Recommended measures to establish protections for human rights in the United States of America

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Abstract

The detention and interrogation policies adopted by the United State's government in the wake of the 11 September 2001 attacks have raised several questions about its commitment to international law and human rights. Initially a bipartisan issue, the instances of torture and prisoner abuse brought before the public were condemned by both Democrats and Republicans, and both party's presidential candidates promised to shut down the illegal prison in Guantánamo Bay, Cuba. Likewise, with the exception of foreign government officials who participated in the Central Intelligence Agency's "extraordinary rendition" program, much of the international community has called on the U.S. government to comply with its treaty obligations. Despite initial signs that the Obama administration would act decisively on U.S. detention and interrogation policies, much of the debate has degenerated into partisan debate, and nearly 200 political prisoners continue to await justice in Cuba. This political deadlock has prevented even relatively straightforward initiatives, such as an investigation to determine which Bush administration officials were responsible for prisoner abuses, torture, and deaths, from moving forward with any reasonable efficiency. As a result, more comprehensive initiatives that would address the economic and political conditions that prompted the U.S. government to begin torturing political prisoners have not even entered the debate. The only way to ensure that similar human rights violations are not repeated, however, is to address both the immediate and the larger institutional issues. The immediate issues entail relief for current prisoners, restitution for former prisoners and other victims, and criminal investigations into actions that violated existing U.S. laws and international treaties. At an institutional level, both the executive and legislative branches of the federal government need to exercise greater accountability to democratic oversight, particularly in light of the executive branch's repeated abuse of claims to "national security." Ultimately, the best safeguards against future human rights abuses in the United States will be both a well informed and politically engaged citizenry. This report concludes with a series of suggestions that may help to develop such a citizenry.

Introduction

President Obama's 22 January 2009 Executive Orders mandating the closure of the Guantánamo Detention Facility and secret prisons operated by the Central Intelligence Agency [1], restricting interrogation techniques to those outlined in the Army Field Manual [2], and mandating an inter-agency task force to review the detention policies being implemented by the Defense and Justice departments [3] initially indicated a significant break with the previous administration's policies. On the other hand, Obama's decision to resume the use of military commissions, maintain the "extraordinary rendition" program, reverse an earlier decision to release photographic records, and his failure to press Congress for an independent investigation indicate

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that his administration will not unilaterally take the steps necessary to halt ongoing abuses and prevent them from reoccurring. Contrary to assertions by administration officials—including former President Bush himself—that U.S. forces consistently operated in a manner "consistent" with the Geneva Conventions, the International Committee of the Red Cross delivered a report to the Central Intelligence Agency in February 2007 warning high-ranking officials that the Agency's treatment of "high value" prisoners was still outside the bounds of international law. As ongoing litigation by the American Civil Liberties Union continues to uncover documents that indicate both the Bush administration and the Central Intelligence Agency were well aware of the legal implications of their policies, and that orders to resort to torture were issued by the White House, the Obama administration is facing more intense pressure to launch a thorough investigation into its predecessor's detention and interrogation programs. These various calls for an investigation center primarily on three issues pertaining to the treatment of prisoners: 1) an unknown number of persons have been subjected to abusive and dehumanizing treatment while being held prisoner by U.S. forces, and in some cases this treatment crossed the line from abuse to outright torture, 2) other prisoners, their numbers also unknown, have been dispatched to prisons run by foreign (i.e. non-U.S.) governments who have, with the knowledge of U.S. officials, had these prisoners abused, tortured, or disappeared, and 3) all of the aforementioned prisoners and many others have been abducted unlawfully and detained indefinitely without access to legal recourse or basic services guaranteed to prisoners of a state. As the administration responsible for implementing two of these three institutional abuses under the pretenses of a defensive campaign to prevent "terrorism," the Bush administration bears both active and passive responsibility for criminal transgressions that have resulted. The administration is first responsible for the role that officials played in actively supporting criminal activities, either by instructing interrogators to use particular techniques or by attempting to remove or circumvent legal protections of the prisoners' rights. Based on the precedent set at both the Nuremberg and Tokyo trials that followed World War II, the Bush administration is also responsible for failing to prevent or halt criminal activities committed by soldiers, agents, or contractors under its direction. To the extent that individual legislators in the U.S. Congress who were aware of these detention and interrogation programs helped to perpetuate them either by continuing to fund them or by introducing legislation designed to legitimate them, they too bear a measure of legal responsibility for the abuses that followed.

The dominant rationale for subjecting the Bush administration and its accomplices to a careful investigation is twofold: first, it may bring much-needed relief and compensation to victims whose rights have been violated; second, it may help to prevent similar abuses from being repeated by another administration. While an investigation into the Bush administration's policies and practices represents an important step toward preventing future human rights violations, the precedents set by previous administrations and the political conditions that allowed both Congress and the Bush administration to implement illegal detention and interrogation programs must also be examined. While the Bush administration's detention and interrogation policies almost certainly represented some of the most egregious human rights violations, they were not the only violations for which the U.S. government has been responsible, nor were they entirely without historical precedents.

Unwanted military occupations typically rely on force and intimidation to keep civilian populations under control, and the U.S. military has not been exceptional in this regard. In the early 1900s, U.S. soldiers routinely used water torture, mass killings, and the razing of villages to subdue Filipinos who opposed the occupation of their country [4]. During the Nuremberg trials that followed World War II, Nazi war criminals could be exonerated for demonstrating that the crimes which they were accused of were also committed by Allied forces [5]. Following the war, the Central Intelligence Agency began to actively research torture during the anti-Communist campaigns in the 1940s and 50s, and several of its findings were employed in the training provided to Latin American soldiers and police in the U.S. Army School of the Americas (now the Western Hemisphere Institute for Security Cooperation) [6]. In Southeast Asia in the 1960s and 70s, U.S. forces repeatedly targeted civilians in contravention of international law [7]. The U.S. government provided weapons and other support to several Latin American dictators responsible for multiple human rights violations in the 1970s and 80s, including Chile's Pinochet, El Salvador's Hernández, and Panama's Noriega [8]. Rather than face a rebuke from the International Court of Justice for his administration's support of a guerrilla war against the democratically elected Sandinista government in Nicaragua, Reagan

chose to withdraw U.S. acceptance of mandatory jurisdiction in 1985. This disregard for international law was initially answered by bipartisan condemnation, but the legislature made no efforts to restore the court's jurisdiction in the United States, nor has the issue ever been addressed in a presidential campaign [9]. More recently, the Clinton administration was the one to implement the extraordinary rendition program that the Bush administration used to kidnap and export prisoners to nations like Egypt and Morocco for interrogation [10]. The Clinton administration was also responsible for upholding sanctions against the Iraqi people so severe that two UN heads of the Iraq program described them as genocidal when they quit, and for the 20 August 1998 destruction of Al-Shifa, a Sudanese pharmaceutical plant that supplied medicine to the surrounding region.

In light of the historical record, the defining features of the Bush administration's human rights violations may be their brazenness and their scope rather than their severity or inhumanity. It was this brazenness, rather than the substance, that former Secretary of State Madeline Albright objected to in her criticism of the "Bush Doctrine" [11]. Therefore, while returning to pre-11 September policies would represent an improvement over the status quo, such measures would not be sufficient to ensure that the U.S. government complies with international human rights agreements in the future. To prevent abuses from continuing, the political establishment would need to go beyond investigating the Bush administration and repair the flaws in its infrastructure that allowed these abuses to take place. Such structural reforms would necessarily entail, *inter alia*, both significantly greater levels of transparency and much more democratic control over both the executive offices and the legislative functions of the federal government. The central focus of this document is the detention and interrogation procedures associated with the "War on Terror," but its scope has been widened to address the political and economic factors that prompted the Bush administration to adopt illegal detention and interrogation techniques. These larger institutional reforms are proposed in the spirit of Paragraph 1 of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which states that "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction" [12]. The recommendations contained in this document are organized into four related sections. The first section represents the most immediate and pressing issue, which is the status of the roughly 200 persons still being held in Cuba and the need to provide victims the opportunity to seek redress. This transitions into the second section, which discusses the need to identify which officials were responsible for human rights abuses and measures to hold them accountable. The third section reviews larger-scale legislative reforms that could lessen the likelihood of similar abuses occurring in the future, and the fourth section proposes some issues that concerned individuals may begin mobilizing on to prepare the groundwork for human rights reforms in the U.S. Extensive pressure from a well-organized and committed group of activists will be needed to move many of the institutional reforms proposed herein into the realm of political plausibility.

1 Immediate Issues

The most pressing and obvious responsibility that the U.S. government currently faces is the need to provide relief to the roughly 200 persons still being held in Guantánamo Bay, Cuba, as well as prisoners who have been rendered to other nations or who are being held in Iraq and Afghanistan, and the large number of documented and undocumented immigrants and visitors being held within the United States. For many of these prisoners, this relief will likely consist of immediate release coupled with an official apology and reparations as needed. In addition to compensating persons presently being held, victims of previous abuses, especially torture and illegal detention, will also require reparations for their suffering.

