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## The Aftermath: 9/11 and the War on Privacy, Rights and Humanity

Omid Irani

### **Introduction & Background**

Nearly a decade and a half ago, the United States experienced a brazen series of terrorist attacks that rattled every aspect of American life. Upon deeper analysis, it is easy to distinguish that some of these facets are still being shaped by the cataclysmic events of September 11, 2001. The trauma that accompanied the terrorist attacks and the seemingly imminent future attacks that would follow afterwards left our nation feeling excessively vulnerable, drastically unprepared and, most of all, helplessly uncertain. This fusion of raw emotions manifested itself in a wide array of reforms and legislation which were passed in the shadows of the terrorist attacks. With the fresh attacks serving as justification for their questionable actions, the American government enacted programs and passed laws that would alter the entire infrastructure of intelligence gathering by means not previously employed. Such actions were met with very little opposition because of the country's embrace of President Bush at the time, as it is so typically the case in times of domestic attacks of such nature. This 'rally around the flag effect' was misused and taken advantage of by members of the Bush administration as a carte blanche for the implementation of laws that effectively curtailed a wide array of rights – privacy and secrecy chief among them – that the American public had all but sanctified as being intrinsic and innate as per the Constitution. Nevertheless, in this harrowing instance, political pandering and fear mongering trumped legal privileges and guaranteed protections.

As the country returned to a sense of relative normalcy, Americans began to see, feel, and experience what kind of life awaited them in the post-9/11 era. Prior to embarking on a warmongering journey which forever tarnished its once revered moral and ethical standing among the international community, the United States first used the cover of law to engage in irresponsible conduct and permit unwarranted transgressions against basic liberties of its own citizens. These illegal, immoral, and unethical actions have regrettably all been hallmarks of this dark era that the United States so boldly refers to as the "War on Terror." The tragic events of September 11, 2001 brought with them not only a sense of physical vulnerability in their callous nature, but also introduced a pretext for the implementation of unconscionably invasive and intrusive practices sanctioned by the American government through appropriate legal channels as a means of significantly transforming the security-privacy nexus by means of keeping tabs on the general

populace irrespective of adequate justification, oversight or location – more appropriately referred to as the “War on Rights and Privacy.”

A trio of practices were employed as part of America’s policy to combat terrorism. Such practices were sold as a bag of goods under the intentionally misleading label of “anti-terrorism procedures” in order to alleviate the American public’s fear at a time of mounting insecurity. The three practices were (and in many respects still are): 1) the proliferation of domestic drone use and their security and legal implications 2) increased drone strikes on suspected terrorists overseas 3) the international community’s turning a blind eye toward extraordinary rendition, indefinite detention and torture of terror suspects in American-controlled detention centers. The rapid expansion of military and surveillance drone use overseas and its budding debate for use in the homeland, systemic implementation of dragnet detention and application of torture on suspected terrorists, as well as the greenlight to kill without adequate legal checks, all fused together to personify the draconian approach that has characterized the United States post-9/11.

### **Overview of Drones**

For a technology that is seven decades old, there is expected to be differing views on this re-emerging contrivance.<sup>1</sup> The controversy surrounding these drones stems equally from the association they evoke in their expanding military and emerging domestic usages. As it stands today, there are already widespread uses of these high-tech machines in the American homeland which are relatively underreported, if not unreported all together. Along United States’ southern border, the Customs and Border Patrol agency (CBP) has employed seven Predator B drones in the ongoing battle against illegal border crossings. The CBP has expressed its intentions to increase the numbers of their surveillance drones in their fleet by over 300% to 24 by 2016.<sup>2</sup> It is expected that by 2015, the Federal Aviation Agency (FAA hereafter) is due to permit commercial drones to operate within U.S. airspace.<sup>3</sup> (2013). More troubling is the estimate that by 2030 as many as 30,000 drones are projected to be operating in American airspace.<sup>4</sup>

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<sup>1</sup> Jones, Mildred V. "Drones the sky's the limit--or is it?" *Technology & Engineering Teacher* 74, no. 1 (September 2014): 28-32.

<sup>2</sup> Stanely, J., & Crump, C. “*Protecting Privacy From Aerial Surveillance*,” American Civil Liberties Union. (December 2011): p. 6.

<sup>3</sup> Jones, Mildred V. "Drones the sky's the limit--or is it?" *Technology & Engineering Teacher* 74, no. 1 (September 2014): 28-32.

<sup>4</sup> Oyegunle, Ajoke. (2013). Drones In The Homeland: A Potential Privacy Obstruction Under The Fourth Amendment And The Common Law Trespass Doctrine. *CommLaw Conspectus*, 21365.

The large-scale security applications of drones are often tolerated, if not accepted altogether, as a means of ensuring safety. This general justification could explain the budding use of such technology as a means of domestic law enforcement as evidenced by police in Colorado being granted FAA permission to conduct drone flights anywhere in Mesa County, marking the first time a police department was afforded such extensive rights which parallels Miami police obtaining authorization to conduct drone testing over the Everglades.<sup>5</sup> The flying of drones has even been introduced at popular sporting events; most notably in 2011 to surveil crowds flocking to the National Football League's championship game, the Superbowl, hosted in Arlington, Texas.<sup>6</sup> Despite how valid and prevalent the security concerns of modern reality tend to be, framing surveillance as a tradeoff between privacy and security marks the eventual demise of a democracy.<sup>7</sup> It is for this vital equation that the parameters of drone activity, whatever the justification of its uses may be, must be thoroughly examined and be meticulously dissected.

### **Overview of Drone Strikes**

With the rise in the number of drones and their increasingly sophisticated surveillance and military applications, there is a growing potential for the American security apparatus collect what is termed as 'actionable intelligence' which largely supplants the legal and bureaucratic hurdles needed to jump through in order to deliver the "kill shot" on the designated target(s).

