

Keynote address at the 40th anniversary meeting of the British Columbia Civil Liberties Association by John Ralston Saul

President John Dixon.

Mr. Churchill, congratulations to you. I have to say that, when I was told about your defence of yourself, what immediately came to mind is that you are in a very important tradition in Canada of people who have defended themselves in the courts.

The beginning of the formal idea of freedom of speech in Canada and citizens' rights happened in precisely that way when Joseph Howe was accused of libel in order to bankrupt him. He was advised that he could only lose and therefore decided to defend himself.

In an amazing speech that lasted six hours he ripped apart the governing elite of Nova Scotia, convinced the jury and against all odds won the case. That was the beginning of what this room is about tonight.

You have something here to live up to. The second great case of this was after the Winnipeg general strike in 1919 and everybody was arrested, and the first trial was the leader of the strike, the key person. His name, as it happens, was Frederick J. Dixon. He defended himself and won and was acquitted and was shortly thereafter elected.

I can't quite remember to what, but all the leaders who were arrested within three years had been elected municipally, provincially or federally, which is a very interesting story about Canada.

So I don't know whether you are the third. I am not sure who came in between Dixon and you, but you are in a line.

I also want to say that I was here about ten days ago in this room in another role, for the third annual LaFontaine-Baldwin lecture where George Erasmus gave I thought a fascinating new view about how we can think and talk sensibly and moderately about the normalization of the central Aboriginal role in Canada.

You can't get me to Vancouver enough really. I just like being here, and I have a wonderful time when I am here.

The third thing I want to say as an introductory comments is that I can't quite match some of your stories about what was seized at the border, but I also have been a victim of this process.

When I brought out "Voltaire's Bastards" about a decade ago, it came out first in the United States and my editor was extremely excited and said we are courier up a box of it to you today. So I waited. The next day the box didn't appear and didn't appear. Phone calls back and forth.

I think two weeks went by and finally a box came up, which had been opened, carefully examined and taped up and I guess pushed around. They saw the title "Voltaire's Bastards", assumed that it was and then tried desperately to figure out what was obscene in this 600-page book of philosophy.

Perhaps they needed to redefine the word "obscenity"; I'm not sure. So that was my experience with it. I thought this is ridiculous. It was a moment when I was becoming quite involved in PEN actually, or I was already very much involved.

When John Dixon asked me whether I would come and speak, I really accepted very fast because I wanted very much to come. I wanted very much to come not simply as the writer but actually to come officially, to make the point.

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When people find themselves, as I happen to, in public positions for various reasons -- there are other far more noble reasons, such as being elected, far more noble, far more difficult.

But when people find themselves in public positions, I think it is important to seize that opportunity, to stand up not necessarily in order to agree or to disagree with every issue pursued by the B.C. Civil Liberties Association, but to stand up to say that work such as that done for civil liberties and freedom of speech is the normal essential work of citizenship, and therefore it represents a public demonstration of existential ethics -- not quite philosophy -- which we should all be paying attention to, whether we are members of an organization such as this, or not.

It isn't easy to do this kind of work. It isn't ever easy to do. It isn't easy at PEN; it isn't easy here, these sorts of organizations. It is really tough work.

Camus in 1944 or 1945, just as the war was winding down, said: "Quand on défend la liberté, on la défend toujours dans l'abstrait jusqu'au moment où il faut payer."

When we defend a freedom, we defend it in the abstract until the moment when we have to suffer the consequences of reality.

I think what an organization like the Civil Liberties Association does is it is constantly on the line of the consequences of reality, of paying. People always say French is longer than English. It actually isn't true. French is often shorter.

So he was able to say "le moment est venu où il faut payer", which is the consequences of reality.

The other reason I accepted is because it is the 40th anniversary of a national organization known as the B.C. Civil Liberties Association. It is a national organization because a great deal of what this organization does has an impact on what happens right across Canada. It is very important to remember that it is both B.C. and national.

In a sense, when I sort of make lists of what different parts of the country contribute to the whole, one of the things that British Columbia contributes to the whole is an ongoing argument about civil liberties, led to a great extent by this organization, led by this organization. That is a very important thing.

Also this business of the 40th anniversary certainly reminds me, and I think it reminds all of us, of the fatiguing nature of democracy, citizenship and participation, the ability of democratic society to just plain wear you out, because it just goes on and on and on and on. It is never over. The battles are never won. You think they are won, and they come back again.