1.1 All persons who have been apprehended outside an internationally recognized theater of engagement, a formally approved request for extradition, or the states and territories of the United States of America should be released

Abducting a foreign national from another sovereign nation in the absence of an approved request for extradition is generally referred to as "kidnapping," and is not recognized as a legal way to apprehend criminal suspects. Even in cases of extradition, the prisoner is typically apprehended by the host country, which then delivers her or him to the country requesting the extradition. When CIA agents enter another country and abduct a person without the formal consent of the government and the cooperation of appropriate law enforcement agents, they are effectively kidnapping a foreign citizen. If any other nation (with perhaps the exception of Israel) were to conduct a similar operation within the United States, it would almost certainly be construed by U.S. officials as an act of war and would have severe repercussions. Consequently, any person in U.S. custody who has been apprehended in such a manor is not being held legally, even if she or he were to be held in a domestic prison. This issue of illegal apprehension precludes the issue of *habeas corpus*, and can only be resolved by the prisoner's immediate return to the nation from which she or he was abducted and the issuance of some form of reparation. The one exception to this requirement that illegally apprehended prisoners be returned is in cases that would conflict with Paragraph 1 of Article 3 of the CAT [12], which prohibits the refoulement of persons to States where they are likely to be tortured. Articles 13 and 14 of the CAT mandate that victims of torture and Paragraph 5 of Article 9 of the International Covenant on Civil and Political Rights [13] mandates that victims of illegal detention are both given the opportunity to present their cases against the offending State and that such victims are entitled to fair and adequate compensation. To legally acquire custody of a person that the U.S. government believes should be charged with a crime in the United States, international law requires that the government file a formal request for extradition with the government of host country.

1.2 All remaining prisoners should be held in conditions that are consistent with the requirements of international law

Prisoners who are not eligible for release based on the previous conditions should be detained in a manner consistent with their status as suspected criminals, including the presumption of innocence. In particular, Articles 6–11, 14, and 15 of the International Covenant on Civil and Political Rights explicate several of the rights that a person detained by the State is still entitled too, including humane treatment, a fair trial, and access to legal assistance [13]. Section (6) of President Obama's "Closure of Guantánamo Detention Facilities" Order [1] mandates that the detainees held in Cuba must be treated in a manner that is consistent with the Geneva Conventions Against Torture[1], but such treatment is only appropriate with regards to persons captured in Iraq or Afghanistan. Persons abducted by the CIA are not prisoners of war, and therefore are protected by a different set of international agreements. President Obama's order does not mention the several documented and undocumented immigrants and migrant workers being held in domestic prisons, nor does it define what "consistent with" the Geneva Conventions entails. Section (2)(c) of the same Order confirms the right of all detainees to a writ of *habeas corpus*, which is inconsistent with the administration's more recent decision to resume the use of military commissions. These commissions are essentially tribunals

[1] The phrase "Geneva Conventions" or "Geneva Conventions Against Torture" refers to the four conventions prescribing the treatment of captured soldiers and civilians during armed conflicts, as opposed to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Many of the principles overlap between the two agreements, but the former contains much more detailed information about how persons captured during a conflict or occupation are to be treated. Although former president Bush declared an end to the war against Iraq, persons captured there are still considered prisoners of war because U.S. forces are occupying the country. The same can be said of Afghanistan, and of the Israeli occupation of Palestinian lands. On the other hand, persons abducted by the CIA or detained by U.S. Immigration and Customs Enforcement are covered by the Universal Declaration of Human Rights, the Convention Against Torture, and other relevant international agreements.

that, according to the Geneva conventions, are meant to determine the status of a prisoner (e.g. prisoner of war, civilian) rather than act as a substitute for a legitimate trial. The most appropriate way for the U.S. government to handle prisoners that it wishes to prosecute would be to bring them before the International Criminal Court, although this would require that the government first recognize the jurisdiction of the court.

1.3 Trade policies and sanctions responsible for ongoing humanitarian crises should be revised or rescinded

According to the UN Security Council, the primary purpose of trade sanctions is to replace military with economic force in an effort to pressure governments to comply with resolutions or agreements. Several human rights organizations and member States have raised concerns about the way that this economic warfare disproportionately harms civilian populations by restricting their access to food, water, medicine, and other important resources. While the Security Council has attempted to address these concerns by exempting humanitarian resources and refining the sanction process, the United States and its allies continue to subject various nations to harmful blockades. The ongoing U.S. embargo against Cuba [14], for instance, has restricted the island nation's access to vital resources such as medicine, and the Israeli blockade of Gaza [15] has impoverished countless Palestinian people and denied them access to basic necessities such as clean water and food. While the U.S. government is not directly responsible for Israel's blockade, it continues to supply the Israeli military with weapons, training, and other aid, despite the fact that the I.D.F. (Israel Defense Force) used U.S.-made weapons—including white phosphorus—in illegal attacks on civilians [16, 17]. Investigations following the recent violence in Gaza have revealed that much of the military hardware used by both sides was supplied by other nations, with the U.S. acting as the primary arms dealer to Israel [18, 19].

The U.S. government should revise its policies on economic sanctions so that nations that humanitarian and necessary civilian trade remains open between all nations, while military aid to nations that repeatedly violate international law is restricted. Using the International Court of Justice's ruling against the United States with regards to Nicaragua [20] as a starting point, military aid could be construed as "the provision of training, arms, ammunition, finances, supplies, assistance, direction, or any other form of support" to military or paramilitary forces (including mercenaries) that attempt to restrict the movement of humanitarian supplies or attempt to suppress, injure, or kill civilians within their nation of origin or abroad. Based on this criteria, the United States government would either discontinue or condition the $10 billion dollars in military aid that it has agreed to provide to Israel on the elimination of institutionalized discrimination within the Israeli government [21] and termination on the state of siege in Gaza and the West Bank [15, 22]. This policy shift could directly counter the escalation of violence by denying the I.D.F. the resources needed to inflict further civilian casualties and indirectly by challenging the legitimacy of Israel's institutional apartheid.

While it should take steps to restrict the transfer of military supplies to nations or organizations that continue to violate human rights standards, the U.S. government should not blockade humanitarian supplies, nor should it encourage others to do the same. Items such as medicine, food, and the resources needed to sustain a viable civil infrastructure should be unconditionally exempted from any sort of trade embargo. This would allow much-needed food and medicine to reach civilian populations in nations currently suffering from sanctions imposed by the U.S. or its allies, such as those of Cuba and Palestine. Economic sanctions are often far more deadly to a civilian population than a military invasion, while the relatively minor resources they require allows governments to implement them without the same level of democratic input that an invasion would generate [23]. Both the international community and the U.S. government officially denounce the use of "weapons of mass destruction" to intentionally inflict civilian casualties, yet the U.S. government, in some cases through the United Nations, has used economic sanctions to achieve the same results. Just as the UN has taken steps to revise its use of sanctions to protect civilian populations while simultaneously denying oppressive regimes the military resources needed to perpetuate violence, so too should the United States government restructure its sanctions policies.

The use of sanctions or the threat of sanctions to interfere with another nation's democratic processes by pressuring the population to support a particular consensus also constitutes an illegitimate use. Former

president Bush provided an example of this type of coercion when he threatened Canada with more restrictive border regulations if the people voted to liberalize the nation's marijuana laws[24]. As the ICJ has repeatedly stated, intervention in another nation's democratic selection of a political, economic, social, or cultural system is both illegal and antidemocratic. To protect the rights of sovereign nations, the U.S. government and business operating in the U.S. should respect free and open elections by refraining from interfering with the election process with propaganda or with threats of economic sanctions. Corporations, who are also frequently guilty of intervening in democratic processes both within the United States and abroad, could be discouraged from engaging in this sort of economic warfare with a policy that prevents such corporations, or other corporations that enter into to contracts with them, from engaging in commerce within the United States. Actions that constitute interference would include, inter alia, the use of propaganda to promote a particular candidate or political party, the threat (or implementation thereof) to terminate or breach an otherwise legitimate public or private contract, and the threat or actual removal of production facilities as a result of a democratic decision or election. This would reduce the extent to which multinational or foreign corporations can leverage economic power against democracy in a sovereign nation, thereby affording civilian populations a greater degree of protection from economic attacks on their own interests.

1.4 The military occupation of Afghanistan and Iraq should be terminated in accordance with the will of the occupied nation

Neither the U.S. military occupation of Iraq nor Afghanistan is particularly popular with the respective populations. Continued occupation in the absence of popular support from the population hosting the occupation is inconsistent with a policy that respects human rights and with the basic principles of international law. The people in the occupied countries are also more likely to have a far more accurate perception of the risks they're facing than those in Washington, and therefore should have the final say over when U.S. forces withdraw.

A recent poll of the Iraqi public indicates that 61% of the population believes that U.S. forces are making the security situation worse, and a slight majority of 38% of the population favors an immediate withdrawal (35% would prefer that security be restored first) [25]. A national referendum should be held to determine whether these findings still represent the will of the Iraqi people and, if so, the U.S. government should withdraw its forces as expeditiously as possible.

In Afghanistan, the public attitude toward U.S. forces is slightly less decisive. While the largest proportion (44%) of the population wants U.S. and NATO/ISAF forces to be decreased, 42% also wants these forces to maintain some sort of presence until security is restored. To restore security, 64% of the population believes that the Afghan government should negotiate with the Taliban [26]. In this case, the U.S. government help to facilitate these negotiations (without interfering with them) and, once a settlement is reached, should withdraw its forces from Afghanistan.

