

SPEECH

A BULL IN A CHINA SHOP: THE WAR ON TERROR AND INTERNATIONAL LAW IN THE UNITED STATES†

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There are significant differences of opinion about the legal rights of detainees and the legal responsibilities of detaining authorities in the so-called war on terror. Some reflect reasonable differences among reasonable people; others reflect catastrophic errors of judgment and bad faith efforts to obscure the true content of applicable law. Many of these differences of opinion would dissolve if we could eliminate the kind of willful ignorance that the legendary American journalist H.L. Mencken no doubt had in mind when he observed that for every complex problem there is an answer that is clear, simple, and wrong.

Detention in the context of counterterrorism is, indeed, a complex issue with many moving parts, both large and small. Before diving into the details, I would like to offer some historical background on the major issues.

MOVING PART 1: INTERNATIONAL HUMAN RIGHTS LAW

World War II gave us the Age of Rights.¹ Immediately after that conflict, the United Nations was born and the first three major items

† This article is based on a speech given as part of the California Western School of Law/UCSD Speaker Series, *The Future of International Humanitarian Law*, at California Western School of Law on November 15, 2007.

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1. LOUIS HENKIN, *THE AGE OF RIGHTS* (1990). Henkin, often acknowledged as the father of modern human rights law, used the phrase “Age of Rights” to describe the increasing emphasis of international law on the rights of individuals in the post-war period.

on its agenda were a Universal Declaration of Human Rights, a Convention against Genocide, and a proposal for an international criminal court. A long list of international human rights treaties followed. Regional human rights enforcement mechanisms were established in Europe, the Americas, and now, in Africa.

MOVING PART 2: INTERNATIONAL HUMANITARIAN LAW

A hundred years before the dawn of the Age of Rights, limits on the means and methods of warfare and rules for the treatment of armed conflict detainees began to find their way into international treaties, most famously, the various Hague Conventions and the Geneva Conventions of 1864. The law of armed conflict, also known as the law of war or international humanitarian law (IHL), is related to, but separate from, human rights law.

MOVING PART 3: A SHIFT IN FOCUS OF INTERNATIONAL LAW FROM STATE-TO-STATE TO STATE-TO-INDIVIDUAL RELATIONS

Human rights law and humanitarian law have common characteristics. They are both aspects of international law, a body of law that began to take shape many hundreds of years ago to bring order to international relationships, especially in war. But unlike international law, with its state-to-state underpinnings, IHL and human rights law are also designed to protect individuals, and in particular, to govern the state-to-individual relationship.

MOVING PART 4: SOVEREIGNTY

The idea that the world should be divided into sovereign states is not a reflection of any natural law—it just happened that way. And as long as international law was limited to the regulation of relations between states, it impinged little upon the prerogatives of state sovereignty. But once international law began to instruct states on appropriate conduct towards individuals, especially towards individuals within its own borders, the tension between sovereignty and international law began to mount. Thus, cynical observers have noted that IHL is at the vanishing point of international law and international law is at the vanishing point of law.

MOVING PARTS 5, 6, AND 7: A SHIFT IN THE NATURE OF THE RELATIONSHIP AMONG LEGISLATIVE, EXECUTIVE, AND JUDICIAL POWER IN THE UNITED STATES

Everyone knows about the balance of powers established among the legislative, executive, and judicial branches, reflected in Articles I, II, and III of the U.S. Constitution. The ordering of the three branches (legislative, executive, and judicial) was not random. The founders planted the sovereign power of the legislature to make law in the first Article.² Today, casual observers may assume that the importance and power of the legislative and executive branches are reversed, because for the last quarter century, and especially during the Bush Administration, the executive has been increasingly elbowing its way into the territory of an increasingly pliant Congress.³ The same executive, despite its lip service to Tenth Amendment visions of federalism (the reservation to the several states of the powers not ceded to the federal government), has also had remarkable success in populating the third branch, the federal courts, with judges who are enthusiastic foot soldiers in the “executive power” militia.

Human rights law, humanitarian law, the increasing focus of international law on state-to-individual relations, the pressures this places on traditional notions of state sovereignty, and finally, the shifting nature of the relationship among legislative, executive, and judicial power in the United States provide context to the violations of international law committed by the United States in the war on terror. These violations take three forms: treatment of detainees, right to challenge detention, and trial of detainees.

DETAINEE TREATMENT

The war on terror has given us the ultimate brush-off of international law, most notoriously in the so-called torture memos. You may recall that these memos, written by Professor John Yoo and Judge Jay Bybee, sycophantically informed the President that he had the power to ignore international law in the service of his personal

2. U.S. CONST. art. I, § 1.

3. CHARLIE SAVAGE, TAKEOVER: THE RETURN OF THE IMPERIAL PRESIDENCY AND THE SUBVERSION OF AMERICAN DEMOCRACY (2008).

vision of national security.⁴ The memos essentially allow the President to torture people when he thinks it is necessary, despite the fact that the ban on torture is one of the most well-established prohibitions in international law. Out of this blank check philosophy came the President's Memorandum of February 7, 2002, most notable for its incontrovertibly false conclusion, later nixed by the U.S. Supreme Court in *Hamdan v. Rumsfeld*,⁵ that Al Qaeda prisoners are not covered by the laws of war.⁶ What is so heartbreakingly less noted about this memo is its shocking conclusion that there exists a category of individuals who are not legally entitled to humane treatment.