In the current military campaign against international terrorism, the United States employs drones that are controlled and guided via satellite signals by a 'pilot' who sits comfortably and safely hundreds, if not thousands, of miles away from the area of engagement. From this safe haven, removed and detached from the grave realities on the ground, the pilot is shockingly permitted to render omnipotent judgements of life or death for the target(s) on his/her screen. Should the pilot elect to engage, by the press of a button, a \$70,000 missile is deployed by a \$28 million dollar Predator drone to vaporize the subject(s) in focus. Calling into question these rules of engagement, many have deemed such behavior as utterly "cowardly and unfair."<sup>8</sup> They derive their justification for this characterization by invoking the psychological detachment phenomenon that argues such killings are enabled because "the face cannot be seen, [thus this form of killing is

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<sup>5</sup> Stanley, J., & Crump, C. "Protecting Privacy From Aerial Surveillance," American Civil Liberties Union. (December 2011): 6.

<sup>6</sup> Ibid, 8.

<sup>7</sup> Hundt, Reed, et al. "Saving Privacy," Boston Review 39, no. 3 (May 2014): 14.

<sup>8</sup> Coeckelbergh, Mark. "Drones, information technology, and distance: Mapping the moral epistemology of remote fighting," *Ethics & Information Technology*, Vol 15, Issue 2, (June 2013): p. 92.

easier because] face-to-face killing means to overcome some form of natural resistance.”<sup>9</sup> With this most basic element of humanity missing from drone strikes, there are virtually no emotional or mental barriers needed for the pilot to overcome.

Further expansion upon the lack of compassion and humanity vis-à-vis drone strikes is offered by invoking the factors of distance between the killer and the killed. This simple element of distance between the two parties serves as the groundwork for all further actions. The lack of moral responsibility stems from the fact that the drone controller(s) “feel no particular emotion about the moral consequences of their actions, which makes it easier for them to kill [and forget].”<sup>10</sup> In its purest form, this theory originates from the ancient Greek philosopher Aristotle who developed an ingenious moral equation which held that the notion of ‘knowing’ encapsulates one of the most principal tenets of responsibility ascription.<sup>11</sup> Therein lies the quandary facing this disturbing policy – if the drone operators do not ‘know’ what devastation their actions create, there can be no reasonable expectation for them to feel a sense of responsibility, thus enabling such ruthless attacks to endure.

### **Overview of Detainee Treatment**

In the early battles against Al-Qaeda and its various affiliates in Afghanistan and Iraq, the United States was at a significant disadvantage in not knowing the arid terrain, foreign culture, significance of religious adherence, nomadic lifestyles or the networking constructs of the enemy or the countries they waged their wars in. These reasons, coupled with exaggerating international legal loopholes and ambiguities, rationalized the decision by Western forces – namely the United States – to engage in the extraordinary rendition of Iraqi and Afghan detainees.

This alternative to rampant drone strikes calls for the capturing, detaining, and interrogating of individuals who U.S. officials deem to be suspected terrorists or “high value detainees” (usually suspected informants or couriers for terrorists). While the tactic to employ rendition may seem to be the most logically pursued method to extract potentially useful intelligence for subsequent use on the battle field, the legality of this practice is expressly forbidden. Nevertheless, the procedure to extradite any such detainees to detention facilities abroad is yet another example of American disregard for universally accepted norms and laws.

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<sup>9</sup> Grossman, Dave. *On Killing: The Psychological Cost of Learning to Kill in War and Society*. Boston: Back Bay Books, 1996, p. 132.

<sup>10</sup> *Ibid*, 88.

<sup>11</sup> Aristotle. *Nicomachean Ethics: Book VIII & IX*, (350 BCE), p. 85-86.

In the immediacy of the invasion of Afghanistan and Iraq in 2001 and 2003 respectively, the United States saw the population of its overseas prisons (including the various CIA Black Sites located across the world) grow exponentially and rapidly. Individuals who the United States Armed forces swooped up through their various dragnet measures, almost all arbitrarily, were illegally extradited to detention sites out of their homeland, constituting a direct violation of the Fourth Geneva Convention's most significant tenets.<sup>12</sup>

While it would be unfair and incorrect to say that every single detainee would be subjected to rendition was also subjected to torture, it is safe to say that this was the case for the overwhelming majority of detainees who were a part of this unfortunate system. Thus, it is imperative to separate rendition from torture, in the name of objectivity, for it is just as possible to have one and not the other as it is to also have both. As it pertains to torture, there are a vast number of opinions from intellectuals who have immersed themselves into this quandary and its lawfulness for decades. Among the field of thinkers and scholars on detention and torture issues, there are individuals who hold a unique perspective on torture – arguing that “if [the United States is] to have torture, it should be authorized by the law.”<sup>13</sup> For this reason, they conclude that the United States should be more pragmatic and legally protect its behaviors through issuances of torture “warrants” granting “legal permission” only in specific instances, as opposed to the existing program of blanket tolerance on torture.

Whereas those individuals straddle the proverbial fence on the issue of torture, adherents to the theory of modern utilitarianism, founded by Jeremy Bentham and fiercely advocated by John Stuart Mill, would subscribe to such punitive acts as per the consequentialist rationale. The meshing of these two moral theories espouse any course of action in which the outcome results in the maximization of utility, generally defined as augmenting benefits for the most amount of individuals as possible while simultaneously reducing suffering – if possible.

Further evolving that theory, John Stewart Mill similarly regards the collective well-being of a society to be of paramount importance when challenged with the dilemma of whether or not to torture a subset of society. “To save a life,” Mill wrote in his most notable philosophical defense of the ideology, *Utilitarianism*, “it may not only be allowable, but a duty, to steal, or take by force,

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<sup>12</sup> International Committee of the Red Cross, “*ICRC Report On The Treatment Of Fourteen “High Value Detainees” in CIA Custody*,” International Committee of the Red Cross. (February 2007): p. 37.

<sup>13</sup> Dershowitz, Alan. (2001, November 8). Is There a Torturous Road to Justice? *The Los Angeles Times*.

the necessary food or medicine, or to kidnap and compel to officiate, the only qualified medical practitioner.”<sup>14</sup> In other words, it is permissible to infringe upon the rights of an individual if by doing so it increases the net happiness of a larger group of individuals.

As such, endorsers of Bentham, Mill and the greater utilitarian field argue through the prism of a seemingly rational cost-benefit analysis. Thereby, torture would be permissible under the rationale that the amount of widespread happiness and safety achievable through torturing accused individuals (rightly or wrongly) outweighs the unhappiness and danger to the tortured. For decades now, with considerable attention to the years after 9/11, this particular approach has resonated with western leaders who wish to justify some of their most questionable undertakings. Using this convenient ethical argument, many western governments – led by the United States – have engaged in illegal and heinous acts with utter disregard for the sanctity of rights and civility, simply because they feel empowered to do so under of the utilitarianism principle.