That is the nature of democracy. It is actually the strength of democracy. Only dictatorships actually solve problems forever, so to speak. Thousand year Reich and all the rest of it. In democracies it just keeps coming back, and it is extremely tiring and extremely wearing.

Nothing is ever settled, except by death, one's personal death, and you get out of it. You stop having to sit on the committees when you die.

It requires enormous energy, persistence, staying power, which is actually one of the toughest things. It is one thing to be stubborn, but actual intelligent

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staying power is one of the hardest things about freedom of speech, civil liberties, democracy, participation, citizenship. Stubbornness, all the same. A thick skin quite often.

Basically whatever it is that you are born arguing and defending, you are probably going to be arguing and defending the day you die. That is sort of a depressing way of putting it, but that's just the way it is in a free society. You come in and it is already happening; you leave and hopefully it is still happening.

You are just part of the process of what is in this country, flawed though it may be in many ways, the second or third oldest continual democracy in the world.

We don't say that enough, because it means that there is a lot of experience, positive and negative, a great deal to lose because it has been there for a long time building; a great deal to build on because it has been there for a long time. There is nothing new about our experience. It is an old experience.

What I want to talk about briefly -- and I promised John I wouldn't speak too long, because we are going to have a question period as well or a discussion period.

What I want to talk about a bit -- and it is rather an abstract speech that I seemed to have cobbled together; so forgive me -- is the need to normalize society's sense of this uncertainty that you are here to discuss, that I have been talking about, the uncertainty of civil liberties, the uncertainty of freedom of speech, of citizenship.

I want to talk about the need to normalize the tension which is central to civil liberties and freedom of speech; to normalize it, to celebrate that tension, because I think that tension is actually proper to democracies.

I want to talk about it in the context of both what I think individualism really is and what freedom of speech can be.

I personally am always amazed that the normal attitude -- which I think is abnormal -- but the theoretically normal attitude toward debate in our country and other democracies, to difference of opinion, to people being engaged seriously in public debate as opposed to keeping their heads down, to the criticism of established views, of established habits, of established methods, is generally speaking considered to be controversial.

It is considered to be controversial to be involved in public debate, to be committed, to be criticizing established views.

In fact, controversy is considered to be controversial, which I have never understood. I don't see how in a democracy controversy could be controversial. It seems to me that controversy is at the very core of democracy and therefore is normal.

What is controversial is agreement in a democracy. Now that's controversial. Everybody is in agreement. There is something definitely wrong. There is something to be argued about if everybody is in agreement in a democracy. Either we are all asleep or we aren't listening to ourselves and what we might be thinking ourselves.

I think that these sorts of things which are considered to be marginalizing for a successful career or life as a citizen today, these things which are considered so

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often not to be professional, are in fact the meat and potatoes of the normal life of a normal citizen in a normal democracy.

What I am saying is so banal, so utterly banal, and yet on an almost daily basis I hear and witness situations where acting as a normal citizen is treated as if it were marginal.

It is almost as if, quite apart from legal cases, from the point of view of mythology in the country the Charter didn't exist.

After all, if you look at the Charter -- just to remind myself, I pulled it back out again. It has been a couple of years since I argued anything for PEN on using the Charter in one hand and whatever in the other hand.

There it is. It does start out. There is a short first article, and then the second article has the four fundamental rights in it. The second of the fundamental freedoms is the freedom of thought, belief, opinion and expression.

It is not marginal. The whole country is constructed legally, right up at the top, around the idea of disagreement, argument, debate, participation. That's what it is built around. That's the nature of our democracy.

They didn't put that right up there in about the eighth line of the Charter of Rights by mistake. They put it up there because that is the nature of society.

You will note that nowhere in the Charter of Rights and certainly not up in the first four or five lines is mentioned the freedom to go skiing on the weekend or the freedom to agree or the freedom to maximize footnotes or the freedom to be obscure. That's not laid out. The freedom to be loyal is not mentioned. The freedom to go to really good restaurants isn't mentioned.

None of this is in the Charter. I know it could be argued that it is assumed. I am sure John could find an argument in favour of good restaurants in the Charter, if we gave him enough time. But nobody went to the trouble of actually stating it in the Charter as being central to the way we organize the country.