The memo also takes liberty with long-standing notions of the laws of war concerning the distinction between the two branches of that body of law: rules for the conduct of hostilities and rules for treatment of persons in the power of the enemy, including detainees. During the conduct of hostilities, enemies may be targeted consistent with the principle of military necessity, which is that which contributes to the military mission. However, considerations of military necessity in rules relating to conduct of hostilities have no place in questions concerning the obligations of detaining authorities to detainees, who must always be treated humanely. Nevertheless, the President says the policy (not the legal obligation, the existence of which he denies) of humane treatment will apply only "to the extent appropriate and consistent with military necessity."⁷

4. Judge Bybee may have been one of the first to suggest that an act is not torture unless the pain inflicted is "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death." Memorandum from Jay S. Bybee, Assistant Att'y Gen., to Alberto R. Gonzales, Counsel to the President, Re: Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-40A (Aug. 1, 2002), *available at* http://www.humanrightsfirst.org/us_law/etn/gonzales/memos_dir/memo_20020801_JD_%20Gonz_.pdf. Similarly, Professor Yoo suggested that U.S. obligations under the Convention Against Torture would not prevent the use of certain tortuous interrogation methods against "captured al Qaeda operatives." Letter from John C. Yoo, Deputy Assistant Att'y Gen., to Alberto R. Gonzales, Counsel to the President (Aug. 1, 2002), *available at* <http://news.findlaw.com/wp/docs/doj/bybee801021tr.html>.

5. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

6. Memorandum for the Vice President et al., Humane Treatment of al Qaeda and Taliban Detainees (Feb. 7, 2002), *available at* http://www.humanrightsfirst.org/us_law/etn/gonzales/memos_dir/dir_20020207_Bush_Det.pdf.

7. *Id.*

If you do not think these claims are so disturbing, then wait until you hear why the United States is throwing international law overboard. It is not in defense of national security. Early on in the war in Afghanistan, the United States became frustrated at how little actionable intelligence it received on the Taliban and especially on Al Qaeda. No wonder, given the reliance on technology in both the fighting and intelligence-gathering effort and the lack of human penetration into the places where information lay.

Consequently, the pressure for good information was ratcheted up in the realm of detention. Two tragically misbegotten tactics that were guaranteed to backfire emerged as a result of this pressure. First, the United States effectively decided to outsource the decision of whom to detain to the many-factioned Afghan population. By littering the countryside with leaflets offering huge bounties for the capture of "Al-Qaida and Taliban murderers," the United States assured itself that it would be provided with large numbers of innocents turned in purely for financial gain.⁸

8. See Mark Denbeaux et al., *Report on Guantanamo Detainees: A Profile of 517 Detainees Through Analysis of Department of Defense Data 23-25* (2006), available at http://law.shu.edu/news/guantanamo_report_final_2_08_06.pdf.

Psychological Operations (PsyOp)

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THIS IS ENOUGH MONEY TO TAKE CARE OF
YOUR FAMILY, YOUR VILLAGE, YOUR TRIBE
FOR THE REST OF YOUR LIFE -
PAY FOR LIVESTOCK AND DOCTORS
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ALL YOUR PEOPLE**

This, in turn, resulted in the detention of large numbers of persons with little or no intelligence value.⁹ For obvious reasons, interrogations of this population proved frustrating. But rather than conclude that further interrogations would reap diminishing returns, detaining authorities decided to increase the pressure on detainees to talk. Thus began the second misbegotten tactic: the move to “enhanced interrogation techniques”—a euphemism for torture.¹⁰

At this point, there should no longer be any need to prove that detainees were systematically tortured, despite the President’s hollow mantra that “we do not torture.”¹¹ However, denials of abuse persist. Several administration supporters have made the obligatory half-day personal visit to Guantanamo in their “investigation” of alleged abuses and pronounced the conditions there humane.¹² For this reason, it remains necessary to recount the evidence. Here is an account of detainee treatment at Guantanamo from an FBI agent:

On a couple of occasions, I entered interview rooms to find a detainee chained hand and foot in a fetal position to the floor, with no chair, food, or water. Most times they had urinated or defecated on themselves, and had been left there for 18, 24 hours or more. On one occasion, the air conditioning had been turned down so far and the temperature was so cold in the room that the barefooted detainee was shaking with cold. When I asked the MP’s [sic] what

9. See *id.* at 21-22. For example, many Chinese Uighur detainees have been cleared for release from Guantanamo, following the government’s failure to provide any evidence of their connection to the Taliban, Al Qaeda, or any entity hostile to the United States. *Id.*; see also William Glaberson, *Judge Orders 17 Detainees at Guantánamo Freed*, N.Y. TIMES, Oct. 8, 2008, available at <http://www.nytimes.com/2008/10/08/washington/08detain.html>. These Uighur men are reported to have been sold into detention by bounty-seekers for \$5000 per head. *The 7:30 Report: Chinese Muslims Stuck in Guantanamo Limbo* (Australian Broad. Corp. broadcast Jan. 17, 2006), available at <http://www.abc.net.au/7.30/content/2006/s1549632.htm>.

10. See, e.g., *Hearing on Annual Worldwide Threat Assessment Before the S. Select Comm. on Intelligence*, 110th Cong. 24 (2008) (statement of General Michael Hayden, Director, Central Intelligence Agency), available at http://www.dni.gov/testimonies/20080205_transcript.pdf.

11. *Bush: “We Do Not Torture” Terror Suspects*, MSNBC, Nov. 7, 2005, <http://www.msnbc.msn.com/id/9956644>.

12. David D. Kirkpatrick, *Senators Laud Treatment of Detainees in Guantánamo*, N.Y. TIMES, June 28, 2005, available at <http://www.nytimes.com/2005/06/28/politics/28gitmo.html>.

was going on, I was told that interrogators from the day prior had ordered this treatment, and the detainee was not to be moved. On another occasion, the A/C had been turned off, making the temperature in the unventilated room probably well over 100 degrees. The detainee was almost unconscious on the floor, with a pile of hair next to him. He had apparently been literally pulling his own hair out throughout the night. On another occasion, not only was the temperature unbearably hot, but extremely loud rap music was being played in the room, and had been since the day before, with the detainee chained hand and foot in the fetal position on the tile floor.¹³

Getting no information or bad information and making enemies of the very people the United States needed to befriend were not the only consequences of these practices. A number of CIA interrogators became increasingly concerned about the risk of following orders to commit war crimes.¹⁴ These interrogators were rightly concerned that their conduct could subject them to prosecution, either during this administration as scapegoats or in the future. Absent legal cover, the interrogators made their fears known and balked at torture.