### **The Troubling Evolution of Domestic Drones**

Drone manufacturing and its usage has grown exponentially ever since 2001, in large part to fulfill an ever-growing demand from America’s military and intelligence agencies in their quests for human intelligence and information collection. This unceasing desire for data, patterns and behaviors has created some overwhelming concerns and vulnerabilities in privacy, morality and, ironically enough, national security. Drones are emblematic of how an innovative technological marvel can open up Pandora’s Box to unthinkable consequences once it is at the hands of an angry government in fear. All of these externalities stem from a nation that increasingly feels susceptible to some of the most overblown dangers in the world.

The Fourth Amendment protection guarantees individuals against unreasonable searches and seizures by the government. Such wording is a central tenet as it pertains to the data collection and monitoring practices of drones on the homeland and against American citizens abroad. It is, therefore, troubling to come to terms with the notion that the same federal government that is supposed to uphold the Fourth Amendment has been flying domestic drones dating back to 2004.<sup>15</sup>

#### **A. Domestic Surveillance**

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<sup>14</sup> Stewart Mill, John. *Utilitarianism* (1861), p. 63-64.

<sup>15</sup> Oyegunle, Ajoke. (2013). *Drones In The Homeland: A Potential Privacy Obstruction Under The Fourth Amendment And The Common Law Trespass Doctrine*. *CommLaw Conspectus*, 21365.

With regards to the prospect of drone-based monitoring and potential killings on American soil, the expanse of legal worries widen even more. Many civil rights outlets, international agencies, and ordinary people have cried foul over the possibility of the legal protections that apply to drone strikes overseas to be extended to domestic use and endanger their literal lives. To this point Senator Rand Paul (R-KY), in an interview with the *National Journal* believes:

Americans thought it was important that you get a warrant before tapping someone's phone. I think they would want some due process before they are killed. [Domestic drone strikes] pales in comparison to even warrantless wiretapping, because that's an invasion of your privacy; now we're talking about killing you. There has to be some kind of judicial oversight. We have terrible people who commit terrible crimes. But we don't summarily execute any of them. They all get a trial, a lawyer on their side. We want to make sure the people who are punished are the guilty ones.<sup>16</sup>

Without the oversight Senator Paul alludes to, the United States could very likely find itself on the fast track to becoming a modern-day Orwellian society where every action is monitored and recorded for the administration of fatal force down the road. The FAA, funded for fiscal years 2011-2014 as per President Obama's signing of the FAA Act of 2012, articulated clear and publicized guidelines whereby the American public was to be assured they would be safe from the imminent expansion of drone use.<sup>17</sup>

The FAA Act though leaves major gaps in the blueprint of drone utilization on a domestic scale. One significant shortcoming is that the Act fails to unambiguously outline the requirements needed to be met for applicants to obtain a license in order to join the club of drone deployment.<sup>18</sup> Furthermore, there is no clear language which addresses the concerns about what happens to the information that these applicants will inevitably collect from private individuals.<sup>19</sup> Can they be saved? If so, for how long? Can they be sold? To whom? It is precisely for these inadequacies that

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<sup>16</sup> Sorcher, Sara. (2013). Rand Paul: 'We Shouldn't Be Crisscrossing the Skies With Drones'. *National Journal*.

<sup>17</sup> Oyegunle, Ajoke. (2013). Drones In The Homeland: A Potential Privacy Obstruction Under The Fourth Amendment And The Common Law Trespass Doctrine. *Commlaw Conspectus*, 21365.

<sup>18</sup> *Ibid*.

<sup>19</sup> *Ibid*.

the FAA Act is a hollow piece of legislation that further exacerbates the discussion and concerns surrounding domestic drones rather than alleviating them.

The weakness of this legislation only underscores the fact that there is no adequate oversight when dealing with this field of technology – especially when it enters the public sphere. Regarding the dilemma that surfaces with drones and the privacy, the Fourth Amendment provides two clear clauses it meant to safeguard against government incursions of privacy. The “reasonableness clause” protects against “unreasonable searches and seizures.”<sup>20</sup> Secondly, the “warrant clause” outlines how affords an additional level of protection against the commencement of a search without both the existence of both probable cause and warrant(s).<sup>21</sup>

The United States Supreme Court has entered the legal discussion about domestic drone flights, their legality and admissibility of the information obtained therefrom. On the docket was what would become a landmark case – *California v. Ciraolo (1986)*. This case involved the use of aerial surveillance by police officers in collecting evidence of a drug-related crime. As it pertains to the facts of the case, Dante Carlo Ciraolo, the defendant, was growing marijuana plants in his backyard which were hidden from plain view through the erection of fences. After picking up an anonymous tip, Santa Clara police dispatched several police officers to fly over the property in question in a private airplane to photograph their observations. These photographs later caused Ciraolo to plead guilty.

With the foundation set, the Supreme Court dove into this case knowing full well that their decision would have tremendous future legal implications applicable to obtaining warrants and evidence gathering. After months of deliberation, the Court held that there was no violation of the defendant’s privacy because there was nothing unreasonable about the search. The Court deemed the aerial fly-over to be a legitimately legal action without a warrant for the reason that the police observed the illegal activity in plain view, albeit 1,000 feet above ground. What the Court failed to address, however, was the notion that from 1,000 feet above, such activity would not be so easily viewed had it not been for the use of image enhancing technologies. Neglecting to reprimand the Santa Clara police force for their overt transgression of privacy, the Court left the door open to such searches with newer and more advanced technologies.

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<sup>20</sup> Oyegunle, Ajoke. (2013). Drones In The Homeland: A Potential Privacy Obstruction Under The Fourth Amendment And The Common Law Trespass Doctrine. *CommLaw Conspectus*, 21365.

<sup>21</sup> Ibid.