In addition to withdrawing its military forces, the U.S. government should withdraw the armies of private contractors and mercenaries it has deployed in Iraq. The reconstruction of the Iraqi infrastructure should be the purview of Iraqi businesses who are directly accountable to the communities they serve, and the mandatory funding owed by the United States should be channeled into the Iraqi economy instead of into multinational corporations. Unfortunately, much of the funds for reconstruction have already been directed out of Iraq by the Coalition Provisional Authority's mismanagement of the early reconstruction phases. Instances of corporations defrauding the CPA should be investigated to recover as many of these funds as is possible, and all further contracting should be controlled by a democratically elected Iraqi government. The Iraqi people should also be given the opportunity to vote directly, via a series of national referendums, on whether to continue or to terminate any existing contracts, including those with service providers such as water and communication systems, imposed by the CPA. Similarly, the U.S. government should also provide reparations to the Afghan people, both to whatever extent is possible through the Afghan government and to domestic groups working to rebuild communities and to provide relief Afghan people.

1.5 The government should fulfill its obligations to provide reparations to victims of U.S. military aggression, economic sanctions, and other injurious policies

International law mandates that persons who have been abducted and detained illegally by the U.S. government are entitled to reparations, and populations that have been injured by U.S. policies such as the invasion and occupation of Iraq and Afghanistan are also entitled to reparations. Neither invasion was sanctioned by international law, and both occupations have been prolonged against the will of the occupied people.

The U.S. government also owes reparations to persons and nations injured by policies that extend beyond the post-11 September policy of unilateral militarism. Prior to the 2003 invasion, the people of Iraq have suffered under a regimen of economic sanctions that impoverished much of the civilian population and killed many men, women, and children. The U.S. government still owes reparations to several other nations, including Vietnam, Nicaragua, and Cuba, that have been harmed by military invasions, economic sanctions, and other attacks. In many cases, lasting effects from U.S. intervention continue to inflict suffering on civilian populations, from unexploded ordinance in Southeast Asia to crippling foreign debts from dictatorships imposed by the U.S. throughout Latin America. The compensation owed to these different nations should be prioritized by urgency and the government should begin paying them accordingly. In cases like Nicaragua, the International Court of Justice has acted as an arbitrated and already determined the nature (albeit not the dollar amount) of the reparations initially owed [20], while others may require further arbitration. The ICJ would be the most reasonable arbitrator in these cases, particularly if the United States were to reinstate its acceptance of the court's compulsory jurisdiction. In addition to bringing the U.S. government closer to compliance with international law, paying this compensation and adhering to the rulings of the ICJ could eventually contribute to significant decreases in defense spending, as such measures would help to ameliorate much of the current hostility toward the U.S.

2 Investigation and Prosecution

The issue of an investigation into the Bush administration's detention and interrogation policies has been raised repeatedly in the media, although neither the federal legislature nor the White House has indicated that it is willing to conduct such an investigation. While Attorney General Eric Holder has agreed to review evidence indicating that particular interrogations conducted by the CIA violated federal law, he has explicitly stated that this does not guarantee either a full investigation nor any prosecutions. Moreover, Holder's review is limited to a very few instances of interrogation, despite multiple reports of other human rights abuses and abductions beyond the cases being considered [27].

2.1 Investigate torture directives in both directions along the chain-of-command

In addition to pursuing particular instances of torture, an independent investigation should proceed up the chain-of-command to determine which parties were responsible for the conditions that gave rise to the human rights abuses that followed former President Bush's decision to deny prisoners the protection of the Geneva Conventions [28]. Available evidence already indicates that the Bush administration's practices included illegal abductions [29, 30], refoulement [31, 32], illegal detention practices [33, 34], abusive and coercive interrogation techniques [35, 36], and torture [37]. This is in addition to the widely-accepted reality that the invasion of both Afghanistan and Iraq, both members of the United Nations, was conducted without the international body's approval, and that the White House may have knowingly presented inaccurate information to Congress and the United Nations in its efforts to secure approval for the invasions [38]. Amnesty International has requested that Congress establish a nonpartisan, politically autonomous panel of legal and medical experts to investigate the allegations against the Bush administration [39] and to

formulate policy recommendations. These policy recommendation should include proposed steps to bring the United States into compliance with international agreements to which the U.S. is party, including the Universal Declaration of Human Rights [40], the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [12], the International Convention on the Elimination of All Forms of Racial Discrimination [41], and the International Covenant on Civil and Political Rights [13], but for which Congress has not yet implemented sufficient legislation to satisfy the conditions of the treaty.

Unlike investigations pending and previously carried out by the U.S. Justice Department and other executive offices, the independent investigative body should pursue policies dictating abuse or torture up the chain-of-command. While an individual CIA interrogator or U.S. soldier who claims to have been following orders is still criminally liable for acts of torture or abuse, the individuals issuing the orders are also subject to prosecution. According to the precedents established in the Tokyo War Crimes Tribunals, officers who fail to prevent soldiers under their command from committing war crimes are also responsible for them. At the very top of this particular chain-of-command, former president Bush has already announced that he personally reviewed and approved the interrogation tactics employed by his subordinates [42], some of which are now officially recognized as torture (e.g. waterboarding). This assumption of responsibility is in addition to Bush's official declaration that the Geneva Conventions would not be applied to prisoners taken by U.S. forces.

While this investigation should operate independently of any political influence, it should be coordinated with similar investigations taking place in other nations that may have been involved in or affected by illegal operations, including investigations already underway in Italy [43], Spain [44], Germany [45], and Sweden [46]. Such cooperation entails the sharing of information, names, and other pertinent details, as well as compliance with extradition requests where appropriate. While outstanding extradition requests, such as those from India, Cuba, and other nations, may merit reconsideration, the primary focus in this case is the extradition of persons involved in abductions of foreign nationals from a sovereign country. As the existence of an illegal operation has already been established, and as kidnapping is considered a crime in the United States, no legitimate grounds exist to prevent the extradition of an individual from the United States to a nation that the United Nations Office of the High Commissioner of Human Rights believes is in compliance with the Convention Against Torture.

The findings of the investigation should be made readily available to the public, with due respect given to the rights of the persons identified as criminal offenders. This will allow the public to assess the quality of the investigation and provide persons whose rights have been violated comprehensive grounds for reparations. In instances where the findings conclude that a criminal prosecution is appropriate, the Department of Justice should act to detain the individuals to bring them before an impartial court. Given the close relationship between the executive and judicial branches of the U.S. government, the only place where individuals charged with criminal violations are likely to receive a reasonably fair trial would be in the International Criminal Court, although the United States has yet to ratify the Rome Statute of the ICC. In addition to the ICC, the findings of the investigation should be made readily available to the United Nations General Assembly, the International Court of Justice, and to both the European Court for Human Rights and the Inter-American Court on Human Rights to determine whether further action is required.

2.2 Terminate and prohibit employment contracts with individuals whose involvement in illegal activities violated professional standards

Several lawyers and physicians have condemned the roles that some of their colleagues have played in the implementation of abuse and torture and in attempting to allow the White House to sidestep domestic laws. That many of the legal advisers, such as Jay Bybee and John Yoo, have been granted high-ranking positions in the federal judiciary and in the academy is particularly troubling. Even if an independent investigation does not conclude that Bybee and Yoo are criminally liable for the crimes that followed from their counsel, the unabashedly partisan nature of the "torture memo" and its severe logical flaws should be

sufficient grounds for disbarment. While some progressive organizations have filed ethics complaints against several of the Bush administration's legal advisers [47], neither the American Bar Association nor the Office of Professional Responsibility has indicated that they are considering any action. In its recent paper on the Inspector General's report on Counterterrorism Detention and Interrogation Activities, Physicians for Human Rights has called for health professionals responsible for illegal and unethical activities to be "held accountable through criminal prosecution, loss of license and loss of professional society membership where appropriate" [48]. Trained professionals who have used their knowledge and expertise to circumvent the law and subject persons to abuse and torture should not continue in public service, as their ethical standards are not consistent with those of the majority of the public. Both dismissal from public service and disbarment or license revocation are necessary measures to prevent these individuals from inflicting further harm on the public as a whole or on individuals.

3 Institutional Reforms

The reforms proposed in this section entail significant policy changes in federal legislation. In some instances, these policy changes would supplement president Obama's policy initiatives, while in others, they would be completely independent initiatives. While the scope of these recommendations is still carefully limited to human rights, some of them begin to address the broader political and economic context that human rights issues are typically framed in.