The solution to this problem was obvious: issue legal memos from the Department of Justice confirming the President's authority to order torture. The purpose of these memos was not to justify an effective program, or even an ineffective program, but rather, to provide legal cover for worried interrogators. "If DoJ says it's legal, then even if they are wrong, I'm not guilty of a war crime since I have

13. CENTER FOR THE STUDIES OF HUMAN RIGHTS IN THE AMERICAS, TESTIMONIES OF FBI AGENTS 3, <http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project/testimonies/testimonies-of-fbi-agents>. "In response to a Freedom of Information Act request filed by the American Civil Liberties Union (ACLU) on October 7, 2003, the United States Government released documents detailing abuse of detainees held overseas. The documents filled more than 100,000 pages, many of them heavily redacted." *Id.* at 1; see also Josh Meyer, *FBI Works to Bolster Cases on Al Qaeda*, L.A. TIMES, Oct. 21, 2007, at A1, available at <http://articles.latimes.com/2007/oct/21/nation/na-terror21> ("Those guys were using techniques that we didn't even want to be in the room for," one senior federal law enforcement official said. "The CIA determined they were going to torture people, and we made the decision not to be involved.").

14. Joby Warrick, *CIA Tactics Endorsed in Secret Memos*, WASH. POST, Oct. 15, 2008, at A1, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/10/14/AR2008101403331.html>.

the defense of justifiable reliance on legal advice.” So if you read these memos and react with a “This is shocking! How can they say this?” you have missed the point. The authors’ mission was accomplished, not by being correct, but simply by being.

The President’s February 7, 2002, memo provided interrogators a second layer of insurance by denying that the Geneva Conventions applied to the detainees.¹⁵ The U.S. War Crimes Act generally applies only to violations against persons protected by the Geneva Conventions.¹⁶ Thus, if the victims are not protected by the Conventions, then the perpetrators are not guilty of war crimes, even if their techniques amount to torture! It is that simple.

Are these the sullen musings of a human rights advocate trying to attribute the worst possible motives to our leaders on mere speculation? No. Denying application of the Geneva Conventions to Guantanamo detainees in order to shield U.S. interrogators from war crimes liability is an unabashedly explicit motive, articulated in the advice given to the President just prior to the issuance of his February 7 memo.¹⁷

This is the purpose of the torture memos. This is the imperative for which 50 years of commitment to international human rights, 150 years of commitment to the international laws of war, and 200 years of commitment to the constitutional balance of powers were cast aside. The United States must retreat from the attractive nuisance that Mencken warned of: embracing simple solutions to complex problems. It is true that Al Qaeda detainees are not entitled to Prisoner of War (POW) status and it may be the case that Taliban detainees are also not entitled to POW status.¹⁸ But that is a far stretch from the

15. Memorandum for the Vice President et al., *supra* note 6 (“[N]one of the provisions of Geneva apply to our conflict with al Qaeda in Afghanistan or elsewhere throughout the world . . .”).

16. 18 U.S.C. § 2441(d) (2006).

17. *See, e.g.*, Letter from John Ashcroft, Att’y Gen., to President George W. Bush (Feb. 1, 2002), *available at* <http://news.findlaw.com/hdocs/docs/torture/jash20102ltr.html> (“Thus, a Presidential determination against treaty applicability would provide the highest assurance that no court would subsequently entertain charges that American military officers, intelligence officials, or law enforcement officials violated Geneva Convention rules relating to field conduct, detention conduct or interrogation of detainees. The War Crimes Act of 1996 makes violation of parts of the Geneva Convention a crime in the United States.”).

18. *See* Geneva Convention Relative to the Treatment of Prisoners of War art.

government's assertions that none of the laws of war or rules of human rights law apply to them.

In fact, there are three applicable and overlapping legal frameworks: IHL, international human rights law, and domestic law. All three legal frameworks apply to some extent in armed conflict. Within IHL, there is one set of rules for international armed conflict (IAC) and another, less comprehensive set for non-international armed conflict (NIAC).¹⁹ Consequently, there is greater application of human rights and domestic law in NIAC than in IAC situations. In non-armed conflict, IHL does not apply—only international human rights and domestic law apply.

War on terror detainees must be properly qualified into these categories to determine what rights they have to challenge detention and whether they are to face trials. But to determine what kind of

4, Aug. 12, 1949, 6 U.S.T. 3116, 75 U.N.T.S. 135 for the criteria for POW status.

19. Common Article 2 of the four Geneva Conventions (so-called because it is found in all four Conventions) governs international armed conflict—armed conflict between two or more parties to the Conventions. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field art. 2, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 [hereinafter First Geneva Convention]; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea art. 2, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85 [hereinafter Second Geneva Convention]; Geneva Convention Relative to the Treatment of Prisoners of War art. 2, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter Third Geneva Convention]; Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 2, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Fourth Geneva Convention]. Only one article, Common Article 3, addresses NIAC. First Geneva Convention, *supra*, art. 3; Second Geneva Convention, *supra*, art. 3; Third Geneva Convention, *supra*, art. 3; Fourth Geneva Convention, *supra*, art. 3. *See also* Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, *adopted* June 8, 1977, 16 I.L.M. 1391 (1977) (*entered into force* Dec. 7, 1979) [hereinafter Protocol I] (comprised of 102 articles and two annexes); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, *adopted* June 8, 1977, 16 I.L.M. 1442, 1125 U.N.T.S. 609 (1977) (*entered into force* Dec. 7, 1978) [hereinafter Protocol II] (comprised of twenty-eight articles and no annexes). “Although the U.S. is not party to Additional Protocol I, important segments of the Additional Protocol are widely regarded as customary international law.” Gabor Rona, *Legal Issues in the “War on Terrorism”—Reflecting on the Conversation between Silja N.U. Voneky and John Bellinger*, 9 GERMAN L.J. 711, 729 n.69 (2008), available at <http://www.germanlawjournal.com/print.php?id=963>.

treatment they are entitled to, detainees do not need to be pigeonholed at all. The legal frameworks are unanimous: all detainees are entitled to be treated humanely and no one falls between the cracks because there are no cracks. To get its way with detainees, the United States has run roughshod over the delicate fabric of international law. The United States claims the prerogatives of the laws of war even when it is not war, as evidenced by its literal use of the term war on terror and overly broad definition of enemy combatant.²⁰