Today, drone technology has vastly improved in the years following *Ciraolo*. The superior surveillance abilities of drones have enabled for greater and broader inspections both in terms of means and manners that were previously incomprehensible. As opposed to the airplane scanning the defendant's property in the aforementioned case from 1,000 feet by current standards, drones now have the potential to soar at heights in excess of 60,000 feet for many days continuously, with expectations to design drones fashioned to sustain years of flight.<sup>22</sup> Even more worrisome, certain drones are designed and modified with direct intention to survey private property and remain undetected while gathering sensitive data.<sup>23</sup> The dramatic evolution in drone capabilities, as only one leg of the larger surveillance spider, serves as a testament to the holistic improvement of observation and reconnaissance technologies on a larger scale and highlights the lapse in creative imagination on the part of the *Ciraolo* holding. As such, there now exists a legal quandary. Because the *Ciraolo* court did not have the foresight to anticipate the eventual evolution of the entire surveillance apparatus at the time of its holding, courts now have precedent to refer to in order to declare drone surveillance and searches to be in compliance with the Fourth Amendment's designated parameters (*see Florida v. Riley (1989)*).

### **B. Commercial Uses**

Parallel to the overreaching tendencies of police-employed drone surveillance, there exists the worrisome nature of the commercialization of drones in sectors pertaining to item delivery. While drones are largely used in the military and surveillance sector, there is also a rising trend of their utilization for other more troubling uses. The demand for commercial drones introduces a new pathway for some of the largest commercial chains to fulfill delivery orders and meet, in a new and inventive manner, demands from their ever-growing consumer bases.

Living in an era that amalgamates consumer satisfaction with efficiency, many companies are turning to drones in an effort deliver goods with astonishing expediency. Electing to embark on such a pathway of promptness necessitates that certain luxuries must be also be relinquished. Only then can the gravity of this potentially imminent paradigm shift in the ever-changing company-consumer nexus.

Despite the fact that commercial flight of drones is largely prohibited in the United States, the FAA is mulling over the possibility of enacting several reforms and regulations which could

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

potentially ease such a ban in the near future or significantly hamper the mobilization of commercial drones in American skies. Both avenues being considered by the FAA serve as a microcosm for the dynamics of privacy preservation in America.

The conventional go-to-the-vendor norms of item acquisition, which has been in place for countless millennia, are already beginning to be altered with by commercial powerhouses such as Amazon, Google, and Dominos. These business goliaths are pouring immeasurable research dollars in order to be among the first enterprises to perfect what they believe will be the newest “it” thing – drone item delivery.

Amazon has already released several facets of its "Prime Air" system which would utilize small drones to deliver packages within a 30-minute timeframe of an order being placed. Jeff Bezos, founder of Amazon, in an interview with *60 Minutes* shared that Amazon was heavily concentrating its efforts to win approval for his stated undertaking from the FAA. Google is also aiming to have the drones flying programmed routes at altitudes of 130 feet to 200 feet with the push of a button before finally delivering the ordered items to an area roughly proportional to the dimensions of a doorstep.<sup>24</sup> In another business classification, Domino’s Pizza has recently experimented with the ‘technological research’ phase of drone deliveries of pizza to customers in the United Kingdom. Despite these highly publicized feats, Domino's U.S. spokesman, Tim McIntyre, has made it clear “[drone pizza delivery in the United Kingdom] has nothing to do with us in the U.S. and we have no plans to pursue this idea.”<sup>25</sup> However, what is to say Dominos would not want part of the drone-delivery pie (pun intended) if firms like Amazon and Google demonstrate it to be a huge money maker in their rollouts?

While drones certainly have the potential to transform how goods are transported from supplier to purchaser, their functional duality also brings to the forefront some unavoidable red flags that must be examined if this relationship is to be altered in its proposed fashion. The fact that the same variation of drone that facilitates the killing of groups of people overseas can also deliver a soccer ball or pizza to a doorstep is deeply disturbing. The ability for ‘function creep’ cannot be overlooked or understated as drone usage still leaves the prospect of ushering in an Asimovian society.

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<sup>24</sup> Barr, A., & Bensinger, G. (2014, August 29). Google Is Testing Delivery Drone System. *The Wall Street Journal*.

<sup>25</sup> Pepitone, Julianne. (2013, June 4). Domino’s Tests Drone Pizza Delivery. *CNN*.

Opposition to drones have also been stemming from elected representatives on Capitol Hill. Representative Ted Poe (R-TX) introduced the Preserving American Privacy Act of 2013 geared specifically at safeguarding privacy rights from the threats posed by commercial drones while also cautioning that "companies could use drones for information gathering whether that is taking a photograph of your patio furniture or recording the make and model of your car."<sup>26</sup> Similarly echoing his colleagues' privacy concerns, Senator Ed Markey (D-MA) commented, "before drones start delivering packages, we need the FAA to deliver privacy protections for the American public. Convenience should never trump Constitutional protections."<sup>27</sup>

### **Drone Strikes & Their Illegitimacy / Criminality**

Serving as an offshoot to the growing toleration of drones and enhanced surveillance therefrom, lethal drone strikes overseas, with express interest to kill groups of suspects, have become an all too familiar strategic application of the United States in its declared mission combatting perceived threats. The propensity of such drone strikes in countries against which the United States has not legally and directly declared war is troubling on many levels. The continuance of such arbitrary strikes ranks among the top reasons and causes for fueling a growing disconnect, disregard, and disassociation among the victims: the survivors, their families and their fellow nationals and the belligerent – The United States of America. Drone strikes now retain the ominous precedents of striking and killing American citizens who reside abroad. The compilation of all the aforementioned facets of these machine killers should speak volumes about their legality, efficacy, and constitutionality – all of which are in question.

While in principle some individuals might be able to conceive of certain parameters in which drones and drone strikes could potentially be used for beneficial circumstances, the surfacing of admissions by President Obama, members of the White House and those in Congress that drone strikes have and could potentially be used in the future to assassinate American citizens overseas without any oversight or legal representation makes the acceptance of such machines and practices significantly more incomprehensible.

On September 30, 2011, controversy erupted after the United States, with President Obama's expressed approval, carried out a series of drone strikes targeting an American citizen

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<sup>26</sup> Abbot, Maxwell. (2013, December 31). Amazon.com Drones Raise Red Flags Regarding Privacy Rights. *PRWatch*.

