

Human Rights in U.S. Policy: A Casualty of the 'War on Terrorism'?

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This article examines the disturbing trend away from human rights protection and promotion in post September 11 U.S. foreign and domestic policy. It argues that human rights, both abroad and at home, are under attack and advancements of the past decades are desperately being defended in the face of the Bush administration's war on terrorism. It attempts to gauge the breadth and depth of this assault on human rights by chronicling the downplaying of rights promotion in bilateral relations and the growing debate around, and in some cases implementation of, policies advocating political assassinations, secretive military tribunals, massive detainment and breaches of the Geneva Conventions for treatment of prisoners, and the spectre of torture in interrogations.

In the immediate aftermath of the 11 September 2001 attacks on the United States and the onset of President George W. Bush's war on terrorism, many foretold the death of idealism in American foreign policy. One commentator captured this sentiment:

This is going to be a trying time for those who promote human rights, and for those who advocate humanitarian intervention. That decent 1990s impulse to do good in Bosnia and Kosovo, even at the price of alienating Russia and China, was already, before Sept. 11, giving way to a foreign policy based on an unsentimental notion of our national interest. Now the calculations will be even colder.¹

In the months that have followed, this pessimistic prediction has been largely confirmed: Human rights, both abroad and at home, are under attack and advancements that were made over the past decades are desperately being defended in the face of the Bush administration's war on terrorism, ominously termed a 'war without end'. We are witnessing the downgrading of human rights promotion in bilateral relations while at the same time a growing debate around, and in some cases

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implementation of, policies advocating political assassinations, secretive military tribunals, massive detainment and breaches of the Geneva Conventions for treatment of prisoners, and the spectre of torture in interrogations. Each is chronicled below in an effort to gauge the breadth and depth of this assault on domestic and international human rights.

HUMAN RIGHTS ABUSES DOWNPLAYED IN BILATERAL RELATIONSHIPS

Since the launch of the war on terrorism and the ensuing efforts by the Bush administration to build a broad 'with us or against us' coalition, virtually all international relationships and policies have been opened up for redefinition. Many bilateral relationships have been transformed in the process. Relations with Pakistan, Russia, China and Uzbekistan have most notably improved, as strategic interests have overtaken previous concerns for human rights or democratisation. One analyst noted: 'Human rights issues among new allies are likely to be handled with greater delicacy, if they are mentioned at all.'² This shift has prompted human rights activists, journalists, politicians and bureaucrats to voice concerns. A former Pentagon official from the Reagan administration, Richard Perle, cautioned: 'I hope we don't make the mistake of abandoning our principles to protect ourselves. It never works over the long term. We're far better off sticking to what we believe.'³ Yet it seems that, at least for the foreseeable future, enlightened principles have been sidelined in favour of *realpolitik*. Marwan Bishara bluntly sized up the Bush administration's new-found friends: 'The members of the unwritten alliance [– Pakistan, Saudi Arabia, Turkey, Russia and Uzbekistan –] are undemocratic regimes that grossly violate human rights.'⁴

What has been the impact of these new alliances and the concomitant downplaying of human rights and democratic norms in U.S. foreign policy? Human rights advocates have concluded that a number of countries, including China, India, Indonesia, Singapore, Malaysia, Russia, Uzbekistan and Israel, are using the U.S.-led campaign against terrorism as a cover to justify repression of all kinds, including that of non-violent activism for democratic change.⁵

Turning to specific cases, when the U.S. military forged a relationship in Afghanistan with the ragtag Northern Alliance to be its proxy ground troops against the Taliban, Human Rights Watch lamented that accountability had been passed over in favour of expediency as the U.S. rushed to defeat its enemy.⁶ Not surprisingly, the Northern Alliance violated rules of war, including the killing of Taliban prisoners, in their quest for victory. While Bush admonished his new allies 'to make sure that they respect the human rights of the people that they are liberating',⁷ it is

unclear what effect his mild lecture had on a guerrilla force whose history of abuses rivals that of the Taliban itself. Human rights groups have chronicled this dismal record, which entails shelling civilian neighbourhoods, looting, raping and killing civilians, summary executions of enemies, and opium and weapons trafficking, all with impunity.⁸