As stated in the President's memo, when the United States is at war, it claims the detainees are not covered by the law even though they are.²¹ The United States also stakes out a lonely position that human rights law does not apply to its actions abroad.²² The extraterritorial application of human rights obligations is accepted by a broad spectrum and an overwhelming majority of international jurisprudence and scholarship.²³ By ignoring the weight of

20. U.S. District Judge Joyce Hens Green questions whether the term enemy combatant "cover[s] (and thus, permit[s] detention of) a little old lady in Switzerland who writes checks to what she thinks is a charity that helps orphans in Afghanistan but really is a front to finance al-Qaeda activities." Rona, *supra* note 19, at 727 (citing *In re Guantanamo Detainee Cases*, 355 F. Supp. 2d 443, 475 (D.D.C. 2005)). "She could," replied Deputy Associate Attorney General Brian Boyle. "Someone's intention is clearly not a factor that would disable detention." *Id.* (citing *Government Argues for Holding Detainees*, MSNBC, Dec. 1, 2004, <http://www.msnbc.msn.com/id/6631668/>). "Judge Green objected to such an expansive definition of enemy combatant which includes 'individuals who never committed a belligerent act or who never directly supported hostilities against the U.S. or its allies.'" *Id.* (citing *In re Guantanamo Detainee Cases*, 355 F. Supp. 2d at 475).

21. Memorandum for the Vice President et al., *supra* note 6.

22. See, e.g., Human Rights Comm., *Concluding Observations of the Human Rights Committee: United States of America*, ¶ 284, U.N. Doc. CCPR/C/79/Add.50, A/50/40 (Apr. 6, 1995) ("The Committee does not share the view expressed by the Government that the Covenant lacks extraterritorial reach under all circumstances. Such a view is contrary to the consistent interpretation of the Committee on this subject, that, in special circumstances, persons may fall under the subject-matter jurisdiction of a State party even when outside that State's territory.").

23. Protocol II to the Geneva Conventions recognizes the applicability of international human rights law in armed conflict: "[r]ecalling furthermore that international instruments relating to human rights offer a basic protection to the human person . . ." Protocol II, *supra* note 19, at preamble. Similarly, several international authorities on human rights support the continued application of human rights law in armed conflict: these include the International Court of Justice, the

international authority, actions such as enforced disappearance of persons into secret CIA detention camps and extrajudicial rendition of such individuals to countries notorious for torture become legal in the U.S. lexicon of international law. Human rights advocates welcomed the *Hamdan* Court's conclusion that Common Article 3 (CA 3) of the Geneva Conventions²⁴ requires humane treatment of detainees and did indeed apply to all Al Qaeda detainees.²⁵ It would have been better had the Court added that human rights treaty obligations, namely the International Covenant on Civil and Political Rights²⁶ and the Torture Convention,²⁷ require no less, thus ending the pretense that human rights law does not apply in war or beyond U.S. borders.

But even had the Court done so, the United States has a ready-to-wear fallback position. Whether or not human rights law applies, and even though CA 3 has been deemed to apply, the CIA's so-called enhanced interrogation techniques, including waterboarding, short shackling, extreme temperatures, sensory deprivation, isolation, use of dogs, and sleep deprivation, are all legal, according to official U.S.

Human Rights Committee, the Committee on Economic, Social, and Cultural Rights, the International Criminal Tribunal for the former Yugoslavia, and the Inter-American Commission on Human Rights. See *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226 (July 8); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136 (July 9); U.N. Human Rights Comm., *General Comment No. 29: States of Emergency (Article 4)*, ¶ 3, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (Aug. 31, 2001); U.N. Human Rights Comm., *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (Mar. 29, 2004); U.N. Econ. & Soc. Council, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, E/C.12/1/Add.69 (Aug. 31, 2001); *Prosecutor v. Furundzija*, Case No. IT-95-17/1-T, Judgment, ¶ 183 (Dec. 10, 1998); *Coard v. United States*, Case 10.951, Inter-Am. C.H.R., Report No. 109/99, OEA/Ser.L/V/II.106, doc. 6 rev. ¶ 38 (1999).

24. First Geneva Convention, *supra* note 19, art 3; Second Geneva Convention, *supra* note 19, art. 3; Third Geneva Convention, *supra* note 19, art. 3; Fourth Geneva Convention, *supra* note 19, art. 3.

25. *Hamdan v. Rumsfeld*, 548 U.S. 557, 629-32 (2006).

26. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), at 52, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966).

27. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, U.N. Doc. A/39/51 (Dec. 10, 1984).

doctrine. These techniques are legal because cruel, inhuman, and degrading treatment (CID) that falls short of torture (as these methods do, according to administration doctrine) is understood to encompass only conduct that violates the Fifth, Eighth, and Fourteenth Amendments of the U.S. Constitution.²⁸

Well, what is wrong with that? What is wrong is that the Fourteenth Amendment has no application to the conduct of federal authorities; the Eighth Amendment has no application to abuse that is not “punishment” (as in being sentenced to a whipping following a criminal conviction); and the Fifth Amendment prohibition against abuse of detainees is fluid, triggered only by conduct that “shocks the conscience.”²⁹ The government may assert that although pumping a drug suspect’s stomach may shock the conscience,³⁰ none of its

28. The Torture Convention prohibits both torture and “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture.” *Id.* part 1, art. 16. The United States made a reservation when ratifying the Torture Convention, stating that it understood the phrase “cruel, inhuman or degrading treatment or punishment” to mean conduct prohibited by the Fifth, Eighth, and Fourteenth Amendments. Office of the High Comm’r for Human Rights, Committee Against Torture: Declarations and Reservations, <http://www.unhchr.ch/html/menu2/6/cat/treaties/convention-reserv.htm>.