<sup>27</sup> *Idib*.

living in Yemen. The man, Anwar al-Awlaki, had been on the radar of American intelligence and counterterrorism officials for his anti-American vitriol publicized on his YouTube page along with his supposed ties with a spate of successful and unsuccessful domestic terror attacks. As the labelled catalyst for domestic terror, al-Awlaki was placed on a list of people the Central Intelligence Agency were authorized to kill because of terrorist activities by U.S. President Barack Obama in April 2010.<sup>28</sup> This unprecedented and astonishing step authorizing the targeted killing of an American citizen abroad is extremely unnerving to say the least.

Fortunately, there is a counterweight to what the White House views as its open season to kill any individual (American citizen or not) through drone strikes. Once again, such a voice can be found in the advocacy and relentless questioning of Senator Rand Paul. Asked whether he believed the United States government was obligated to disclose its rules for drone use both inside and outside of the country, Senator Paul believed getting hard policy disclosure was essential both as a matter of principle and from a legal perspective. As in the case of Anwar al-Awlaki and other American citizens like him, Paul stated:

I would have had a federal trial. If he didn't come home, I would have allowed him to have representation, or I would have appointed representation. He could have been tried whether he was here or not. If the evidence is secret, go into closed session even in a federal court with a jury, convict him of treason, and the penalty for treason can be death.<sup>29</sup>

In essence, Paul was not against the killing of al-Awlaki as a matter of what the circumstances called for, however, his legitimate worries were that such an assassination could create a very dangerous precedent which in turn could lead drone strikes down a slippery slope to be used for a wide array of uses (silencing opponents and dissidents). While these punitive notions may seem far-fetched it is not totally out of the realm of possibility either.

Despite the overwhelming consideration Anwar al-Awlaki's case has received, he is hardly the only American to be killed in a drone strike; he is not even the only U.S. citizen to have been killed in that particular strike. To date, four American citizens have been killed in drone strikes outside of the traditional battlefields of Afghanistan and Iraq. This fact, although kept under wraps

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<sup>28</sup> Shane, Scott. (2010, April 6). U.S. Approves Targeted Killing of American Cleric. *The New York Times*.

<sup>29</sup> Sorcher, Sara. (2013). Rand Paul: 'We Shouldn't Be Crisscrossing the Skies With Drones'. *National Journal*.

for a significant period of time, is now public knowledge as per intense pressure on the Obama administration to show transparency in regard to this hot-button issue. Buckling under pressure, United States Attorney General Eric Holder acknowledged the practice for the first time publically in a May 2013 letter to the Senate Judiciary Committee chairman:

Since 2009, the United States, in the conduct of U.S. counterterrorism operations against al-[Qaeda] and its associated forces outside of areas of active hostilities, has specifically targeted and killed one U.S. citizen, Anwar al-[Awlaki]. The United States is further aware of three other U.S. citizens who have been killed in such U.S. counterterrorism operations over that same time period: Samir Khan, [Abdulrahman] al-Rahman Anwar al-[Awlaki], and Jude Kenan Mohammed.<sup>30</sup>

The revelation of these killings naturally took the public by surprise. Feeling vulnerable, many Americans justifiably began asking themselves “how could our country’s highest elected official, whose sworn duty is to ‘preserve, protect, and defend the Constitution of the United States’ permit strikes against American citizens abroad without any due process?” This question still resonates with the American public who continue to feel wary of their government and the protections they presumed were afforded to them under the American Constitution.

While the direct privacy violations of drone strikes on Americans have been clearly portrayed, there is yet another prism whereby these strikes must be looked through in order to accurately grasp the detrimental externalities that such a practice has on not only the survivors, communities, and their governments, but also how those consequences, thousands of miles away, directly affect American safety and security in the homeland.

A second concern relating to drone strikes is the fact that they are actually counterproductive to the American mission at large. For over a decade now, the United States has been fighting a war against what it has termed ‘extremists’ and ‘extremism.’ At first glance, one would surmise this is a war that should be fought tooth and nail until America becomes victorious – rightfully so. But what if the approach being taken for over the past decade-plus was actually undermining the stated mission? What if drone strikes actually adversely positioned the United States in an arrangement of vulnerability rather than one of strength?

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<sup>30</sup> The New York Times. (2013). Holder Letter on Counterterror Strikes Against U.S. Citizens. *The New York Times*.

Sadly, this has actually been happening. The United States, through its relentless drone strikes overseas, is in fact “feeding the beast.” The “beast” in this scenario is the apparatus and groupthink mentality advocating for harsher responses to America’s increased susceptibilities. How so? In the Obama years alone, it is reported that over 2,400 individuals (overwhelmingly civilians) have been killed by drone strikes.<sup>31</sup>

The drone program, rapidly accelerated under the Obama administration, has created a climate that has stymied the United States with respect to its once-revered aura of justness. President Obama has authorized over 400 drone strikes during his unfinished tenure yet, as compared to 290 under the entirety of President Bush’s term.<sup>32</sup> Continued use of drone strikes naturally denigrate the legitimacy of the United States and its unceasing declarations of justice, peace, and rule of law.<sup>33</sup> Any unbiased individual can see how detrimental this aggressive foreign policy program has proven to be. In the eyes of the world, the United States bends, if not breaks, the rules when it sees fit in order to achieve its goals, irrespective of international norms, agreements, treaties, and sometimes, its own laws. A further aftereffect of drone strikes manifests itself when tensions among attacked countries and the United States naturally come to a boil when the former feels its territorial sovereignty is being continually violated and its citizens blown into pieces by an external force, in this case the United States.<sup>34</sup> These tensions, if protracted, serve to actually have an undoing and undermining effect on the alliances the United States has spent so much time, effort and money to help preserve.

Anti-Americanism in the countries where such attacks take place seems to be the most pervasive (Yemen, Pakistan, Somalia). Human rights groups such as Amnesty International and Human Rights Watch have vociferously denounced extrajudicial drone killings, calling the policies “unlawful” as they for arbitrarily terminate one’s life without any due process or legal mechanism.<sup>35</sup> In a case study conducted by Amnesty International, the human rights group found that of the 45 random drone strike cases taken into consideration an overwhelming number of

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<sup>31</sup> Sledge, Matt. (2014, January 23). The Toll of 5 Years Of Drone Strikes: 2,400 Dead. *Huffington Post*.