3.1 Explicate the President's Constitutional authority to pardon criminal offenses and to operate without oversight

One of the central debates in the opposition to the Bush administration's detention program has been the autonomy of the presidential office. Even in the absence of a formal declaration of martial law, many of the Bush administration's legal advisers believed that the president should enjoy virtually unlimited powers as the Commander in Chief of the military and as the chief executive. One of the arguments put forth by these proponents of an "unitary executive" was that the president has the legal authority to authorize acts of torture, despite the fact that both the Convention Against Torture and the 8th Amendment to the U.S. Constitution prohibit the use of torture under any circumstances. When it became clear that most of the public disagreed with this reading of the Constitution, former president Bush had considered issuing a blanket pardon shortly before leaving office that would have prevented any member of his administration who was involved in the detention and interrogation programs from being prosecuted. While he ultimately decided not to issue such a pardon, the possibility of him doing so raises questions about the intent and use of presidential pardons. Pardons to known terrorists and criminals have also raised questions about the authority of the president, and have contributed to the popular belief that the president operates above the rule of law. The 23 members of the Pennsylvania Convention who declined to ratify the Constitution in 1787 did so because they believed that investing the president with the authority to pardon virtually any offense threatened the principle that the nation was ruled by its laws. As Bush threatened to do shortly before leaving office, they were concerned that an unscrupulous executive could abuse the ability to issue pardons to "screen from punishment the most treasonable attempts that may be made on the liberties of the people." While the Pennsylvania Minority was discussing the possibility of the president pardoning allies in the senate [49], past abuses of presidential pardons have validated their general concerns. An amendment should be introduced to the U.S. Constitution that prevents the president from pardoning criminal activities carried out under his or her direction, or from issuing pardons after he or she has lost an election, unless such pardon is also approved by the president-elect.

Another point of contention between the Bush administration and other interests in Washington was its abuse of the "state secrets" doctrine. Unfortunately, the Obama administration has done little to undo these abuses, and has itself invoked the doctrine on several questionable occasions. The onus then is upon Congress

to develop legislation that would place a significant burden of proof for invocation of the state secrets doctrine on the government, mandate that evidence protected under such doctrine still must be presented for judicial review, and allow the judge to rule in favor of the plantiff in cases where state secrets doctrine has been invoked [50]. A failure to implement these restrictions would encourage even more egregious abuses, as it would allow the executive office to operate without accountability.

While the conflict between the Bush administration's concept of a unified executive and many of the traditional power brokers in Washington was partially responsible for bringing the Bush administration's detention policies and interrogation practices into the media, efforts should be taken to ensure that it is not repeated. The form of unitary executive theory promoted by the Bush administration's legal advisers is contrary to one of the nation's fundamental principles: that every person is accountable to the same rule of law.

3.2 Revise the President's war powers to maintain the autonomy of the U.S. military and the state-level National Guard

Another concern about the Bush administration's policy changes was the state of indefinite war created by the president's declaration of a "war on terror." This proclamation turned out to be more than a rhetorical construct, as the Bush administration used this perpetual emergency to implement significant domestic and international policy changes without democratic oversight. Two changes that should be addressed immediately relate to the president's authority over the nation's military forces.

Particularly while under the direction of Donald Rumsfeld, the U.S. Department of Defense transferred a significant proportion of wartime and "peacekeeping" responsibilities, including combat and security operations, from the federal armed forces to private contracting firms. In addition to allowing mercenaries with a history of disregard for human rights to be employed by the U.S. government, this "outsourcing" of combat operations limit the extent to which Congress and the public can prevent the president from engaging in an unwanted war [51]. Former "pro-consul" Paul Bremer further eliminated safeguards on mercenary operations when he issued CPA Order 17, which exempted mercenaries from accountability to the Iraqi people [52]. Since mercenaries are also exempt from the Uniform Code of Military Justice, they are essentially operating without any legal boundaries in Iraq. Contracting military operations or supplies to private corporations has repeatedly led to practices that have endangered the lives of both civilians and soldiers throughout the nation's history [53]. Therefore, Congress should prohibit defense funding from being diverted to contracts for combat, security, or support operations. Order 17 should also be dismissed, as corporations operating in the United States who wish to hire armed mercenaries for security services should be accountable to both local laws and to the laws and jurisprudence of the U.S., as should the corporations providing the mercenaries. As commercial enterprises, mercenary contractors are not entitled to exemption from domestic prosecution in the United States in instances where contract violations, negligence, or improper conduct lead to a greater risk of—or actually result in—the physical injury or death of persons employed by said contractors. Finally, any organization rendering services to the U.S. Government that hires persons who were party to previous human rights violations or war crimes should have its contract terminated immediately.

Congress's decision to expand the president's authority to declare martial law and deploy National Guard forces under the control of the state government unilaterally also transferred a significant amount of authority out of the hands of the respective states and territories and into the Office of the President. Section 1076 of H.R. 5122 should be amended to reverse the changes encouraged by the Bush administration to Section 333 of Title 10, United States Code that allow the President to unilaterally employ National Guard forces in federal service. Specifically, Section 333 of Title 10 should be amended either by striking Subsection (a)(1) entirely and replacing "described in this paragraph" in paragraph 2 with "that authorizes the President, by using the militia or the armed forces, or both, or by any other means, to take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy" or by amending the text of both paragraphs to explicate the need for authorization from the State government. Additionally, the President should notify Congress within 12 hours of his or her decision to declare martial

law in Subsection (b), and use of the term "possession" in instances where "or possession" were inserted should be restricted to include only unincorporated territories to which Congress has determined to apply at least a portion of the U.S. Constitution [54]. While the sovereignty of the individual states has diminished significantly since the signing of the Constitution, certain decisions, such as when and where to deploy its own National Guard, should still reside with the states' elected governments.

3.3 Terminate federal policies that undermine the Constitutional freedoms of U.S. citizens and foreign visitors

Several practices adopted prior to and in the course of the "War on Terror" violate the basic liberties of U.S. citizens and international visitors. These infringements on individual liberties should be reversed, and safeguards should be established that prevent them from being repeated.

Among the most egregious violations of Constitutional principles to be rectified is the federal practice of denying citizens the right to travel without presenting a case before a jury or offering any other form of due process. The Transportation Security Administration's "Secure Flight" program, known primarily for its "No-Fly" list [55], allows the federal government to deny individuals access to private airlines without subjecting their decision to judicial scrutiny or public review. This lack of recourse violates the principle that a person is to be presumed innocent until proven otherwise in an impartial trial, which is a fundamental principle in the U.S. legal system, while denying citizens access to common forms of interstate transportation may violate the fourteenth amendment to the U.S. Constitution [56]. Accordingly, the "Secure Flight" program should be terminated, and the TSA should offer a formal apology to each person listed on the "No-Fly" list and provide financial compensation where a person's listing resulted in personal or professional damages.

Former president Bush's Executive Order 13224, which designates several organizations as "terrorist threats" and prohibits U.S. citizens from associating with groups so designated [57], allows the president to unilaterally revoke citizens' right to peaceful assembly without any form of judicial or legislative review. If U.S. citizens belonging to a particular group in the United States engage in terrorism or other crimes, then they should be charged and tried accordingly. No citizen may rightfully be denied the right to associate with a group of her or his choice, however, simply because that group has been labeled "terrorist" by administrative action. While the Department of State or Homeland Security may legitimately maintain a list of groups that it suspects of terrorist activity for individual consultation [58], they should not have the authority to deny citizens the right of association based on untried suspicions. Consequently, this Order should either be challenged in court or countermanded by legislation mandating that citizens be granted the right of assembly.

The illegal surveillance of private communication conducted by the National Security Agency is also inconsistent with Amendment IV to the U.S. Constitution[59], which declares that persons shall be secure from undue scrutiny by the state. Even after Congress passed legislation significantly expanding the NSA's authority to monitor e-mail and telephone traffic without judicial approval, the Agency has still been "overcollecting" private communications under the Obama administration [60]. Rather than allowing these intrusions into individual privacy to continue, Congress should repeal the legislation authorizing the government to violate individuals' Fourth Amendment rights without a warrant, and require that future surveillance be conducted exclusively under judicial oversight. Legislation retroactively granting corporations that voluntarily participated in the NSA's illegal surveillance operations should also be repealed, as it denies individuals whose rights have been compromised access to just legal compensation. The rule of law is one of the fundamental principles upon which the legitimacy of the U.S. government rests, and policies or legislation that undermine this commitment to the law represent are incompatible with a constitutional democracy.

Some of the immigration policies adopted after 11 September have also infringed on the rights of both documented and undocumented foreign nationals visiting the United States. Beyond the detainment of foreign nationals indefinitely among convicted prisoners in domestic prisons, one of the most egregious of these policies has been the deportation of documented visitors based on convictions for which they have already been sentenced and, in several cases, have already fulfilled their sentences. Subjecting individuals to

a deportation hearing (or bypassing such a hearing) based on a previous conviction comes perilously close to charging them twice for the same violation, an action explicitly prohibited by Amendment V of the U.S. Constitution. To prevent further violations of individual rights, Congress should intervene with legislation that prohibits Immigration and Customs Enforcement from detaining or deporting a foreign national based on a previous conviction. As previously described in Section 1.2, ICE should also be prevented from detaining any foreign national, documented or otherwise, without a warrant authorizing said detention for the purposes of an impartial trial. Documented and undocumented visitors are entitled to the same legal protections as are "native" citizens, and their rights should be respected accordingly.