29. The Eighth Amendment bans cruel and unusual punishment. U.S. CONST. amend. VIII. The Fifth Amendment, as interpreted by the Supreme Court in *Rochin v. California*, bans official conduct that “shocks the conscience.” 342 U.S. 165, 172 (1953). The Fourteenth Amendment applies these two Amendments to the states. U.S. CONST. amend. XIV. Professor David Luban explains that “[the Justice Department’s Office of Legal Counsel] loopholed this definition of CID in two ways. First, it seized on the fact that the [Supreme] Court has held that the Fifth and Eighth Amendments apply only within U.S. territory. Ergo, nothing outside U.S. territory can possibly count as CID.” Posting of David Luban to Balkinization, <http://balkin.blogspot.com/2007/10/were-you-really-surprised.html> (Oct. 5, 2007, 11:23 EST). The second loophole stems from the government’s misguided interpretation of the Supreme Court’s statement that the “shocks the conscience” standard applies to “‘only the most egregious conduct,’ such as ‘conduct intended to injure in some way unjustifiable by any government interest.’” *Id.* (citing to Letter from William E. Moschella, Assistant Att’y Gen., to Patrick J. Leahy, U.S. Senator (Apr. 4, 2005), available at <http://www.scotusblog.com/movabletype/archives/CAT%20Article%2016.Leahy-Feinstein-Feingold%20Letters.pdf>). “Obviously, [in the government’s view] interrogation of detainees is justifiable by a government interest. If so, it doesn’t shock the conscience, doesn’t violate the Fifth Amendment, and therefore doesn’t count as cruel, inhuman or degrading.” Posting of David Luban to Balkinization, *supra*.

30. The “shocks the conscience” test was articulated in *Rochin*, where the

techniques shock the conscience when dealing with terrorist suspects. Thus, the “shocks the conscience” test becomes a hole that you can drive a CIA extraordinary rendition jet through and once again, after the administration’s lawyers have had their go, words become divorced from their ordinary meaning. What appears to be white is in fact black.

THE RIGHT TO CHALLENGE DETENTION

Another area where the United States has abused both IHL and international human rights law is in connection with the right to challenge detention. The United States correctly asserts the right to detain combatants for the duration of hostilities. But the United States has used an overly-broad definition of enemy combatant to include many individuals within its power. In fact, the laws of war cover detention without charge or trial of either combatants or civilians, but only in the case of armed conflict between states (international armed conflict) and as to civilians, only those who pose a serious security risk. In NIAC, IHL does not detail the rules for the right to detain.³¹ This is no accident. Fighters in NIAC do not enjoy a privilege of belligerency that applies to members of armed forces in wars between states. NIAC fighters are mere criminals under domestic law, and so, rules concerning their detention fall under domestic law, tempered by international human rights obligations. The United States recognizes no such distinctions, let alone the fact that not everything that is classified as part of the war on terror is governed by IHL.

After the Supreme Court in the *Hamdi* case expressed doubts about both the government’s definition of persons who are detainable³² and the process used to determine who to detain,³³ the

Court held that forcibly and involuntarily pumping the stomach of a drug suspect “shocks the conscience.” 342 U.S. 165, 172 (1953).

31. The Third and Fourth Geneva Conventions, which cover POWs and civilians in IAC, respectively, devote a large number of rules to detention, including detention without criminal charge or trial. Third Geneva Convention, *supra* note 19; Fourth Geneva Convention, *supra* note 19. The only provision of the Conventions applicable to NIAC, Common Article 3, makes no mention of detention. *See* First Geneva Convention, *supra* note 19, art. 3; Second Geneva Convention, *supra* note 19, art. 3; Third Geneva Convention, *supra* note 19, art. 3; Fourth Geneva Convention, *supra* note 19, art. 3.

32. *Hamdi v. Rumsfeld*, 542 U.S. 507, 516 (2004).

Pentagon instituted combatant status review tribunals (CSRTs) at Guantanamo—a smoke screen designed to create a patina of due process, in the hope that it would insulate the government from a court-ordered remedy.³⁴

To further insulate this charade, the administration, which knew exactly what it was doing, and a compliant Congress, many of whose members arguably did not, arranged for the appearance of adequate judicial review through the Detainee Treatment Act (DTA).³⁵ The DTA purports to have suspended the statutory right of habeas corpus for detainees and instead it created an appeal procedure that limits judicial inquiry to whether the procedures in any particular case were consistent with the rules for CSRTs and the U.S. Constitution.³⁶ We have already seen that the administration's concept of constitutional rights applicable to detainees is essentially devoid of content. In addition, no mention is made in the DTA of U.S. treaty obligations under the Geneva Conventions or the prohibitions against arbitrary detention contained in the International Covenant on Civil and Political Rights.³⁷ Thus, the exchange in the *Guantanamo Detainee Cases* in which the detainee could not defend himself because the tribunal could not even tell him the name of the alleged member of Al Qaeda with whom he is alleged to have associated,³⁸ would raise no specter of reversible error under the DTA. The Supreme Court recently considered this sad state of affairs in *Boumediene v. Bush*.³⁹

33. *Id.* at 537.

34. Detainees are given no meaningful opportunity to contest their designation, which is potentially based on coerced evidence and often based on secret evidence. *In re Guantanamo Detainee Cases*, 355 F. Supp. 2d 443, 468 (D.D.C. 2005). Such evidence is not only unavailable to the detainee, but may also be unknown to the hearing officers. For example, one detainee was denied access to the name of the Al Qaeda member he was allegedly associated with, because the hearing officer did not even know the name. *Id.* at 469 (“Detainee: Give me his name. Tribunal President: I do not know.”).

35. Detainee Treatment Act of 2005, Pub. L. No. 109-148, §§ 1001–06, 119 Stat. 2680, 2739-45 (2005), available at <http://thomas.loc.gov/cgi-bin/cpquery/T?&report=hr359&dbname=109&>.

36. *Id.* § 1005, 119 Stat. at 2740-44.

37. *See id.*

38. *In re Guantanamo Detainee Cases*, 355 F. Supp. 2d at 469.