<sup>32</sup> Serle, Jack. *Drone Warfare*. Bureau of Investigative Journalism, 2014.

<sup>33</sup> Boyle, Micheal J. *The Costs and Consequences of Drone Warfare*. *International Affairs*, Vol. 89, No. 1, January 2013, 1.

<sup>34</sup> Boyle, Micheal J. *The Costs and Consequences of Drone Warfare*. *International Affairs*, Vol. 89, No. 1, January 2013, 1.

<sup>35</sup> National Public Radio. *Rights Group: Drone Strikes Violate ‘Fundamental Human Right’*. Here and Now, 2013.

civilians were among the casualties.<sup>36</sup> Similarly, Human Rights Watch examined six drone strikes in Yemen and concluded that:

These attacks were in clear violation of international humanitarian law – the laws of war – because they struck only civilians or used indiscriminate weapons. [Drone strikes] violate the laws of war because the individual attacked was not a lawful military target or the attack caused disproportionate civilian harm [and because] the US did not take all feasible precautions to minimize harm to civilians, as the laws of war require.”<sup>37</sup>

Such strikes facilitate the growing recruitment of militant fighters who subscribe to a radical ideology made tangible by indiscriminate American assassinations that incinerate civilians and destroy psyches in the process. “The US embrace of drone technology is a losing proposition over the long term as it will usher in a new arms race and lay the foundations for an international system that is increasingly violent, destabilized and polarized between those [nations] who have drones and those who are victims of them.”<sup>38</sup>

Failing to realize this, the United States continues to pursue a course of action that inhibits its attaining the desired goals – peace and security. There can be no expectation of peace when drone strikes kill thousands of innocent men, women, and children overseas. The images of American-induced carnage only feeds into extremism and extremists who use these attacks as justifications for carrying out terror attacks on American soil. Although disheartening, evidence exists to back up this notion. Pakistani American Faisal Shahzad told the judge presiding over his case on June 21, 2010 that he placed a bomb in Times Square as retribution for the United States’ global drone strikes. Fortunately, the bomb did not detonate. Nevertheless, when the judge tried to comprehend how Shahzad would be able to justify the killing of innocent New Yorkers he responded: “Well, the drone hits in Afghanistan and Iraq, they don’t see children, they don’t see anybody. They kill women, children, they kill everybody. It’s a war and in war, they kill people.

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Boyle, Micheal J. *The Costs and Consequences of Drone Warfare*. International Affairs, Vol. 89, No. 1, January 2013, 1.

They're killing all Muslims.”<sup>39</sup> Shahzad's failed Times Square bombing vividly demonstrates the pitfalls of a drone-centered counterterrorism strategy.

Overseas drone strikes don't work. If the intent of the policy is to bring about peace and security, both for the struck countries and for the striker's country, it has unquestionably failed. American citizens living abroad have had their rights repeatedly violated to the utmost degree by their supposed legally well-versed elected officials – the very same officials who later turn a blind eye to blowing American citizens to smithereens with missiles without any legal rhyme or reason. Relentlessly kvetching about insecurity in the face of the rising specter of domestic terror attacks, American politicians must accept complicity for constructing an ambiance of antagonism. For years now Pakistan, Yemen and Somalia have witnessed innumerable drone strikes resulting in the death of thousands of innocent men, women and children. Are these countries any less dangerous? Moreover, is the United States any safer?

### **Illegal Detainee Detention & Torture**

In the aftermath of the 2001 terror attacks there existed a rampant craving for revenge and vengeance against those, who were believed to have carried out said attacks. Eventually, this popular desire permeated into the brain trust of the national government which greased the wheels for the appallingly inexcusable treatment of foreign prisoners, enemy combatants, and informants at the hands of American and American-allied powers. As such, the world's self-proclaimed liberalized and democratized countries revealed that behind their smiling façade, there existed more sinister and more disconcerting tendencies than previously envisioned.

The invasion of Afghanistan in late 2001 and that of Iraq in 2003 demonstrated the illegitimate and shameful wartime conduct which were only then exacerbated by more than a decade of occupation and drone strikes. Facing an ever-growing number of 'leads' to jihadists, extremists and Taliban fighters, following the September 11 attacks, the White House concocted a policy of rounding up these men before extraditing them, quite questionably, to various CIA black sites before landing in their eventual destination in the cold lawless cells of Guantanamo Bay detention camp in Cuba under the CIA program, known internally as 'Rendition, Detention and Interrogation,' during the Bush administration.

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<sup>39</sup> Shifrel, S., Gendar, A., & Martinez, Jose. (2013, June 22). Remorseless Time Square Car Bomber Faisal Shahzad Warns "We will be attacking US." *New York Daily News*.

With the wars raging in Iraq and Afghanistan, the United States found itself with a growing number of detainees that it regarded as dangerous and a threat to the mission at hand. During this chapter of the War on Terror, former United States Attorney General Alberto Gonzalez publicly defended America's decision not to apply the Geneva Conventions to detainees captured in the battlefields.<sup>40</sup> Refusing to be bound by the Fourth Geneva Convention, the United States, as the occupying power in Iraq, could act freely and transfer "persons outside of [an] occupied territory" which is a tenet that is strictly prohibited by the Convention.<sup>41</sup>

In his explanation, Gonzales cited five primary reasons why withholding the Geneva rights from such detainees was indeed the "appropriate" action because had the Bush administration applied them, the administration would then be legally bound by it and its provisions. However, in failing to doing so, the following rationalization was given: a) applying Geneva to suspected Al-Qaeda detainees would "honor and reward bad behavior" and thus "be a dishonor to the Geneva Convention" as a whole, b) "it would make it more difficult for [American] troops to win the conflict against Al-Qaeda, c) "it would limit [American] ability to solicit information from detainees" in an effort to stave off imminent attacks, d) "it would require [the United States] to keep detainees housed together where they could share information, coordinate stories and/or plan attacks against guards, and e) 'War on Terror' detainees would thus "enjoy combat immunity from prosecutors for certain war crimes.<sup>42</sup> These five points seemed to be all that was needed to apparently wash American hands clean of the legal, moral, ethical, and human rights of the detainees.