It is freedom of speech, which is to say the freedom also to hear. One forgets that freedom of speech is not simply about speaking; it is also about hearing and hearing a variety of opinions. It is that which was put up at the front as normal protection, normal freedom at the core of the Canadian democracy.

Why would you bother to put it up there if you weren't interested in differences of opinion, if it were normal to be in agreement?

If the concept of democracy and citizenship were actually properly integrated into the way we imagine ourselves as a nation, as people, as citizens, if it were properly integrated, then the people most admired in our society, in the list of the 20 most amazing people of the year, the 100 most whatevers, would almost invariably be lists of the people who spoke out and didn't conform.

Our whole legal system is designed in order to admire those people. It is only the mythology which doesn't admire them and which says that there is something vaguely unprofessional about them because they are sort of not in agreement and they are kind of annoying, because they are always upsetting what everybody would like to think they are supposed to think.

In fact, they are the people who are willing to get to their feet and disagree, the most admirable people, if only because they are the people who are taking their

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own constitution seriously. Recognizing what the constitution says is actually important.

This is rather a dry subject, but I am trying to point out the self-evident in a non self-evident way, since it isn't treated as self-evident.

MR. DIXON: I'm excited!

DR. SAUL: Good. What I suppose this comes back to -- and I suppose some of you have heard me say this part of it before. The problem with debate in a society which has a great deal of corporatism in it is that there is an unreasonable obsession with loyalty.

Corporatism is very, very interested in loyalty, which democracy really isn't. Loyalty is always described in rather peculiar ways. It is always described that someone is calm -- these are compliments: they are calm, they are loyal; they are professional, they are loyal; they are responsible, they are loyal.

The emphasis around loyalty is always on agreement and the assumption that there is a truth upon which we all agree, which is why it is marginal to speak out and not be in agreement. It is undermining the smooth surface of a professional and sophisticated society.

There is an enormous admiration in a society with a lot of corporatism for smoothness on the surface; whereas democracy is actually rather rough on the surface. That is what it is supposed to be.

All the great politicians will tell you it is supposed to be rough. It is not supposed to be smooth.

I think there is something which is very important to say which isn't said enough, and that is that nobody, no organization, private, governmental, media, nobody has the right to question the loyalty of any citizen to their society. That is not actually, I believe, a right which lies in the hands of any organization in a democracy: to question the loyalty of a citizen. Or worse still, to ask the citizen to demonstrate or to state their loyalty. That is even worse.

The reason for that is very simple. In a democracy the source of legitimacy is the citizenry. We have our constitution, we have our methodologies, but the base of legitimacy in a democracy is the citizenry. That is what makes it a democracy.

If the source of the legitimacy in a democracy is the individual, the citizen, then their loyalty by the very definition I have just given you, has to be taken as a given. If their loyalty isn't taken as a given, then they are not the source of legitimacy in society. But they are. So the loyalty has to be taken as a given.

From that base of the given loyalty of the citizen, you can move on and have debates and have differences of opinion, because you know you are all loyal whatever your opinions might be. Right, left, centre, for, against, you know you are all loyal because you are all citizens. Therefore, you are free to disagree.

The marginalization of controversy, of the debate of ideas, of tension, is a profoundly anti-democratic event. It is summarized in its most insulting way to citizens by the raising of the question of the loyalty of citizens under any circumstances.

Let me put this in a slightly different way.

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It seems to me that the enemy of citizenship, of responsible individualism, could be described as a desire for certainty, a desire for inevitability; or, to put it even more bluntly, that certainty and a belief in inevitability is an enemy of citizenship.

Certainty and inevitability -- I have said this before -- are ideology, again by definition. It is worth remembering that when I say this kind of thing, there is a long line -- 2500 years in the western tradition; in many other traditions a long line as well -- which keeps pointing out that certainty is ideology, that uncertainty is democracy and individualism.

It is not limited to social democrats or whatever. It is right across the spectrum of the non-ideological societies, the non-ideological elements in society.

So William Pitt, a conservative. Necessity -- i.e. inevitability, i.e. certainty. "Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves."

Malraux: "L'esclave dit toujours oui." The slave always says yes.

It is disagreement which is admirable in a democracy, not agreement.