In nearby Pakistan, the once-marginalised regime of General Musharraf experienced such a reversal of fortune it made many a head spin (and tongue wag). Although the Bush administration has denied it, in response to Pakistan's readiness to assist in any way possible with the war on terrorism and specifically the war on the Taliban and al Qaeda in Afghanistan, this new ally was immediately offered more than US\$1bn in thanks.⁹ Similar gratitude was extended to Turkey, where the U.S. government has called for the cancelling of \$5bn in debt and asked the International Monetary Fund to pledge \$19m in new assistance in exchange for its help in containing rising Muslim extremism.¹⁰

Relations with Russia also improved markedly at the same time as that country's human rights record was subordinated to more pressing concerns. Whereas in recent years, U.S. officials publicly criticised abuses in Russia's war with the secessionist rebels in Chechnya, in the wake of Moscow's offer to let the U.S. use its bases and airspace, Bush abruptly came to see the bloody ethnic battle Putin's way. Bush called on rebels to cut their ties with 'international terrorist groups' and to enter into peace talks with Moscow.¹¹ The U.S. administration went further to seek normal trade status with Russia, ignoring calls to make this contingent on improvements in Moscow's human rights record.¹²

The *Washington Post* summed up these developments in U.S. policy this way:

Mr. Putin...hopes that his initiative will win the West's acceptance, or at least stifle its criticism, of his steps to limit Russian press freedom and democracy and of his brutal military campaign in Chechnya. So far he seems to be succeeding.¹³

Yet the State Department has been sending Putin mixed messages about whether the Russian premier indeed has the *carte blanche* that he thinks he does. In January 2002, U.S. officials spoke out against media repression in Russia and human rights abuses against civilians in Chechnya. The Department issued a tough criticism noting 'a continuation of human rights violations' against civilians and the 'use of overwhelming force against civilian targets'.¹⁴ This statement, however, was an anomaly all too rare in post-9/11 U.S. foreign policy.

With regard to China, prior to September 11 the few utterances Bush made on human rights abuses were overwhelmingly levelled against this

nation and were centred on Beijing's curtailment of religious freedoms. However, since the Chinese were forthcoming with intelligence information about Muslim militants,¹⁵ this bilateral relationship thawed almost overnight. This development was not lost on human rights advocates nor on the press. The *Washington Post* noted:

The U.S. relationship with China has changed almost as dramatically as that with Russia since Sept. 11, and for some of the same reasons. Public prickliness has disappeared as the government of Jiang Zemin has supported the U.S. campaign against terrorism and even the bombing in Afghanistan – the first time China has supported a U.S. military action since the end of the Cold War. In return, China, like Russia, expects new understanding for its brutal repression of a Muslim minority, the Uighurs, on the grounds that it is also counterterrorism. And, as with Russia, the Bush administration appears ready to make important concessions.¹⁶

Nevertheless, in his October 2001 visit to Shanghai, Bush did gently remind his hosts that 'the war against terrorism must never be an excuse to persecute minorities'.¹⁷ With that critique, Bush attempted to redeem himself in the eyes of human rights and religious freedom advocates; yet it is far from clear whether these words will be backed up by actions, or if they were spoken more to placate the audience back home than to cause any real change in the Chinese government's behaviour.

Uzbekistan illustrates a final case of this transformation in bilateral relations along with Washington's downplaying of its human rights and democratisation record. As U.S. Air Force pilots made Uzbekistan their temporary home in the Afghani war, Bush embraced his new strategic ally¹⁸ and largely abandoned former concerns over that government's jailing of Muslim activists and over the curtailment of religious freedom generally. Furthermore, the country received \$160m for 2002 in U.S. aid money and Bush lobbied Congress to lift trade restrictions.¹⁹

But as with Russia, the U.S. has not entirely abandoned its efforts to promote human rights and democratic institutions in Uzbekistan, at least not on paper. In the 'Declaration of Strategic Partnership' signed between Secretary of State Colin Powell and the Uzbeki foreign ministry, the latter government commits itself to broad political and economic reforms, including establishing a multiparty system, ensuring free and fair elections, and promoting an independent media, judicial reform, and free market reforms.²⁰ While this is indeed a progressive step, few believe that violating such an agreement would cause a falling out between the two nations, as long as the Uzbeki airports are needed and welcoming.