Compounding the legal problems for the detainees was the fact that the United States never ratified a 1977 protocol referred to as 'Protocol 1' which would have provided detainees with legal protections, humanitarian assistance as well as provisions dealing with extradition. In an effort to evade popular demand to set a general period of time or define the length of the 'War on Terror,' "Bush administration officials stressed that the United States' "war on terrorism" [would] be a long-term effort" and thus gained the legal cover to deprive legal detainee status to individuals

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<sup>40</sup> United States Assesses Options for Long-Term Detention of Suspected Terrorists. (2005). *The American Journal of International Law*, (2). 483.

<sup>41</sup> *Ibid.*, 484.

<sup>42</sup> *Ibid.*, 483.

held in detention as well as having carte blanche “to neither try nor to release from custody” individuals who were apprehended during this conflict.<sup>43</sup>

It was within the confines of these detention centers that some of the most odious acts of torture were committed. Within the Bush White House there was a debate as to what, if any, legal and philosophical argument could be concocted as a means for justifying the use of torture. A consensus was eventually arrived at which believed that the utilitarian approach, albeit a perverted interpretation of it, was needed to be summoned in order to appropriately ensure American safety. Reporting that Standard Interrogation Techniques (SITs) were not yielding satisfactory intelligence from the detainees, the CIA’s Office of General Counsel sought further measures that “would be effective in securing intelligence from detainees that were unresponsive to SITs.<sup>44</sup> The newly introduced methods, dubbed Enhanced Interrogation Techniques (EITs), included, but were not limited to: a) stress positions, b) prolonged sleep deprivation, c) waterboarding, and d) confinement to insect filled boxes.<sup>45</sup>

President Bush and his cabinet constantly invoked the ‘ticking time bomb scenario’ in order to obtain information and stave off that attack. This was widely used as the classic Bush-era tactic to justify torture and EITs. Oddly enough, there were no real instances or shreds of evidence of these so called ‘ticking time bomb scenarios’ which leads one to think their invocations were more of a psychological ploy devised by officials against the public as a means to substantiate their appalling behavior rather than one originating from genuine concern.

The Bush administration simply propped up a bevy of legal arguments in an effort to try to justify their behavior and legitimize any such future behavior. One of the most glaring hurdles the administration had to overcome was United States Code Title 18 Section 2340A which explicitly prohibits American citizens from committing torture outside of the United States and outlines a multitude of legal consequences should such actions take place.<sup>46</sup> Keeping in line with typical Bush-era actions, an interpretation was developed to evade Section 2340A. In this interpretation, the administration shrewdly circumvented them by stating that “certain acts may be cruel, inhuman or degrading, but will not produce pain and suffering of the requisite intensity to fall within Section

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<sup>43</sup> Ibid., 483.

<sup>44</sup> Blakeley, Ruth. (2011). Dirty Hands, Clean Conscience? The CIA Inspector General's Investigation of “Enhanced Interrogation Techniques” in the War on Terror and the Torture Debate. *Journal Of Human Rights*, 10(4), 544-561.

<sup>45</sup> Ibid., 547.

<sup>46</sup> Ibid., 552.

2340A's proscription against torture."<sup>47</sup> Just like that, another legal barrier was razed and permitted for the continuance of poor detainee treatment. The continuous legal and oratory maneuvering by the Bush administration supports the study conducted by Florida State University which found that "states who engage in torture in a given year have a 93% chance of continuing to torture in the following year."<sup>48</sup>

Deceptive in its labeling, the White House long masqueraded behind the term 'Enhanced Interrogation Techniques' as a way to dodge the public-opinion liabilities that would have been associated with 'torture.' The United States could not evade public and international scrutiny indefinitely though. The Obama administration's decision to release documents that outlined the various EITs employed at foreign American detention facilities brought forth an onslaught of criticism and condemnation from human rights groups, international organizations and other countries.<sup>49</sup> These entities cited the United Nation's Convention Against Torture's definition of torture as: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining information from him or a third person or a confession" in their denunciations of the heinous American treatment of detainees.<sup>50</sup>

Furthermore, there were legitimate concerns that the United States was violating International Humanitarian Law by condoning degrading and humiliating detainee treatment for interrogation purposes. Even more so, the aforesaid entities additionally excoriated the United States for violating the privacy rights of these individuals – that is, in a vast number of cases, falsely charging and/or detaining individuals, extraditing them thousands of miles to a land foreign to them, robbing them of years of their lives, creating unjustifiable psychological trauma by separating them from loved ones, depriving them of any semblance of due process or legal recourse to challenge their detention and in all cases in which detainees were released or transferred, doing so without any apology or substantive compensation of which to speak. The United Nations encapsulated all of these concerns in its review of the United States' judicial system and practices. This 2014 report, the first of its kind since 2006, reprimanded the United States for the CIA's

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<sup>47</sup> Ibid., 552.

<sup>48</sup> Ibid., 459.

<sup>49</sup> Phillips, Kate. (2009, April 16). The Methods List of Interrogation. *The New York Times*.

<sup>50</sup> The United Nations. (1984). Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

policies of extraordinary-rendition while also feeling “deeply concerned” about the large number of detainees kept in custody without any charges.<sup>51</sup>

Further intensifying the public relations nightmare American officials found themselves in, the United States Senate released a lengthy report concluding that the CIA had both tortured detainees as well as misled Americans about its conduct. The report, assembled by Democrats on the Senate Intelligence Committee revealed, with certainty, that CIA interrogators regularly subjected detainees to waterboarding, slapping, excessive stress positions, sexual threats and humiliation, and prolonged sleep deprivation.<sup>52</sup> In one case, a detainee, Abu Zubaydah, was confined to a coffin-sized box for a total of 266 hours and an even smaller box (dimensions: width – 53 cm, depth – 76 cm, length – 76 cm) for a total of 29 hours.<sup>53</sup> Intelligence Committee Chairwoman Dianne Feinstein labelled the CIA's actions as a "stain on US history" and also reiterated that “under any common meaning of the term, CIA detainees were tortured.” President Obama also echoed similar sentiments saying, "These techniques did significant damage to America's standing in the world and made it harder to pursue [American] interests with allies and partners."<sup>54</sup> These self-criticisms, however genuine they might seem to be, are years too late and do not bring solace to the thousands of prisoners who had their lives destroyed or lost at the hands of the world’s most ubiquitous actors of torture.