That doesn't mean that the citizen always has to say no, but the citizen will certainly, or should, I would imagine, certainly -- I shouldn't say certainly. I'm stopping myself.

I would think that the citizen probably will consider no before saying yes or before discussing the possibility of a yes; or may say no, or may say maybe, but will certainly not feel obliged to say yes.

If you are going to actually be forced to make a choice between yes and no as a citizen, the noble position is no. The slave's position is yes.

These are all uncontroversial arguments which have been made for thousands of years but which are actually again and again forgotten and I think are particularly forgotten in our society.

Why is no the more noble position?

Individualism -- and John and I talked about this a bit, and I sort of promised that I would talk a little bit about the contradictions inside individualism in a democracy such as ours.

Individualism requires living a double life. The first life that we live is a life which is tied to rights, and a great deal of the work of organizations such as the Civil Liberties Association. It is one of the rights which exist on paper, in law or in traditions, and also that same form of individualism has to do with struggling to maintain what is written down or struggling to improve what is written down.

That is one of the things that we do. It is sort of that argument about natural rights, created rights, and so on.

Right beside that you exist as a second person who isn't really engaged in the debate about your rights. You are actually simply engaged as citizens in society in a far more general way, in a far more doubt-filled way of questioning, of involvement, of giving time to society.

On the one side you have laws and charters and structures, which suggest in a country like Canada -- most of these rights are actually almost in place, pretty close to being in place. When you actually look at things like programs such as

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public education and health care, basically the structures of law and services make us think that we live in a very developed, which we do, evolved society and that we have all sorts of rights, whether legal or social, which are in place and that we have the right to receive them and that we should fight back if we don't receive them.

What I am describing there already is a somewhat passive relationship even though it doesn't feel passive most of the time, because most of the time people like John are fighting like mad and his people are fighting like mad to maintain them in place.

But it has at the base of it something which is vaguely passive in the sense that we are an old civilization; not simply 2500 years old but 160 years basically of building on democracy and gradually chipping away at the things that are wrong and adding in more things that are right, and ups and downs, and so on.

The difficulty -- and I think John would agree with me on this -- is that if one focuses too much on that side of it, you can end up by mistake overly focused and in a certain way reactive, because you are reacting to this enormous weight of law and regulation and services which are in place.

Even if we all worked, everybody in this room, 24 hours a day, every day of the year, we wouldn't really be able to work enough to keep all of that in place and improve it, because the way in which you keep it in place and improve it is to have also this other person, this other you, who is simply engaged in a much more aggressive and general manner in society in which you don't have the assumption of rights.

You are not in that sense owed anything or sure of anything. You are actually out there knowing that it could all fall away at any moment, because however well it is written down, it is astonishingly fragile and can disappear very fast.

On the one side you have a responsible individualism, which is about rights and resolution, and in a very real sense that is what it is about. Then on the other side you have this much more unstructured involvement in society.

In fact, the rights on the one hand only have meaning to those receiving them and protected by them if that same person is completely engaged in a general way on the other hand. Any citizen who does not engage is asking for their guaranteed rights to disappear. They are simply inviting them to disappear, because those rights are empty unless the citizen is engaged in a general way and is willing to give serious amounts of time to ensuring that there is a context to the rights in their society, a sense of what citizenship is in their society. So it follows naturally that those rights would stay in place.

Although I am sure this room is an exception to the rule, I think that many citizens have forgotten that you only receive protection and services because you spend more time than that generally engaged in society in order to create a context of the public good.

What I am talking about is a permanent tension, in a sense, between what you receive and what you give; what you expect and what you go out and try to create, a permanent tension without respite.

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You can see how quickly something like that can disappear. You can have a service, like legal aid, for example, and this is central obviously to the processing anywhere in the western world. In any democracy in the western world legal aid is central to the technical processing of the legal system. If it isn't there, the legal system can't process people and events and crimes and innocence. If you can't process it, you can't have justice.

So just like that, a structure can fall away and suddenly there is a hole where you thought there was justice. It happens with a rapidity and a facility which is absolutely terrifying. And it often happens without there being a real debate about justice as opposed to about something else which is technical.

That is why I say there is the specific and there is the general, and one has to maintain both at the same time.