3.4 Dismantle the Central Intelligence Agency and transfer its information-gathering functions into the State Department

Reports that agents in the United States Central Intelligence Agency were not particularly surprising to those familiar with the Agency's operational history. While the full list of CIA-run, -sponsored, or -supported operations is still not publically available, the substantial volume of information that is available indicates that the CIA's primary concern is neither the promotion of liberal democracy nor the well-being of U.S. citizens. Instead, the CIA has served primarily the economic interests of a minority of wealthy interests in Washington [7]. Well the more active role that individual agents played in some of the Agency's more recent illegal operations may be more substantial, their basic function and mission did not change significantly under the Bush administration. Moreover, the shroud of secrecy that the CIA continues to operate under gives the politicians who control it the impunity to act without the consent of the public. The culture of impunity that this produces is antithetical to a functioning democracy and allows the Agency to continue to operate without accountability to any form of domestic or international legal constraints [61].

The most immediate concern is the termination of the CIA's extraordinary rendition program and its network of secret prisons around the world. Although Section (4)(a) of president Obama's Executive Order "Ensuring Lawful Interrogations" mandates the closure of the secret detention facilities [2], it does not mandate that the extraordinary rendition program be terminated, nor does it mandate prosecution for personnel who violated U.S. laws. In addition to shutting down the rendition itself, the U.S. government should request that any victims currently being held in other countries by released in a country of the prisoner's choosing. Instead of funding further CIA operations, the resources used to maintain the prison networks and the rendition program should be used to provide reparations to victims of illegal activities (See Section 1.5).

Legislation introduced in 1995 by Representative D.P. Moynihan [62] that calls for the abolition of the Central Intelligence Agency and the transfer of responsibility for intelligence activities to the Secretary of State should be updated and implemented by the federal legislature. In addition to dismantling the CIA, this legislation should eliminate the classification of government operations and information beyond the standard level of identity protection for information sources that is used to protect "whistleblowers." This includes information about past operations and the illegal detention programs recently operated by the CIA. Agents who destroy records to prevent them from being declassified should be prosecuted for attempting to conceal evidence in a criminal investigation, and any persons implicated by the declassified information should be prosecuted accordingly.

3.5 Establish a standard of complete transparency in the detention system

In addition to the blatantly illegal abuses identified in military prisons operated by the U.S., human rights violations have also been frequently identified in domestic prisons, including inadequate shelter, prolonged isolation, and prisoner abuses by guards [63, 64]. Steps should be taken to remedy these conditions and ensure that the rights of every prisoner are respected. The "International Convention for the Protection of All Persons from Enforced Disappearance" [65], which mandates that detention facilities remain open to

inspection by the legal council representing the prisoner, representatives of the UN Office of High Commissioner for Human Rights, the ICRC and consular agencies representing the prisoner's national citizenship at the request of any of the aforementioned parties or at the request of the prisoner him- or her-self. According to the treaty, under no circumstances may a prisoner be denied any opportunity to contact his or her family, legal council and/or consular office. To facilitate compliance with the mandates of the ICPAPED and other legislation requiring that prisoners be provided humane accommodations, Congress should consider initiating an independent inquiry into the state of prison conditions across the nation. In addition to retaining full access to any detention center administered directly by or under contract with any local, state or federal government office, members of this inquiry could establish a standing task force to investigate reports by prisoners of inhumane conditions or patterns of prisoner abuse.

3.6 Remove mechanisms that impede the universal application of international treaties to the United States

The use of Reservations, Understanding, and Declarations (RUDs) when adopting international agreements, or the practice of declaring them "non-self-executing," has been abused by policymakers to undermine the U.S. government's accountability to international human rights laws. The "Bush doctrine" of anticipatory self defense is a particularly aggressive example this attitude of exceptionalism, and it has raised the ire of much of the international community. The right to unilaterally engage in military aggression against another nation who might at some point pose a threat to domestic interests leads to absurd conclusions if applied universally, and therefore cannot serve as a legitimate foreign policy for a nation that wishes to cooperate with the rest of the world. While the Bush administration took the bold step of publicly announcing this philosophy, many Presidents have relied on a similar standard to justify acts of illegal military aggression. Regardless of whether it is held openly or kept confidential, the majority of the U.S. public rejects the doctrine of U.S. exceptionalism, and believes that the U.S. should work with international bodies like the United Nations[66].

In adherence to the people's will, Congress should undertake measures to prevent future acts of military aggression or the threat thereof from being employed by the U.S. government without the explicit approval of the United Nations General Assembly. Congress should also acknowledge the universal applicability of international law by reviewing all ratified treaties and removing reservations that exempt the United States from full compliance and accountability. Trade policies should also be reviewed, and those that infringe on the sovereignty of other nations, such as NAFTA, should be revised or revoked. The U.S. government should also relinquish its veto power in the United Nations Security Council, and recommend that the Council be restructured to remove the veto power and to include more nations in the decision-making process. . The ability to dismiss the consensus of the world's population with a single veto that can be—and often is—issued without the consent of or against the wishes of the domestic majority is antithetical to a national or a global democracy [67, e.g. the number of times the U.S. has used its veto power to shield Israel's violence against Palestinians].

As mentioned previously (see Section 2.1), president Obama should accept the compulsory jurisdiction of the International Court of Justice, and should re-engage the U.S. in the Treaty of Rome of 1998, which is responsible for establishing the International Criminal Court. Once the U.S. government has agreed to accept the jurisdiction of both courts, legislation should be implemented that prevents the president from withdrawing this acceptance in the future. While these measures do not guarantee that the U.S. government will comply with international law in the future, they should help to prevent some of the more egregious instances of exceptionalism from re-occurring.

3.7 Limit the influence of corporations over policy and labor in the United States

The United States Supreme Court's *ultra vires* statement granting corporations the same legal rights and protections as individual human beings in Santa Clara County vs. Southern Pacific Railroad Company [68] has allowed large multinational (or transnational) corporations to subsume most of the government safeguards designed to regulate the extent to which they are allowed to exploit both human laborers and the environment, and the present state of the financial and manufacturing markets in the United States undermine the claim that granting corporations every opportunity to exploit available resources is the key to healthy economic growth for anyone outside a small circle of investors. Chief Justice Waite's decision to grant corporations the same rights as persons was neither democratic nor beneficial, and has allowed large corporations, which exist solely to accumulate profit, to exert a disproportionate influence on public policy, effectively "capture" regulatory agencies designed to keep them in check, and turn federal, state, and community services into private enterprises [69]. To prevent these powerful commercial interests from continuing to interfere with legislation designed to protect and promote human rights, Section One of the Fourteenth Amendment should be amended to exclude corporations from the protections offered therein, and that the burden of proof be shifted to corporations to demonstrate their entitlement to personal rights. As the rise of a corporate oligarchy over the last century has demonstrated, corporatization is fundamentally incompatible with democracy, and the ongoing consolidation of major corporations into fewer hands has exacerbated inequalities in the distribution of wealth. The corporation, as it exists today, cannot be allowed to continue if democracy is to be revived in the United States [70].

The ability of large corporations to exploit poorer labor protections by shifting manufacturing outside the U.S. undermines the health, safety, and rights of laborers in both nations. To prevent corporations from shipping their abuses overseas, initiatives to encourage labor unionization globally should be implemented and any corporation or industry that operates, trades, or is based in the United States should be held to strict environmental and human rights standards in all operations, including those overseas. Any corporation based in the United States that repeatedly or egregiously violates these labor standards, regardless of the labor policies of the nation in which the violations occurred, should have its charter or registration terminated immediately and its assets divided equally among its domestic and foreign employees. Any corporation based outside the U.S. that does the same should be prohibited from conducting any trade or commerce within the United States. Finally, any domestic corporation that does trade with such a foreign corporation should be subject to the same penalties as would be applied if the corporation had undertaken such practices itself. This should help all workers attain a more reasonable standard of living, may mitigate some negative perceptions of the United States, should encourage further attempts to address immigration issues in a manner that protects individual human rights, and should help the government fulfill its obligations to uphold the UDHR and other international treaties to which it is party.

Pending legislation that should be implemented by Congress to further protect labor includes the International Covenant on Economic, Social and Cultural Rights [71], the Convention of the Rights of the Child [72], and the Employee Free Choice Act. Congress should also protect undocumented and registered migrant workers by ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families [73]. Obviously, all of these treaties should be ratified without RUDs or "non-self-executing" clauses, as discussed in section 3.6.

Finally, the inordinate power that large corporations exercise over the political system should be reduced by restructuring the campaign finance system. Much of the corruption responsible for human rights abuses and other violations of international law is encouraged by the prevalence of legalized bribery in the campaign process. Because government campaigns are financed with private funds, economic power translates directly political capital, granting the bulk of the political influence to the minority of the population that controls most of the wealth. By reducing corporate control over the news media (section 4.1), the overall cost of political campaigns could be lowered substantially. This would allow private financing to be replaced by a public fund, which could be divided equally among selected candidates. In addition to reducing the extent

to which the economic interests of large corporations influence public policy, such an egalitarian campaign structure may also help to break the stranglehold that the two mainstream parties have over the electoral system.

4 Civic Engagement

In contrast to the general impressions conveyed by history textbooks and the mass media, progress toward democracy in the United States has been driven not by benevolent politicians who seek to advance democracy around the world, but by mass and labor movements organized by the people. Efforts to reform the U.S. government's human rights policies, therefore, must likewise look beyond the federal legislature and the White House and to the movements taking shape among the people. While federal and local policymakers should be encouraged to adopt the suggested reforms voluntarily, the only force likely to compel them to do so is direct pressure from the public. The foundations of a campaign to advance human rights in the U.S. could be built on the issues and movements listed in this section, as well as other civil rights struggles such as the abolition of capital punishment or the fight for marriage equality. To encourage activists to move from single-issue campaigns into more comprehensive reforms, I have selected movements that are either relevant to virtually every progressive cause or fundamental aspects of social justice and civil rights that most movements would agree on.