The 2014 Senate report sheds light on the fact that the United States intentionally lied not only to its citizens, but to the entire world. The same United States that has and continues to criticize other nations (Cuba, North Korea, Russia, Iran, Iraq, Afghanistan) for their failure to uphold human rights now finds itself sitting at the same table with the very countries it vilifies. Interestingly, the Senate report in fact did confirm that in none of the cases reviewed did the brutal methods stop a terrorist attack; thus signifying that America's reputation, and by association that of its allies as well as the broader West, has been besmirched for no perceptible return. Consequently, this report has rendered the United States defenseless to charges of hypocrisy and double standards, thus making it increasingly more difficult for it to credibly censure ruthless undemocratic governments. It also has the potential to serve as encouragement for terrorists who can now validate their brutalities by simply invoking America’s past abuses.

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<sup>51</sup> Kozłowska, Hanna. (2014, December 1). UN blasts the American justice system in torture report. *Quartz*.

<sup>52</sup> BBC. (2014, December 10). CIA tactics: What is ‘enhanced interrogation’? *BBC*.

<sup>53</sup> *Ibid*.

<sup>54</sup> BBC. (2014, December 9). Report on CIA details ‘brutal’ post-9/11 interrogations. *BBC*.

While the United States' position regarding detainees has changed over the years, it would be erroneous to say that change has been significant or meaningful. A 'different' track was proposed when Barack Obama took over which raised hopes for the introduction of rights to these indefinitely-held detainees in Guantanamo Bay. President Obama has renounced the practices of the previous administration, while curiously maintaining the legalities of his predecessor's actions by electing not to legally try anyone who engaged in torture. It seems as though President Obama was never willing to remove the stain that has sullied America's reputation, but rather give legal cover to the individuals who actively tainted it.

Moreover, despite President Obama's assurance to return America to the "moral high ground" through his signing of an executive order mere days after his 2009 inauguration, requiring the closure of the Guantanamo Bay detention facility, the status quo for the site's legal black hole lingers.<sup>55</sup> As of December 2014, there were 136 men still imprisoned at Guantanamo, despite a significant number of them being cleared for release by the American government.<sup>56</sup>

In isolation, utilitarianism and consequentialism are no better or worse than their competing philosophies; yet, when they fall into the hands of politicians who proceed to then manipulate these viewpoints for their specific agendas, the ideologies become contaminated. At such a juncture, the perspective no longer sanctifies the wholeness of rights, but rather becomes a ruse whereby rights can freely be trampled on without recourse or questioning. The American perversion of the concept of utilitarianism's total good is rooted wholly in the misery and/or death of a specific group of individuals with similar racial and religious commonalities.

That the principles of utilitarianism and consequentialism are advocated for by governments is admirable given their intimate outlook on their society, however, that they wish to use such a theories as a carte blanche to conduct the most egregious forms of physical and psychological torture with blatant disregard for one's privacy and rule of law cannot be tolerated.

## **Conclusion**

The last decade-plus has revealed much about American values in ways that were dubious to observers prior to the September 2001 terror attacks. Everyone tracking "The War on Terror" – from casual observers to astute followers – has been made aware of the blatantly unconscionable

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<sup>55</sup> CNN. (2009, January 22). Obama signs order to close Guantanamo Bay facility. *CNN*.

<sup>56</sup> Vinograd, C., & Thomas, S. (2014, December 7). Pentagon: Six Guantanamo Detainees Sent to Uruguay. *NBC News*.

civil and human rights transgressions that were being committed in a systemic, methodical, and authorized manner by American officials. Actions once regarded and termed as ‘foreign’ and ‘savage’ by American officials are now being used to characterize the leaders of a country who claim to lead a country that does not deviate from its moral and ethical code of conduct – which has now been exposed to be an absolute farce.

The international community must work together to introduce limitations that both meet the standard and preserve the sacrosanctity of civilian privacy rights and expectations. One such resolution to pervasive drone strikes might be the confluence of some sort of international convention, perhaps by the United Nations, to oversee, advocate, and construct tangible outlines and norms for their usage, much like the Convention on Certain Conventional Weapons (CCW).

It is clear that intervention is desperately needed at a time when America’s challengers, domestic and abroad, are subjected to a lawless policy of persistent observation and attack. While there is no doubt that drones retain the capacity to significantly bolster the surveillance capability of a state (democratic or otherwise), this potential also is accompanied with considerable negative consequences for the prospect of civil and human rights. Simply said, drones have the innate potential to drastically convert democracies into ‘surveillance states.’

The terrorist attacks which claimed the lives of close to 3,000 innocent civilians in 2001 have been reciprocated with hundreds of thousands of innocent civilians losing their lives due to the heavy-handed American military responses on a wide array of battlegrounds. Nevertheless, such casualties, however disheartening and staggeringly disproportionate they undoubtedly are, can be understood as happenings of war. What cannot be rationalized, though, even during a time of war, is the sheer deceitfulness and criminality of American action in the face of international laws, namely extrajudicial killings, rendition, indefinite detention, and torture. The failure to comply with its own set deadlines in closing Guantanamo is a testament to how little a priority this notorious site is for the United States. The Guantanamo problem is a blatant breach of the basic principle of *habeas corpus*. Guantanamo speaks volumes about the American governmental mentality and its perceived supremacy vis-à-vis laws.

The reprehensible missteps taken by the United States government in the face of terror have relegated a revered nation of laws to the cellar of human rights violators. In the face of adversity and challenge following the attacks of September 11, 2001, the United States possessed an immensely unique opportunity to prove not only to itself but also to the world that it truly was

the beacon of freedom and advancement, as well as a champion of rights it always claimed to represent. Yet, the path pursued in the short time after the attacks was instead defined by arbitrary surveillance, discriminatory demonization, and unspeakable malice. There is an old adage that reads: “The true test of character is not how you act on your best days, but how you act on your worst days.” It is clear that the United States, in every fashion and by every metric, trounced on the notions of rule of law at a time when their very sanctity needed to be preserved the most.