When we did the LaFontaine-Baldwin here, George gave his speech and then we had a round table. At the end of the round table I sort of pulled out a piece of paper and quoted from one of the handful of great Canadian poets, probably in the top ten of the great Canadian poets. Two of them were Haida poets, Ghandi and Skaay. They were inheriting stories which they rewrote with a great brilliance around the turn of the century, coming into the 20th century.

In one of Skaay's finest poems, called "Raven Travelling", he describes this brilliant raven moving around the world and coming up against clouds which were like a wall, and then the poem said in two lines: He pushed his mind through and pulled his body after.

It is astonishing. That may be among the two finest lines of poetry written in this country, I think. It is an astonishing idea about the mind, the intellect, the argument of the citizen. And the meat and potatoes, the body, the laws, the services, the processes of justice, that you have to pull behind the mind.

You notice it doesn't say he pushed his economy through to prosperity and civilization followed. You notice the mind came first, the body followed. That is what most people think about civilization. It is only the Chicago school and some management schools that actually think the economy comes first in civilization. But that is another speech.

Let me try to state this idea of pushing the mind through and pulling the body afterwards. Let me try to state the argument I have just made in a slightly different way.

Debate, dialogue, consideration, disagreement are central to individualism and democracy. All of these things are dependent on uncertainty. Certainty and inevitability are the enemy of all of those things and are in fact other words for ideology.

Uncertainty of course is very, very uncomfortable, living with uncertainty, permanent tension. It is like never being on holiday, never being asleep. But that is what democracy is like. Go to sleep, wake up and it's gone, or an element is gone. That is just what it is like. It is about permanent tension and uncertainty.

The constant threat to freedom of speech in a country such as ours is the fear of uncertainty. It is to slip into a fear of uncertainty, a fear of discomfort. That is the biggest threat to freedom of speech.

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The essence of freedom of speech is our ability to embrace uncertainty as great positive, as one of the great strengths of democracy. But uncertainty means something else which is related to this.

If I talk about disagreement, I talk about uncertainty and debate but I am also talking about dialogue and consideration. What I am saying is there is no such thing as a real majority. There is no such thing as a majority in democracy. It doesn't exist. There is no natural majority. There is no real majority. There are no majority rights in a democracy. There are only majority rights in authoritarian societies. Democracies are not about majorities. They are always about minorities.

For the purposes of government, of course, we have to create, cobble together temporary majorities in order to choose governments, in order to have people who are making decisions, entering discussion, organizing discussion, and so on.

That is one of the purposes of government, to create what you might call technical or temporary majorities. But they are not natural and they are not real, and they are not permanent. And they have no rights in and of themselves.

There are no such things, I repeat, as majority rights inside a democracy. If anything, the basic principle of a democracy is that you create a majority for the purposes of election in order, once you are in office, to look after the minorities.

That would be a principle that could be made about the functioning of democracies. This is true of all democracies. It has always been true of all democracies. I think it could be said that it is particularly true in Canada because this is a country where the minorities are not simply minorities of opinion, but it is actually a country where we are minorities of regions, of races, of languages, of experiences, of times of arrival.

You can cut Canada up intellectually into minorities so many different ways, it is quite astonishing. And that is what makes the country really interesting; that it is virtually impossible for anybody to pretend that there is a natural majority, which it is quite easy to pretend in some of the older nation states where a lot of wars of religion and civil wars, and so on, were designed in order to create the imaginary existence of a natural majority.

Usually what happens is that 50 or 100 years later it turns out that it wasn't really natural after all, and it starts to redivide itself into natural minorities, intellectual, political, regional, or whatever.

This is a civilization of minorities in every possible way, and that is why the purpose of power in Canada is never to impose the will of the majority. Democracy in Canada is never about the power of 51 per cent. It is never about that.

Power is about dealing with the reality of minorities, and that is why democracy is so much less clear or exciting than authoritarian régimes, because there is no majority. You can't really get all excited about something and get everybody on a horse and charge off in the same direction. It just can't be done, because suddenly you run into a whole bunch of people coming in the other direction, and they are your fellow citizens.

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It is just the nature of the complexity of a minority based society, which democracy is.

What is interesting about that concept of the permanence of various sorts of minorities is that once you know that, you realize that is why democracies work better than authoritarian régimes, because the acceptance of the idea that we are all minorities allows us to accept the idea that extreme positions are not possible. Only the idea of a natural majority can lead you to the position of a natural right of imposition in an extreme position.