39. *Boumediene v. Bush*, 128 S. Ct. 2229 (2008). The Court held in this case that the constitutional privilege of habeas corpus extends to a non-citizen, held beyond the territorial boundaries of the United States in a secure military prison over

THE RIGHT TO A FAIR TRIAL

Let us also talk about trials of detainees. You have probably already heard of the many ways that trials under the Military Commissions Act (MCA)⁴⁰ are unfair, including the possible use of secret evidence, torture-based evidence, non-confrontable hearsay, and the plain fact that the entire process is not independent, but highly tainted by political and command influence. Colonel Morris Davis, the former Chief Prosecutor and former supporter of military commissions, explained that in September 2006, Deputy Defense Secretary Gordon England discussed with him the “strategic political value” in charging some of the prisoners before the midterm elections.⁴¹ “Similarly, in January 2007, Pentagon General Counsel William J. Haynes II . . . telephoned Davis to prod him to charge David Hicks, apparently as a political accommodation to the Australian Prime Minister.”⁴² However, “[e]ven after Haynes was advised that this interference was improper, he again called Davis, suggesting that he charge other prisoners at the same time to avoid the impression that the charges were ‘a political solution to the Hicks case.’”⁴³ But let me concentrate on something else.

Omar Khadr, detained when he was fifteen, and who now is twenty-one after six years in Guantanamo, stands charged with murder and attempted murder in violation of the laws of war, conspiracy, material support for terrorism, and spying. In *Hamdan*, the Supreme Court expressed its doubts about conspiracy as a war crime.⁴⁴ Material support and spying are also not war crimes.⁴⁵ They can be

which the government has exclusive plenary control. *Id.* at 2262.

40. Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 (2006).

41. Josh White, *From Chief Prosecutor to Critic at Guantanamo*, WASH. POST, Apr. 29, 2008, at A1, available at http://www.washingtonpost.com/wp-dyn/content/article/2008/04/28/AR2008042802982_pf.html; Michael Melia, *Ex-Gitmo Prosecutor Alleges Politics*, USA TODAY, Apr. 28, 2008, available at http://www.usatoday.com/news/topstories/2008-04-28-3430213876_x.htm.

42. Marc Falkoff, *Politics at Guantanamo: The Former Chief Prosecutor Speaks*, JURIST LEGAL NEWS & RES., Nov. 2, 2007, <http://jurist.law.pitt.edu/forum/2007/11/politics-at-guantanamo-former-chief.php>.

43. *Id.*

44. *Hamdan v. Rumsfeld*, 548 U.S. 557, 601-02 (2006).

45. See 18 U.S.C. § 2441(c) (2008).

criminalized, and arguably have been by the MCA, but that statute cannot be used to prosecute conduct that predates the creation of such crimes. That is a violation of the most fundamental principle of international law relating to criminal responsibility: the principle of legality, in this case, as *ex post facto* prosecution.

Murder and attempted murder in violation of the laws of war are war crimes.⁴⁶ But Khadr is charged with killing a U.S. combatant and that is not a violation of the laws of war. The United States' theory for charging him with a war crime is that he is an "unlawful combatant." But unprivileged belligerency is not a violation of the laws of war. It is merely a disqualifier for POW status in international armed conflict. While such behavior can be criminalized in domestic law, it has not been criminalized, and even if it were, its application would also need to comply with *ex post facto* prohibitions.

What do the Geneva Conventions say about trials? Among other provisions, CA 3 requires adherence to "judicial guarantees which are recognized as indispensable by civilized peoples."⁴⁷ In fact, in international armed conflict subjecting a detainee to an unfair trial falls into the most severe category of war crimes: grave breaches.⁴⁸ That fact has not been lost on the drafters of the MCA. Like a child that denies stealing any cookies even before you had any reason to suspect him, the MCA defensively states as follows:

Sec. 948b. Military commissions generally

(f) Status of Commissions Under Common Article 3.—A military commission established under this chapter is a regularly constituted court, affording all the necessary "judicial guarantees which are recognized as indispensable by civilized peoples" for purposes of common Article 3 of the Geneva Conventions.

46. *Id.* § 2441(d)(1)(D).

47. First Geneva Convention, *supra* note 19, art. 3; Second Geneva Convention, *supra* note 19, art. 3; Third Geneva Convention, *supra* note 19, art. 3; Fourth Geneva Convention, *supra* note 19, art. 3.

48. Third Geneva Convention, *supra* note 19, art. 130 ("Grave breaches . . . [include] willfully depriving a prisoner of war of the rights of fair and regular trial . . ."); Fourth Geneva Convention, *supra* note 19, art. 147 ("Grave breaches . . . [include] willfully depriving a protected person of the rights of fair and regular trial . . .").

(g) Geneva Conventions Not Establishing Source of Rights.—No alien unlawful enemy combatant subject to trial by military commission under this chapter may invoke the Geneva Conventions as a source of rights.

Sec. 950p. Statement of substantive offenses

(a) Purpose.—The provisions of this subchapter codify offenses that have traditionally been triable by military commissions. This chapter does not establish new crimes that did not exist before its enactment, but rather codifies those crimes for trial by military commission.

(b) Effect.—Because the provisions of this subchapter (including provisions that incorporate definitions in other provisions of law) are declarative of existing law, they do not preclude trial for crimes that occurred before the date of the enactment of this chapter.⁴⁹

Just as the United States seems to believe saying “we don’t torture” proves that we do not torture, the MCA “proves” that military commissions under the MCA comply with the requirements of CA 3 and the crimes subject to Military Commission trials are long-standing violations of the laws of war because the MCA says so. But just in case that tactic fails, the MCA also prohibits detainees from asserting their rights under the Geneva Conventions!

In addition to creating military commissions to try “unlawful enemy combatants,” the MCA amends the U.S. War Crimes Act (WCA).⁵⁰ The old WCA included the crime of violating CA 3: “(c) Definition. As used in this section the term ‘war crime’ means any conduct . . . (3) which constitutes a violation of common Article 3 of the international conventions signed at Geneva, 12 August 1949”⁵¹ But, consider what the MCA did to the WCA:

(b) Revision to War Crimes Offense Under Federal Criminal Code.