Just as official, bilateral relationships have been scrutinised and

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transformed the world over under Bush's war on terrorism, so have individuals and selected groups become the targets of intense scrutiny and, in some cases, abuse. In the weeks following September 11, a massive domestic sweep of 1,100 mostly young, Middle Eastern men was carried out by the FBI. This mirrored an aggressive international roundup of hundreds of al Qaeda suspects in 50 countries coordinated between the CIA and foreign intelligence services.²¹ These and related actions have added up to a general attack on civil rights both domestically and internationally on the part of the Bush administration and U.S. military and intelligence, including the sanctioning of assassination as a potential CIA tool, the establishment of secretive military tribunals, the ongoing detainment of Arab men, open discussion of torture as a 'necessary' interrogation measure, and breach the Geneva Conventions on the treatment of the Guantanamo Bay detainees.

ASSASSINATIONS

In the days following the terrorist attack on New York and Washington, the Bush administration concluded that executive orders do not preclude the president from 'lawfully' fingering a terrorist for assassination by covert action. With that justification, the administration empowered the CIA to carry out such missions in the global campaign against terrorism. At the same time, the Bush team expanded the range of potential targets.²² While this story did not play long in the U.S. press, it may very well resurface as a viable plan for getting rid of the Iraqi leader and Bush family nemesis, Saddam Hussein, as part of the next phase of the war on terrorism.

SECRET MILITARY TRIBUNALS

Invoking 'extraordinary times', 'national security interests' and 'the safety of potential jurors', Bush signed an executive order on 13 November 2001 establishing secret military tribunals to try al Qaeda members and others accused of terrorism. This manoeuvre, attempting to circumvent the U.S. court system and international law, has been an ongoing source of legal and political controversy.²³

This move on Bush's part has been passionately denounced by a small but loud chorus from both the domestic Left and the Right as well as by many within Europe for its sublimation of human rights and over-extension of executive power. William Safire blasted:

[Bush's] gung-ho advisers have convinced him – as well as some gullible commentators – that the Star Chamber tribunals he has

ordered are 'implementations' of the lawful Uniform Code of Military Justice. Military attorneys are silently seething because they know that to be untrue. The UCMJ demands a public trial, proof beyond reasonable doubt, an accused's voice in the selection of juries and the right to choose counsel, unanimity in death sentencing and above all appellate review by civilians confirmed by the Senate. Not one of those fundamental rights can be found in Mr. Bush's military order setting up kangaroo courts for people he designates before 'trial' to be terrorists. Mr. Bush's fiat turns back the clock on all advances in military justice, through three wars, in the past half-century. His advisors assured him that a fearful majority would cheer his assumption of dictatorial power to ignore our courts. They failed to warn him, however, that his denial of traditional American human rights to noncitizens would backfire and in practice actually weaken the war on terror.²⁴

Anne-Marie Slaughter further cautioned:

At a deeper level, such trials challenge Americans' identity as a people. Military commissions have been used rarely in the past, principally to try to hang spies caught behind enemy lines. Now such commissions are proposed as a long-term mechanism to achieve a principal war aim – finding and trying terrorists. But America is also, according to Mr. Bush, fighting for the values embodied in its constitution, against an enemy that would destroy its way of life. How then can it violate those values in the process?²⁵

The Washington advocacy director for Human Rights Watch Tom Malinowski warned that the order will open the door for the world's military dictators to follow suit:

In effect the administration has one critical choice: It can let Mr. Bush's order stand as it is, and let it become a virtual code of misconduct for authoritarian governments around the world. Or it can show what the U.S. system of military justice was meant to show: that America does not abandon its commitments to human rights in times of conflict, but affirms it as an enduring source of national strength.²⁶

U.S. ROUNDUP OF MIDDLE EASTERN MEN

Along with the creation of the military tribunals, an aggressive FBI sweep was championed by Attorney General John Ashcroft. The Justice Department issued a list of 5,000 mostly young men who have entered

the U.S. since the year 2000 from predominantly the Middle East, whom they wanted to interview. At that, many cried racism and racial profiling: 'This type of sweeping investigation carries with it the potential to create the impression that interviewees are being singled out because of their race, ethnicity or religion,' stated Nihad Awad, executive director of the Council on American-Islamic Relations, an Islamic advocacy group based in Washington, DC.²⁷