That is what Wilfred Laurier meant when he said "it is easy to raise prejudices". You pretend you are a majority.

Or Borduas, perhaps the greatest painter we have produced so far, in le refus global, the great statement, artistic statement, when he said: "L'action intéressée reste attachée à son auteur. Elle est mort-née." The self-interested act cannot be separated from its author. It is still born.

Not that there isn't self-interest and we don't need to have it; we all have it. But it is limited. It cannot be an act of society. It is an act of the individual, not as a citizen but as a self-interested individual as opposed to a citizen individual.

Self-interest in a sense is a belief in a natural majority, because to some extent if it is pushed too far, it becomes an incapacity to imagine the other. One's own self-interest passes over the interests of the others, and suddenly one is unable to imagine society as a whole bunch of minorities of different sorts, different ideas, different attitudes, different attitudes towards standing on a TransLink, different attitudes to what you do when you are on a TransLink platform. There is an essential statement of society of minorities.

What I am making here, just to finish, is a very specific argument. It is about citizenship, and it is about individualism, about it coming in two balanced parts: rights and the struggle for rights; general engagement which creates context and the reality for those rights to be held in place. The context of the constant larger work of the citizen, the specific of the permanent work of the citizen to keep in place and to improve what is in place. A close-up on the one hand and a wide shot on the other.

You have to live both of them as a citizen, in contradiction with yourself. On the one hand you are saying I have the right to receive this, and on the other hand you move right away from that whole argument about you have the right to receive, and you become somebody outside of that specific argument.

Let me give you one warning example of what can go wrong if one forgets about those two roles and how inclusive they are and how they are a tension side by side.

There is about a quarter to 30 per cent of Canadian society which, from a statistician's point of view, volunteers. Already this is a dubious statement. Statisticians, statistics, the definition of volunteering as something different than being a citizen.

Increasingly one hears arguments from people who work very hard in the volunteer sector saying we are a sector and we want to be treated differently. We want to have some rules and regulations which will admire, make easier, whatever,

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the work of the volunteer sector. To which I respond I think it's fantastic that about 30 per cent volunteer, including probably everybody in this room. But why would you be treated specially for volunteering? Surely volunteering is simply doing what you are supposed to do as a citizen. Isn't that just citizen activity? Isn't that what voluntarism is?

If you start saying there is the volunteer sector, now you are into a corporatist argument. Now you are saying it is a specialist activity. I don't need to volunteer because 25 per cent of the population is doing it for me. I am going to do something else.

What is it going to be since volunteering is acting as a citizen?

So one has to be very careful about how we think about individualism and citizen engagement and citizen participation. It is something which includes everybody. It isn't something which can be set aside as something which isn't self-interest but which is treated as if it is a specialist, almost self-interest activity, when it clearly isn't. Nor are the people who volunteer self-interested.

The argument in society is so far away from normalizing the participation of the citizen and the importance of disagreement and what is said in the Charter. We are so far away from that that we can slip from doing the work that needs to be done as volunteers into thinking why shouldn't we be a sector and not noticing that one has slipped off track there, not in the work that is being done but in the attitude towards the work that is being done.

If you think about voluntarism not as citizenship but as a sector, suddenly you are undermining the tension between rights and participation.

Actually, it's as simple as it has always been. Dubrovnik was a city state, a democracy which lasted about a thousand years, one of the most interesting of the European city states, like so many of the old democracies brought to an end by Napoleon, a great liberator of democracies from democracy.

In Dubrovnik they had all sorts of very interesting systems. One of them was that you could only stay in power for very short periods of time, and they just rolled people through. So you might be head of government ten or fifteen times in your life. I have forgotten now whether it was a year or six months, or whatever it was that you were allowed to be head of government. But it was a small city state.

They didn't have an army, and they really knew how to talk. So whenever they were under attack, they sent out their best talkers to just talk and talk and talk and talk. And for a thousand years they talked themselves out of being attacked. It was quite wonderful.

When you went into the Parliament of Dubrovnik, which is still there -- it was not destroyed in the bombings in the civil war -- over the door of the Parliament is the following two lines. My Latin is terrible. Obliti privatorum publica curate: forget your own business and attend to the public one.