federal Anti-Terrorism Act, and whether to extend its most controversial features past their sell-by date, count me on the side of Jim Karygiannis. Debating the issue in the House the other day, the Liberal MP explained that “times have changed” since the fall of 2001, when the legislation was passed — by a Liberal government, if memory serves. At that time, he said, “there was a need for reaction. We were getting pressure from all sides. The government of the United States was certainly pointing a finger at Canada.”

“However, times have changed. Yes, terrorism is here. Osama bin Laden is said to still be alive ... However, the need to have investigative tactics and to take people’s civil liberties away ... is something that I personally never favoured and find very hard to support.”

So: Terrorism is still with us, but times have changed. Just so long as no one tries any investigative tactics.

On the pro-tactics side, who should we call upon? Take your pick: John Manley, Anne McLellan, Bob Rae ... Or how about Irwin Cotler? Mr. Karygiannis is concerned about civil liberties. So, presumably, is Mr. Cotler: professor of law, director of McGill University’s Human Rights Program for nearly three decades, counsel to Nelson Mandela, Natan Sharansky, Jacobo Timmerman, not to mention Maher Arar — in short, probably Canada’s foremost expert on civil rights. Mr. Cotler supports retaining the provisions that Mr. Karygiannis finds so troublesome. Doesn’t he realize: Times have changed?

You will notice that I have enlisted only Liberals on either side of this debate, and with good reason. This is not primarily a debate between Conservatives and Liberals, or government and opposition. It isn’t even really a debate about the proper balance between security and freedom. This is a debate within the Liberal party, between its grown-up wing and, well, its Karygiannis tendency.

In substantive terms, the issue has been vastly overblown. Civil liberties in Canada would not have withered away had the measures in question, limited to five years under “sunset” provisions, been extended in last night’s vote, nor will their scheduled expiry tomorrow necessarily cripple the state’s efforts to protect us from terrorist attack. It suited both sides to engineer a showdown, the better to paint the other as either soft on terrorism or drunk with power, and so instead of compromise it came to a straight up-or-down vote.

It is a sign of the oddly disembodied nature of the debate that most of the points advanced could have been made by either side — could and were. The sunsetted provisions, it was pointed out, one allowing police to arrest suspects without warrant and hold them for up to 72 hours, the other empowering judges to compel evidence at special investigative hearings, have never been used. Ha, says one side, so they’re unnecessary! Ho, says the other, so they’ve hardly been abused, have they?

Likewise, the absence of terrorist attacks in the interim is either evidence that the threat was overblown from the start, or that, as the only one of five countries named in that famous Osama bin Laden audiotape yet to suffer the consequences, we’re due. You say the measures are unneeded, as authorities already have broadly similar powers under existing criminal code provisions? And I say: then how are these a threat? And so on.

But three points should be made. One: Neither measure grants the authorities limitless power to apprehend and question suspects. Before police can make a “preventive arrest,” they must have the written approval of the Attorney General; within 24 hours, the suspect must be brought before a judge, who may authorize his detention for a maximum further 48 hours. Similar protections attend the investigative-hearings provision.

And of course, both are subject to the Charter of Rights — though they might not have been, had advocates for the “notwithstanding” clause been listened to at the time. The Supreme Court’s ruling last week in the security certificates case is a reminder, not just that civil liberties may sometimes be unduly constrained in a moment of national panic, but that the rule of law continues to apply.

But, two, if the measures are not the threat to civil liberties some make out — they are in fact quite mild, by international

standards — neither does yesterday's vote spell their permanent extinction. It is always open to the government to reintroduce legislation granting the same authority, as no doubt it will do shortly enough, the better to depict the Liberals as feckless pantywaists.

Which makes it so inexplicable, three, why the Liberals — some of them — have been so eager to step into the role. Any number of possible compromises were at hand: a three-year extension, coupled with annual review of the legislation, as a Senate special committee, chock-full of Liberals, has recommended; a three-to-six month extension, to allow a more searching redrafting of the law, as Mr. Cotler has proposed; and so on.

The government, admittedly late in the game, embraced the Senate committee's proposals. But by refusing to do likewise, the Liberals have left themselves, for the second time in three weeks, looking like fanatics, rejecting legislation they themselves had passed.

But then, as Mr. Karygiannis explained, times have changed.