4.1 The growing movement for media reform

The current state of the mainstream media arguably represents one of the most dangerous threats to the future of democracy in the United States [74]. With the bulk of U.S. media concentrated in the hands of six massive corporations, both the quality and the objectivity of mainstream journalism has plummeted below the already-questionable standards introduced by the rise of "professional journalism" in the early twentieth century [75]. Rather than serving the public as a guardian against corruption and deception by the ruling class, the much of the commercial media has become instead a mouthpiece for the political and corporate establishment, a reality recognized and lamented by most activists [76]. Despite the widespread awareness of the compromised state of U.S. journalism, only a few nascent movements to reform the media presently exist. While a small number of alternative news sources have grown in popularity (e.g. Democracy Now![2] and Socialist Worker[3]), none of them come close to reaching the same proportion of the population as the major commercial networks, despite the explosive growth of Internet technology. The measures needed to resolve some of this imbalance and provide the public access to more balanced and accurate journalism are much the same as those proposed by Sinclair in 1923. The first is legislation that restricts and reverses the media mergers that have proliferated since the passage of the Telecommunications Act of 1996 [77]. Public broadcasting also provides a critical and much-sought alternative to commercial media, and Congress's efforts to strangle it to death by reducing the Corporation for Public Broadcasting's operating budget annually should be reversed. The head of the CPB should be selected through popular election rather than appointed by the White House, and resources should be invested into expanding public broadcasting into the print medium. Public engagement in these reforms could begin with organizations such as Free Press [4] and Fairness and Accuracy In Reporting (FAIR)[5], although neither is a grassroots organization that encourages local organization around media issues. Therefore, forming a national network of such local organizations could be the first step undertaken by activists interested in media reform issues. These local organizations could then work in concert with groups like Free Press and FAIR to coordinate local efforts nationwide and to combine direct pressure on local media franchises with political pressure on the federal legislature.

[2] http://www.democracynow.org/
[3] http://socialistworker.org/
[4] http://www.freepress.net/
[5] http://www.fair.org/index.php

4.2 Efforts to secure the release of political prisoners being held by the U.S. government

Before the post-11 September detention programs brought several political prisoners into the U.S. military base in Guantánamo Bay and elsewhere, the U.S. government was holding approximately 100 political prisoners, the bulk of whom were victims of the Federal Bureau of Investigation's COINTEL PRO [78]. Many of these individuals, such as Leonard Peltier who was recently denied parole under the Obama administration [79], have been repeatedly denied parole despite excellent behavior and the emergence of evidence that challenges the legitimacy of their sentences. In addition to demanding the release of political prisoners being held overseas, activists should press for the release of all political prisoners being held by the U.S. government. The Prison Activist Resource Center (PARC)[6] maintains an alphabetical list of such prisoners and provides resources and information about campaigns on their behalf, while Amnesty International U.S.A maintains a worldwide list of its priority cases, which include prisoners of conscience and other political prisoners [7]. Engaging in campaigns to have these political prisoners released may encourage activists concerned about the detention and interrogation programs implemented after 11 September to look beyond the Bush Administration's abuses and examine the broader political context of human rights in the United States.

4.3 Movements to abolish capital punishment in the United States

Despite international agreements that require the abolition of capital punishment, the U.S. government continues to execute prisoners in its custody and allow individual states to do the same. In addition to irreparably violating a prisoner's human rights, the death sentence is often imposed disproportionately on poor people and on minorities [80]. Amnesty International, Human Rights Watch, and the American Civil Liberties Union—in addition to countless other international and domestic organizations—have all condemned the use of capital punishment in the United States. The U.S. government continues to support the death sentence despite this opposition, and as of 2008, 37 states authorized the use of capital punishment. In addition to the ACLU's Moratorium Campaign[8], the National Coalition to Abolish the Death Penalty lists approximately 80 different advocacy organizations involved in the struggle to abolish capital punishment[9], from civil rights organizations to religious groups. The elimination of capital punishment in the United States is an important human rights issue that can also introduce individuals to others in their communities who are interested in advocating on behalf of human rights.

4.4 The movement for marriage equality

The right of homosexual, bisexual, transsexual, and transgendered persons to marry is also an important human rights issue that has recently seen an influx of young activists. Both Human Rights Watch and Amnesty International have stated that same-sex marriage is a basic human right, and campaigns to overturn existing bans are forming in several states and at the national level. In October 2009, approximately 200,000 activists, many of them under 40, marched on Washington, D.C. to voice their demands that the legislature repeal the Defense of Marriage Act and that the Obama administration eliminate the military's "Don't Ask, Don't Tell" policy [81]. The organization that coordinated the march, Equality Across America, maintains a list of local organizations that advocate marriage equality on its website[10]. In addition to continuing the popular civil rights struggles of the 1960s, the campaign for marriage equality is one of the faster-growing and more coherently organized movements presently, and therefore can provide participants with valuable experience in the organizing involved in major movements.

[6] http://www.prisonactivist.org/
[7] http://www.amnestyusa.org/individuals-at-risk/priority-cases/page.do?id=1106638
[8] http://www.aclu.org/capital/moratorium/index.html
[9] http://www.ncadp.org/index.cfm?content=7
[10] http://equalityacrossamerica.org/

4.5 Volunteer with and support existing human rights organizations

Perhaps the most straightforward way for individuals to promote human rights is to work with and support existing organizations already dedicated to advancing human rights. This section offers a brief introduction to each of the three of the most active and well-known organizations. Each of these organizations are non-profit and non-partisan.

4.5.1 Amnesty International

Amnesty International started with a year-long campaign by Peter Benenson, a British lawyer, in 1961 that urged people around the world to protest against the detention of "prisoners of conscience," or persons imprisoned because of particular moral or political beliefs. This focus on public advocacy has been the primary feature of Amnesty International, which now has 2.2 million members or subscribers in over 150 countries, with national offices in 80. Individuals can join through national offices or through the international organization if such an office is unavailable. Members are encouraged to participate in or organize community chapters that engage in local campaigns and coordinate initiatives with the national and international offices. The web site is located at http://www.amnesty.org/

4.5.2 Human Rights Watch

Human Rights Watch was initially formed as "Helsinki Watch" in 1978 to help citizen groups monitor compliance with Helsinki Accords in the Soviet Union. The organization has since grown to more than 275 staff members who monitor a wide range human rights issues around the globe. It's thorough and impartial investigations have earned Human Rights Watch the respect of the international community, and it has worked with the United Nations, the European Union, and the African Union. Reports on approximately 90 countries are published annually, and all information and reports are available on the organization's web site. This site is located at http://www.hrw.org/

4.5.3 International Committee of the Red Cross

The International Committee of the Red Cross operates under a legal mandate in the 1949 Geneva Conventions to engage in humanitarian activities such as prisoner visits and relief operations during armed conflicts and internal statutes that encourage similar activities in situations where the Geneva Conventions do not apply. The ICRC has recently launched an initiative named "Our World. Your Move," which attempts to encourage individual engagement in issues pertaining to the ICRC's charter through public events and "calls to action." The web site is located at: http://ourworld-yourmove.org/

Conclusion

The primary objective of this framework is the protection of human rights in regions under the direct political or military control of the government of the United States of America. Attempts to reform the abuses of executive power demonstrated in the Bush administration's detention and interrogation programs should address the issues of accountability, culpability, and public policy raised herein to bring our society closer to the more just and humane ideal that many hold. I have, to the best of my limited abilities and knowledge, attempted to identify the critical weaknesses in the economic and political infrastructure that allowed abuse, torture, and indefinite detention to continue under the auspices of a global "War on Terror" and to offer solutions that would prevent the most egregious abuses from being repeatred. The Bush administration's human rights violations helped to identify several institutional and policy issues that should be addressed

to prevent private economic interests from gaining undue control over one of the world's largest stockpiles of military weaponry and trained soldiers. Considering the significant amount of wealth already invested in the U.S. political system, popular struggles against corruption will be rather asymmetrical, and only a movement that effectively mobilizes significant proportions of the population will succeed in bringing about meaningful change. Therefore, issues that affect every progressive movement, such as corporate control over the mass media and the extent to which national elections are funded by private interests and dominated by two nearly identical parties, could act as foundations upon which popular movements can be built. While the struggle for human rights and democracy is often fought under difficult conditions, the suffering of innocent persons everywhere compels those of us with both the knowledge and the capability to continue to struggle. In a world replete with injustice and inequality, even the smallest victory may protect the immeasurable value and sanctity of one more human life.

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References

[1] Obama, B. H. Review and disposition of individuals detained at the Guantánamo Bay naval base and closure of detention facilities. Executive Order 13489, The White House (2009). URL `http://www.whitehouse.gov/the_press_office/ClosureOfGuantanamoDetentionFacilities/`.