(1) In general.—Section 2441 of title 18, United States Code, is amended—

(A) in subsection (c), by striking paragraph (3) and inserting the following new paragraph (3): “(3) which constitutes a grave breach

49. Military Commissions Act of 2006, Pub. L. No. 109-366, § 3, 120 Stat. 2600, 2602, 2624 (2006).

50. *Id.* § 6, 120 Stat. at 2633.

51. 18 U.S.C. § 2441(c)(3) (2008) (amended 2006).

of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not of an international character; or”;

(B) by adding at the end the following new subsection:

(d) Common Article 3 Violations.

(1) Prohibited Conduct.—In subsection (c)(3), the term “grave breach of common Article 3” means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949)⁵²

This new subsection goes on to state “prohibited conduct” includes: torture, cruel or inhumane treatment, biological experiments, murder, mutilation or maiming, intentionally causing serious bodily injury, rape, sexual assault or abuse, and taking hostages.⁵³

In a nutshell, the MCA repealed the WCA’s blanket prohibition of CA 3 violations and replaced it with a laundry list of “grave breaches” of CA 3. One purpose and effect of this change was to remove the CA 3 crime “passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.”⁵⁴ Why? Could it be because that crime is precisely what the United States fears it is committing by holding military commission trials pursuant to the MCA? This, too, is supported by a bizarre and defensive assertion that the MCA satisfies Geneva Convention obligations to criminalize the conduct prohibited by the MCA.⁵⁵ And in the event the victim of a violation should be

52. § 6, 120 Stat. at 2633.

53. *Id.* at 2633-34.

54. First Geneva Convention, *supra* note 19, art. 3; Second Geneva Convention, *supra* note 19, art. 3; Third Geneva Convention, *supra* note 19, art. 3; Fourth Geneva Convention, *supra* note 19, art. 3.

55. What the MCA should have been able to say, but obviously could not because it would have been false, is that it criminalizes conduct the Geneva Conventions require a party to criminalize. Instead, it gives the appearance of satisfying that obligation by suggesting the MCA criminalizes “grave breaches” of CA 3, as required by Article 129 of the Third Geneva Convention:

Sec. 6. Implementation of Treaty Obligations. (a) Implementation of Treaty Obligations . . . (2) Prohibition on grave breaches.—The provisions of section 2441 of title 18, United States Code, as amended by this section, fully satisfy the obligation under Article 129 of the Third Geneva

thinking about suing for habeas corpus relief or other relief in connection with their treatment, detention, or trial:

Sec. 5. Treaty Obligations Not Establishing Grounds for Certain Claims.

(a) In General.—No person may invoke the Geneva Conventions or any protocols thereto in any habeas corpus or other civil action or proceeding to which the United States, or a current or former officer, employee, member of the Armed Forces, or other agent of the United States is a party as a source of rights in any court of the United States or its States or territories.⁵⁶

CONCLUSION⁵⁷

Humanitarian law, human rights law, and the humanitarian purposes they are meant to serve have suffered since 9/11. The cause of this suffering can largely be laid to another irony. While the Nazis, Pol Pot, Slobodan Milosevic, and the Janjaweed may have the blood of millions on their hands, their brutality actually helped promote, crystallize, and expand the reach of human rights and humanitarian law, with the United States leading the charge. Their atrocities encouraged the establishment of new treaties, monitoring mechanisms, judicial bodies, and jurisprudence—an expanding web of international human rights protection and accountability.

Convention for the United States to provide effective penal sanctions for grave breaches which are encompassed in common Article 3 in the context of an armed conflict not of an international character. No foreign or international source of law shall supply a basis for a rule of decision in the courts of the United States in interpreting the prohibitions enumerated in subsection (d) of such section 2441.

§ 6, 120 Stat. at 2632. But Article 129 has no application to “armed conflict not of an international character” and CA 3 does not encompass, let alone mention, any grave breaches. This sleight of hand was evidently intended by the drafters to mask the fact that the former WCA did criminalize violations of CA 3, generally, while these amendments removed from the WCA certain CA 3 violations that the Americans were possibly committing.

56. *Id.* § 5, at 2631.

57. Portions of Conclusion reprinted with permission from the GERMAN LAW JOURNAL.

The United States is, both thankfully and regrettably, different. Thankfully, it has no Janjaweed, no Milosevic, no Pol Pot. And America takes pride in its adherence to the rule of law—but regrettably, not so much as to obey it. Rather, the lawyers serving the American leadership have constructed a house of cards in a Potemkin village of legalisms to convince Americans, if not themselves, that “enhanced interrogation techniques,” “extraordinary rendition,” secret detention, military commission trials, and the acceptance of “diplomatic assurances” from brutal states that they will not torture people America sends there to be detained and interrogated are perfectly consistent, thank you, with America’s international legal obligations. And though the “torture memos,” which counseled how the President can execute his constitutional duties by violating the Constitution have been rescinded (because they were leaked) secret memos continue to lurk. Attorney General Mukasey’s continued inability to say that waterboarding is torture is a virtual reprise of the Yoo/Bybee standard that is no standard.⁵⁸ Talk about lawfare!⁵⁹

There is one respect in which, contrary to Mencken’s admonition, the template for what the United States should do is simple, clear, and right. It is the Golden Rule: that we should do unto others as we would

58. See *supra* note 4.

59. The term “lawfare” has been used to criticize the invocation of legal mechanisms to assert rights relating to detention, treatment, and trial. See, e.g., David B. Rivkin, Jr. & Lee A. Casey, Opinion, *Lawfare*, WALL ST. J., Feb. 23, 2007, available at <http://online.wsj.com/article/SB117220137149816987.html> (“The term ‘lawfare’ describes the growing use of international law claims, usually factually or legally meritless, as a tool of war.”); John Yoo, *Terror Watch: Terror Suspects Are Waging “Lawfare” on U.S.* (Jan. 18, 2008), available at <http://asinthedaysofnoah.blogspot.com/2008/01/terror-watchterror-suspects-are-waging.html> (“‘Lawfare’ has become another dimension of warfare.”). These critics seem to posit that while the administration can and must assert the law in defense of its practices, others who do so thereby give aid and comfort to the enemy. They also assume that any legal challenge to practices that the administration considers to be in the context of the war on terror is lawfare, regardless of whether or not the specific case arises in a situation of armed conflict. A more nuanced analysis of the concept is offered by Major General Charles J. Dunlap, Jr. See Charles J. Dunlap, Jr., Deputy Judge Advocate Gen., U.S. Air Force, Keynote Address at the Field of National Security Law Conference of the American Bar Association: Lawfare and Warfare (Nov. 16, 2008), available at http://www.cspanarchives.org/library/index.php?main_page=product_video_info&products_id=202362-3.