These concerns were largely validated as allegations of unjust and unlawful treatment have poured in. A class action lawsuit was filed against the U.S. government for ethnic and religious profiling in its jailing of non-citizens. Immigration lawyers and rights advocates have repeatedly submitted complaints of civil rights violations on behalf of detainees held in the Metropolitan Detention Center in Brooklyn, as many men are being held without charge of terror-related crimes, yet allegedly with secret evidence against them.²⁸ Amnesty International issued a report on these detentions reiterating concerns over violations of international civil liberties.²⁹

Criticism also has come from an unlikely source: former high-ranking FBI officials, including one former FBI director and an assistant director. These experienced bureaucrats cautioned that the Justice Department was today resurrecting failed tactics that the government had rejected in the late 1970s, which were abandoned at that time for failing to prevent terrorism while simultaneously abusing civil liberties.³⁰

THE SPECTRE OF TORTURE

The debate around the war on terrorism reached its lowest point morally when some in the press began empathising aloud with the frustration felt by both investigators and many in the general public over the inability to get the detainees to talk. 'Some investigators are beginning to say that traditional civil liberties may have to be put aside if they are to extract information about the Sept. 11 attacks and future terrorist plans.'³¹ One seasoned FBI interrogator lamented:

We are known for humanitarian treatment, so basically we are stuck. Usually there is some incentive, some angle to play, what you can do for them. But it could get to that spot where we could go to pressure where we won't have a choice, and we are probably getting there.³²

Alternative tactics being bandied about are using drugs or pressure tactics borrowed from Israeli interrogators or extraditing suspects to third countries where 'security service sometimes employ threats to

family members or resort to torture.³³ What is shocking and disturbing about most of this coverage is its failure to note that torture *anywhere* is a human rights violation. Rather, U.S. domestic law was cited for its 'unfortunate' disallowance of courtroom evidence obtained through 'physical pressure, inhumane treatment or torture' while at the same time allowing victims to sue. In the same vein, a former FBI agent complained:

You can't torture, you can't give drugs now, and there is a logic, reason and humanity to back that. But you could reach a point where they allow us to apply drugs to a guy. But I don't think this country would ever permit torture or beatings.³⁴

This agent wished to differentiate between injecting a suspect with a 'truth serum' and 'beating a guy till he is senseless'. But he warned: 'If there is another major attack on U.S. soil, the American public could let it happen. Drugs might taint a prosecution, but it might be worth it.'³⁵

Bush's insistence on secretive military tribunals in which broad forms of evidence are admissible makes a great deal more sense when viewed in terms of the torture debate. If the sole deterrent that the U.S. administration sees against torturing detainees – the U.S. domestic legal provisions recounted above – are effectively sidelined, then what would prevent them from resorting to barbaric methods of information extraction? One must then ask what weight internationally recognised standards of human rights or principles hold in their calculations. Upon careful reflection, then, it is not unthinkable that torture is in fact one feature of the 'unseen' war to which Bush has frequently alluded.

TREATMENT OF GUANTANAMO DETAINEES

In January 2002, photos surfaced of Taliban and al Qaeda prisoners being held in what appeared to be sensory deprivation conditions – masks, earmuffs, heavy wool caps and gloves, hands and feet bound – by the U.S. military at its naval base in Guantanamo Bay, Cuba, causing a worldwide outcry.³⁶ European diplomats, lawmakers and analysts openly criticised Washington, and other EU officials and prominent NGOs such as the Red Cross raised questions as to the physical and legal status of the prisoners. One ambassador charged the U.S. with:

International law a la carte, like multilateralism a la carte. It annoys your allies in the war against terrorism, and it creates problems for our Muslim allies, too. It puts at stake the moral credibility of the war against terrorism.³⁷

Secretary of State Donald Rumsfeld, in attempting major damage control, asserted that all international conventions on the treatment of prisoners were being respected, but refused to designate the detainees as prisoners of war, which would grant them more explicit protections under the Geneva Conventions. This refusal has been the source of ongoing controversy and criticism. International lawyers, human rights activists and foreign governments largely condemned the action as a violation of at least some of the Geneva Conventions of 1949 which require that, if in doubt, prisoner of war status must be determined by a competent tribunal, not by members of the military.³⁸

The *New York Times* editorialists lectured:

The handling and prosecution of Taliban and Al Qaeda prisoners at the American naval base in Guantanamo, Cuba, cannot be left to the whim of the Pentagon.