[2] Obama, B. H. Ensuring lawful interrogations. Executive Order 13491, The White House (2009). URL `http://www.whitehouse.gov/the_press_office/EnsuringLawfulInterrogations/`.

[3] Obama, B. H. Review of detention policy options. Executive Order 13490, The White House (2009). URL `http://www.whitehouse.gov/the_press_office/ReviewofDetentionPolicyOptions/`.

[4] Kramer, P. The water cure: Debating torture and counterinsurgency—a century ago. *The New Yorker* (2008). URL `http://www.newyorker.com/reporting/2008/02/25/080225fa_fact_kramer?currentPage=all`.

[5] Taylor, T. *Nuremberg and Vietnam: An American Tragedy* (Times Books, New York, New York, United States, 1970). URL `http://isbndb.com/d/book/nuremberg_and_vietnam.html`.

[6] Klein, N. *The Shock Doctrine: The Rise of Disaster Capitalism* (Picador, New York, New York, United States, 2008). URL `http://isbndb.com/d/book/the_shock_doctrine_a03.html`.

[7] Blum, W. *Killing Hope : U.S. Military and CIA Interventions Since World War II—Updated Through 2003* (Common Courage Press, Monroe, Minnesota, United States, 2003). URL `http://isbndb.com/d/book/killing_hope.html`.

[8] Lernoux, P. *Cry of the People: The Struggle for Human Rights in Latin America—The Catholic Church in Conflict with U. S. Policy* (Penguin Books, New York, New York, United States, 1982). URL `http://isbndb.com/d/book/cry_of_the_people_a01.html`.

[9] Murphy, J. F. *The United States and the Rule of Law in International Affairs* (Cambridge University Press, Cambridge, UK, 2004). URL `http://isbndb.com/d/book/the_united_states_and_the_rule_of_law_in_international_affai.html`.

[10] Scheuer, M. *Imperial Hubris: Why the West is Losing the War on Terror* (Potomac Books, Dulles, Virginia, United States, 2007). URL http://isbndb.com/d/book/imperial_hubris_a02.html.

[11] Albright, M. K. United nations. *Foreign Policy* **138**, 16 (2003). URL http://www2.lib.purdue.edu:2048/login?url=http://www2.lib.purdue.edu:2118/pqdweb?did=451023631&sid=1&Fmt=2&clientId=31343&RQT=309&VName=PQD.

[12] General Assembly of the United Nations. Convention against torture and other cruel, inhuman or degrading treatment or punishment. In *United Nation Treaty Series*, vol. 1465, 85 (Office of the High Commissioner for Human Rights, New York, New York, United States, 1984). URL http://www2.ohchr.org/english/bodies/ratification/9.htm.

[13] General Assembly of the United Nations. International covenant on civil and political rights. In *The Core International Human Rights Treaties*, 23 (Office of the High Commissioner for Human Rights, New York, New York, United States, 1976). URL http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

[14] An overview of the Cuban assets control regulations title 31 part 515 of the U.S. code of federal regulations. Summary, U.S. Department of the Treasury, Office of Foreign Assets Control (2009). URL http://www.treas.gov/offices/enforcement/ofac/programs/cuba/cuba.shtml.

[15] Israel/Occupied Palestinian Territories (OPT). Country Summary, Human Rights Watch (2009). URL http://www.hrw.org/en/world-report-2009/israeloccupied-palestinian-territories-opt.

[16] Israel/Occupied Palestinian Territories: Evidence of misuse of US-weapons reinforces need for arms embargo (2009). URL http://www.amnesty.org/en/for-media/press-releases/israeloccupied-palestinian-territories-evidence-misuse-us-weapons-reinfo.

[17] Indiscriminate fire: Palestinian rocket attacks on Israel and Israeli artillery shelling in the Gaza strip **19**, 145 (2007). URL http://www.hrw.org/en/reports/2007/06/30/indiscriminate-fire-0.

[18] Israel / OPT: Fuelling conflict: Foreign arms supplies to Israel/Gaza. Report MDE 15/012/2009, Amnesty International (2009). URL http://www.amnesty.org/en/library/info/MDE15/012/2009/en.

[19] Rain of fire: Israel's unlawful use of white phosphorus in Gaza. Report, Human Rights Watch (2009). URL http://www.hrw.org/en/reports/2009/03/25/rain-fire.

[20] Military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America). merits, judgment. International Court of Justice Reports, International Court of Justice (1986). URL http://www.icj-cij.org/docket/index.php?p1=3&p2=3&k=66&case=70&code=nus&p3=4.

[21] Institutionalized discrimination against Palestinian citizens of Israel. Adalah's Report to the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Adalah: The Legal Center for Arab Minority Rights in Israel, Durban, South Africa (2001). URL http://www.adalah.org/eng/publications.php.

[22] Israel/Egypt: Choking Gaza harms civilians (2009). URL http://www.hrw.org/en/news/2009/02/18/israelegypt-choking-gaza-harms-civilians.

[23] Mueller, J. & Mueller, K. Sanctions of mass destruction. *Foreign Affairs* **78**, 43, 11 (1999). URL http://www2.lib.purdue.edu:2048/login?url=http://www2.lib.purdue.edu:2118/pqdweb?did=40646101&sid=3&Fmt=3&clientId=31343&RQT=309&VName=PQD.

[24] Raaflaub, W., Schobert, T. & Shute-Taylor, J. Canada's proposed decriminalization of marijuana: International implications and views. Report PRB 04-33E, Parliamentary Information and Research Services (2004). URL http://www.parl.gc.ca/information/library/PRBpubs/prb0433-e.htm.

[25] Iraq poll March 2008. Survey, D3 Systems and KA Research Limited, Vienna, Va. and Istanbul, Turkey (2008). URL http://www.globalpolicy.org/security/issues/iraq/pollindex.htm.

[26] BBC/ABC/ARD poll of Afghani citizens. Opinion Poll, Afghan Centre for Social and Opinion Research (2009). URL http://news.bbc.co.uk/2/hi/south_asia/7872353.stm.

[27] Holder, E. Statement of Attorney General Eric Holder regarding a preliminary review into the interrogation of certain detainees. Statement, United States Department of Justice (2009). URL http://www.usdoj.gov/ag/speeches/2009/ag-speech-0908241.html.

[28] Bush, G. W. Military order - detention, treatment, and trial of certain non-citizens in the war against terrorism. *Federal Register* 1665–1668 (2001). Order issued on 13 November.

[29] Begg, M. *Enemy Combatant: My Imprisonment at Guantanamo, Bagram, and Kandahar* (The New Press, New York, New York, United States, 2006). URL http://isbndb.com/d/book/enemy_combatant_a02.html.

[30] Marquiles, J. *Guantanamo and the Abuse of Presidential Power* (Simon & Schuster, New York, New York, United States, 2007). URL http://isbndb.com/d/book/guantanamo_and_the_abuse_of_presidential_power_a01.html.

[31] Grey, S. *Ghost Plane: The True Story of the CIA Torture Program* (St. Martin's Press, New York, New York, United States, 2006). URL http://isbndb.com/d/book/ghost_plane.html.

[32] Off the record: U.S. responsibility for enforced disappearances in the "war on terror". Report, Human Rights Watch (2007). URL http://www.hrw.org/en/reports/2007/06/07/record.

[33] Current conditions of confinement at Guantanamo: Still in violation of the law. Report, Center for Consitutional Rights (2009). URL http://ccrjustice.org/learn-more/reports/current-conditions-confinement-guantanamo.

[34] Locked up alone: Detention conditions and mental health at Guantanamo. Report, Human Rights Watch (2009). URL http://www.hrw.org/en/reports/2008/06/09/locked-alone-0.

[35] ICRC report on the treatment of fourteen "high value detainees" in CIA custody. Confidential Report, International Committee of the Red Cross (2007). URL http://www.nybooks.com/icrc-report.pdf.

[36] Inspector General. CIA office of inspector general's may 2004 counterterrorism detention and interrogation activities report. Special Review 2003-7123-IG, Central Intelligence Agency (2004). URL http://www.aclu.org/safefree/torture/40832res20090824.html.

[37] Leave no marks: Enhanced interrogation techniques and the risk of criminality. Report, Physicians for Human Rights (2007). URL http://physiciansforhumanrights.org/library/report-2007-08-02.html.

[38] Wilson, J. *The Politics of Truth: A Diplomat's Memoir* (Carroll & Graff, New York, New York, United States, 2005), updated edn. URL http://isbndb.com/d/book/the_politics_of_truth_a_diplomats_memoir.html.

[39] USA: Investigation, prosecution, remedy: Accountability for human rights violations in the 'war on terror'. AMR 51/151/2008, Amnesty International (2008). URL http://www.amnestyusa.org/document.php?id=ENGAMR511512008.

[40] General Assembly of the United Nations. Universal declaration of human rights. In *The Core International Human Rights Treaties*, 1 (Office of the High Commissioner for Human Rights, New York, New York, United States, 1948). URL http://www.unhchr.ch/udhr/.

[41] General Assembly of the United Nations. International convention on the elimination of all forms of racial discrimination. In *The Core International Human Rights Treaties*, 57 (Office of the High Commissioner for Human Rights, New York, New York, United States, 1969). URL http://www2.ohchr.org/english/law/cerd.htm.