have others do unto us. In fact, no one has ever said it more succinctly than my mentor, Columbia Law Professor Lou Henkin. The purpose of human rights law, he taught me, is to protect and promote human dignity. The governments, including the United States, that laboriously negotiated the details, including the Universal Declaration of Human Rights⁶⁰ and the International Covenant on Civil and Political Rights,⁶¹ surely understood that they were enhancing human security by establishing principles and rules to protect human dignity and liberty.

In regards to humanitarian law, its drafters also understood that, so long as war could not be abolished, it must be made as humane as possible, while preserving the right of states to use force in defense of their essential national interests. The organizing principle of IHL—the principle of distinction (combatants may be targeted, civilians who take no part in hostilities may not)—is at least as old as the chivalric codes of the Middle Ages.⁶² Christian theologians, including St. Augustine and Thomas Aquinas counseled that imposition of unnecessary suffering feeds the cycle of violence.⁶³ In the eighteenth and early nineteenth centuries, scholars and philosophers including Vattel, Rousseau, and Kant advocated these principles.⁶⁴ These concepts were not borne of pure charity toward the enemy, but rather, out of an expectation of reciprocity and of expedience in the service of national security. With this in mind, the international community began codifying laws of war a century and a half ago. In doing so, they also hit upon the notion of the famous Maartens Clause contained in the Preamble to the 1907 Hague Convention, which established that international humanitarian law could be based on customary as well as codified law:

60. G.A. Res. 217A (III), at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948).

61. G.A. Res. 2200A (XXI), at 52, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966).

62. David Bosco, *Moral Principle vs. Military Necessity*, AM. SCHOLAR, Winter 2008, available at <http://www.theamericanscholar.org/wi08/codes-bosco.html>.

63. *Id.*

64. *Id.*

Until a more complete code of the laws of war has been issued, the high contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and dictates of the public conscience.⁶⁵

There is a straight line from the Maartens Clause to the observation in the International Committee of the Red Cross's respected Commentary to the Geneva Conventions "that the Conventions deal with superior interests—the safeguarding of the lives and dignity of human beings"⁶⁶ It is in the service of these "superior interests" that the application and rules of the laws of armed conflict must be interpreted.

The theme of good faith in interpretation of treaties in accordance with their purposes runs from the Vienna Conventions⁶⁷ to the recent U.S. Counterinsurgency Manuals⁶⁸ accompanying Rule of Law Handbook:

in light of the need to establish legitimacy of the rule of law among the host nation's populace, conduct by U.S. forces that would be questionable under any mainstream interpretation of international human rights law is unlikely to have a place in rule of law operations.⁶⁹

This is wise counsel, consistent with a tradition of construing international human rights and humanitarian law obligations in the

65. 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land, Preamble (*reprinted* in ADAM ROBERTS & RICHARD GUELFF, DOCUMENTS ON THE LAWS OF WAR 70 (3d ed. 2000)).

66. Jean S. Pictet, *Introduction* to COMMENTARY ON THE GENEVA CONVENTIONS OF 12 AUGUST 1949, at 12 (1952).

67. Vienna Convention on the Law of Treaties art. 26, Jan. 27, 1980, 1155 U.N.T.S. 331 ("Pacta sunt servanda": Every treaty in force is binding upon the parties to it and must be performed by them in good faith.').

68. U.S. ARMY AND MARINE CORPS, COUNTERINSURGENCY FIELD MANUAL (U.S. Army Field Manual No. 3-24; Marine Corps Warfighting Publication No. 3-33.5) (2007)).

69. RULE OF LAW HANDBOOK: A PRACTITIONER'S GUIDE FOR JUDGE ADVOCATES (Vasilios Tasikas, Thomas B. Nachbar & Charles R. Oleszycki, eds., 2007).

light most favorable to the interests of human dignity, and thus, human security.

With these reminders of the purposes of human rights and humanitarian law in mind, and further, considering the interpretive bias toward protection of individual rights and dignity that they are meant to suggest, it is obvious that the effort to combat terrorism would be well served by the United States' return to mainstream concepts of applicable international law. Here are three things that the United States can do to that end:

- For people detained outside of armed conflict: Stop using the term “combatant” and stop asserting application of IHL. Reform legal procedures so that the power to detain, the right to challenge detention, and trial procedures comport with the requirements of international human rights law, including the right to habeas corpus.
- For people detained in international armed conflict: Reform legal procedures so that entitlement to POW status and civilian status might be determined in appropriate cases and so that trial procedures are consistent with applicable requirements of IHL. Restrict the use of the term “combatant” to persons entitled to POW status.
- For people detained in non-international armed conflict: Reform legal procedures so that the power to detain, the right to challenge detention, and trial procedures comport with the requirements of applicable IHL and international human rights law, including the right to habeas corpus. Stop using the term “combatant” to describe persons in this category.

We, at Human Rights First, are in the process of drafting detailed “Blueprints” for the next administration, spelling out step-by-step ways for the United States to reform its detainee laws and practices. These Blueprints include practical guidelines to put an end to torture, ill-treatment, arbitrary detention, and unfair trials and thereby, return the United States to the fold of nations that respect and implement their international legal obligations.⁷⁰ By honoring its international humanitarian law and human rights law commitments, the United States will not only improve its tarnished reputation in the realm of human rights, it will also thereby complement its efforts to improve national security and re-establish its ability to advocate for respect for the rule of law elsewhere.

70. These Blueprints are available at <http://www.humanrightsfirst.org>.