[...]

The Geneva Convention confers prisoner of war status on those captured as part of a country's armed forces, whether or not their government was diplomatically recognized by the country holding them...

By holding the Guantanamo prisoners at a military base outside the United States, the administration has complicated the issue of judicial intervention. That does not excuse the Pentagon from following basic American standards of fairness and applicable international law.³⁹

Others took issue not only with the Bush team's dubious legal gymnastics, but also their dehumanisation of the enemy:

From the beginning, the rhetoric of this administration has identified the enemy in terms of absolute evil, the war as expression of a metaphysical combat between good and evil, and Al Qaeda fighters and their Taliban allies as people not to be defeated, but destroyed. The shackled, hooded prisoners photographed at Guantanamo Bay seemed a fulfillment of this rhetoric of demonization and dehumanization.

[...]

In democratic countries it is the responsibility of leaders to govern their language. National policy must respect the humane values defended in the constitution, and treat even enemies with the dispassion required in a nation that has willingly submitted itself to the regime of law. Otherwise the democracy betrays itself.⁴⁰

In response to the mounting criticism, the Bush administration has shown a limited degree of receptivity. Most notably, it has since moved to amend the military tribunals to include a requirement of a unanimous verdict should the military officers on the panel want to impose the death penalty, and the presumption of innocence until proven guilty beyond a reasonable doubt. Nevertheless, hearsay and other forms of evidence not permissible in a civilian court will still be allowed. So while making some concessions, Bush is still inclined to measure U.S. action against the standards of the enemy's conduct rather than against the rule of international, or even domestic, law. His dubious mindset was revealed in comments such as this:

Whatever the procedures are for the military tribunals, our system will be more fair than the system of bin Laden and the Taliban. The prisoners that we capture will be given a heck of a lot better chance in court than those citizens of ours who were in the World Trade Center or in the Pentagon were given by Mr. bin Laden.⁴¹

In a promising move, a U.S. Federal court in April 2002 handed the Bush administration its first legal defeat in its curtailment of civil liberties. Ruling that the Justice Department's policy of closed immigration hearings resulting from the massive round-ups are unconstitutional (a finding that has been appealed), U.S. District Judge Nancy Edmunds wrote in her decision:

It is important for the public, particularly individuals who feel that they are being targeted by the government as a result of the terrorist attacks of September 11, to know that even during these sensitive times the government is adhering to immigration procedures and respecting individuals' rights.⁴²

CONCLUSION

Whatever the eventual outcome of these and other legal challenges to the current U.S. administration's assault on civil rights and liberties at home and abroad, they signal one of the many avenues that can and must be pursued at this crucial moment in history: U.S. judges, lawyers and lawmakers, human rights groups, the media, and concerned scholars and citizens – along with their counterparts in Europe and elsewhere – must sustain the critique and continue to scrutinise and challenge these rollbacks. One such critique, which underscores what is at stake if the Bush administration continues to steer U.S. foreign policy away from championing human rights, was offered by Harvard professor Michael Ignatieff:

Since the end of the Cold War, human rights have become the dominant moral vocabulary in foreign affairs. The question after Sept. 11 is whether the era of human rights has come and gone.

[...]

Of course, just because the United States has other priorities doesn't have to mean the era of this movement is over. Human rights have gone global by going local, anchoring itself in struggles for justice that can survive without American inspiration or leadership. But if Washington turns away, the movement loses the one government whose power can be decisive in stopping human rights abuses.⁴³

The evidence provided herein suggests that human rights protection, not to mention promotion, has been largely sidelined in Bush's war on terrorism, and therefore will unlikely be a major U.S. foreign or domestic policy objective in the near future. Given that fact, and given what is at stake if this attitude becomes generalised, a different kind of power – one that is diffuse, multi-level, uncoordinated, democratic – must move in to fill this void in advocacy and leadership: That power is the culmination of all those concerned acting in defence of human rights wherever they are and in their own way.

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