[42] Froomkin, D. Bush OK'd torture meetings. *Washington Post* (2008). URL http://www.washingtonpost.com/wp-dyn/content/blog/2008/04/14/BL2008041401428_pf.html.

[43] Whitlock, C. U.S. won't send CIA defendants to Italy. *The Washington Post* (2007). URL http://www.washingtonpost.com/wp-dyn/content/article/2007/02/28/AR2007022802050_pf.html.

[44] Spain could open second Guantanamo torture probe. *Reuters* (2009). URL http://www.reuters.com/article/latestCrisis/idUSL534094.

[45] Van Natta, D. J. & Mekhennet, S. German's claim of kidnapping brings investigation of U.S. link. *The New York Times* (2005). URL http://www.nytimes.com/2005/01/09/international/europe/09kidnap.html.

[46] Marty, D. Alleged secret detentions and unlawful inter-state transfers of detainees involving council of europe member states. Report Doc. 10957, Parliamentary Assembly Council of Europe (2006). URL http://assembly.coe.int//Main.asp?link=http://assembly.coe.int/Documents/WorkingDocs/doc06/edoc10957.htm?link=/Documents/WorkingDocs/Doc06/EDOC10957.htm.

[47] Weiss, D. Liberal group files ethics complaints against three ex-AGs. *ABA Journal* (2009). URL http://www.abajournal.com/news/liberal_group_files_ethics_complaints_against_three_ex-ags/.

[48] Allen, S., Keller, A., Reisner, S. & Iacopino, V. Aiding torture: Health professionals' ethics and human rights violations demonstrated in the may 2004 cia inspector general's report. White Paper, Physicians for Human Rights (2009). URL http://physiciansforhumanrights.org/library/news-2009-08-31.html.

[49] Ketcham, R. (ed.) *The Anti-Federalist Papers and the Constitutional Convention Debates* (Signet Classics, New York, New York, United States, 2003), mass market paperback edn. URL http://isbndb.com/d/book/the_anti_federalist_papers_and_the_constitutional_convention.html.

[50] Fein, B. Statement of Bruce Fein before the House judiciary committee regarding the state secrets privilege. Testimony, United States House of Representatives (2008). URL http://judiciary.house.gov/hearings/pdf/Fein080731.pdf.

[51] Scahill, J. *Blackwater: The Rise of the World's Most Powerful Mercenary Army* (Nation Books, New York, New York, United States, 2008). URL http://isbndb.com/d/book/blackwater_the_rise_of_the_worlds_most_powerful_mercenary_ar.html.

[52] Bremer, P. Order 17: Status of the CPA, MNFI, certain missions and personnel in Iraq w/annex **revised**. Order 17, Coalition Provisional Authority (2004). URL http://www.cpa-iraq.org/regulations/20040627_CPAORD_17_Status_of_Coalition__Rev__with_Annex_A.pdf.

[53] Zinn, H. *A People's History of the United States: 1492-Present* (HarperCollins, New York, New York, United States, 2003), Harper Perennial modern classics edn. URL http://isbndb.com/d/book/peoples_history_of_the_united_states_1492_to_present.html.

[54] An act to authorize appropriations for fiscal year 2007 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes. House Roll 5122, 109th Congress of the United States of America, Second Session (2006). URL http://thomas.loc.gov/cgi-bin/bdquery/D?d109:8:./temp/~bdhlbQ::.

[55] Transportation Security Administration: Secure flight (2009). URL http://www.tsa.dhs.gov/approach/secure_flight.shtm.

[56] Tatelman, T. B. Interstate travel: Constitutional challenges to the identification requirement and other transportation security regulations. CRS Report RL32664, Congressional Research Service (2004). URL http://ftp.fas.org/sgp/crs/RL32664.pdf.

[57] Bush, G. W. Blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism. Executive Order 13224, The White House (2001). URL http://www.state.gov/s/ct/rls/fs/2002/16181.htm.

[58] Country reports on terrorism (2007). URL http://www.state.gov/s/ct/rls/crt/2006/82738.htm.

[59] Delegates to the Convention. The constitution of the United States of America. Legislation, The Federal Convention of 1787 (1787). URL http://www.archives.gov/exhibits/charters/constitution.html.

[60] Lichtblau, E. & Risen, J. Officials say U.S. wiretaps exceeded law. *The New York Times* (2009). URL http://www.nytimes.com/2009/04/16/us/16nsa.html?pagewanted=1.

[61] Johnson, C. Abolish the CIA! *TomDispatch.com* (2004). URL http://www.commondreams.org/views04/1105-30.htm.

[62] Moynihan, D. P. Abolition of the Central Intelligence Agency act of 1995. Congressional Record S. 126, Senate of the United States (1995). URL http://www.fas.org/irp/s126.htm.

[63] No equal justice: The prison litigation reform act in the United States. Report, Human Rights Watch (2009). URL http://www.hrw.org/en/reports/2009/06/16/no-equal-justice-0.

[64] Custody and control: Conditions of confinement in New York's juvenile prisons for girls. Report, Human Rights Watch (2006). URL http://www.hrw.org/en/reports/2006/09/24/custody-and-control-0.

[65] General Assembly of the United Nations. International convention for the protection of all persons from enforced disappearance. In *The New Core International Human Rights Treaties*, 43 (Office of the High Commissioner for Human Rights, New York, New York, United States, 2006). URL http://www2.ohchr.org/english/bodies/ratification/16.htm. Doc.A/61/488.

[66] Chomsky, N. *Failed states: the abuse of power and the assault on democracy*. The American Empire Project (Owl Books, New York, New York, United States, 2006), 1 edn. URL http://isbndb.com/d/book/failed_states_a02.html.

[67] Neff, D. An updated list of vetoes cast by the United States to shield Israel from criticism by the UN Security Council (2005).

[68] Santa Clara County v. Southern Pacific Railroad Company, 118 U.S. 394. Ruling, United States Supreme Court (1886). URL http://laws.findlaw.com/us/118/394.html.

[69] Barley, S. R. Corporations, democracy, and the public good. *Journal of Management Inquiry* **16**, 201–215 (2007). URL http://jmi.sagepub.com/cgi/content/abstract/16/3/201.

[70] Chomsky, N. *Profit Over People: Neoliberalism & Global Order* (Seven Stories Press, New York, New York, United States, 1998). URL http://isbndb.com/d/book/profit_over_people.html.

[71] General Assembly of the United Nations. International covenant on economic, social and cultural rights. In *The Core International Human Rights Treaties*, 9 (Office of the High Commissioner for Human Rights, New York, New York, United States, 1976). URL http://www.unhchr.ch/html/menu3/b/a_cescr.htm.

[72] General Assembly of the United Nations. Convention on the rights of the child. In *The Core International Human Rights Treaties*, 97 (Office of the High Commissioner for Human Rights, New York, New York, United States, 1990). URL http://www.unhchr.ch/html/menu3/b/k2crc.htm. General Assembly resolution 44/25.

[73] General Assembly of the United Nations. International convention on the protection of all migrant workers and members of their families. In *The Core International Human Rights Treaties*, 175 (Office of the High Commissioner for Human Rights, New York, New York, United States, 1990). URL http://www.unhchr.ch/html/menu3/b/a_cescr.htm.

[74] McChesney, R. W. *The Political Economy of Media: Enduring Issues, Emerging Dilemmas* (Monthly Review Press, New York, New York, United States, 2008), paperback edn. URL http://isbndb.com/d/book/the_political_economy_of_media.html.

[75] Sinclair, U. *The Brass Check: A Study of American Journalism* (University of Illinois Press, Urbana and Chicago, Illinois, United States, 2003), reprint of the ninth edition edn. URL http://isbndb.com/d/book/the_brass_check.html. Introduction by Robert W. McChesney and Ben Scott.

[76] Herman, E. S. & Chomsky, N. *Manufacturing Consent: The Political Economy of the Mass Media* (Pantheon Books, New York, New York, United States, 2002), updated edn. URL http://isbndb.com/d/book/manufacturing_consent_a03.html.

[77] 104th Congress of the United States of America. Telecommunications act of 1996. An Act Pub. LA. No. 104-104, 110 Stat. 56, Senate and House of Representatives of the United States of America (1996). URL http://www.fcc.gov/telecom.html.

[78] Elijah, J. S. The reality of political prisoners in the United States: What September 11 taught us about defending them. *Harvard BlackLetter Law Journal* **18** (2002). URL https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=18+Harv.+BlackLetter+J.+129&srctype=smi&srcid=3B15&key=d7c6aeb5777a424344f2e400b1370c3f.

[79] Peltier, L. I am Barack Obama's political prisoner now. *CounterPunch* (2009). URL http://www.counterpunch.org/peltier09112009.html.

[80] Dakwar, J. & Hill, C. Capital punishment in the United States. Submission to the Office of the United Nations High Commissioner for Human Rights following UN General Assembly resolution 62/149 Entitled "Moratorium on the use of the death penalty" adopted in December 2007, American Civil Liberties Union (2008). URL http://www.aclu.org/capital/general/35665res20080530.html#attach.

[81] Napoletano, B. Civil rights struggles live on in fight for marriage equality. *Purdue Exponent* 4A (2009). URL http://www.acontrario.org/node/432.