

Comparing Obama and Bush on Civil Liberties and War

by Ivan Eland

Documents found in the files of Muammar Gadhafi's intelligence services in Libya, which indicated that the now overthrown dictator cooperated closely with U.S. rendition of terrorist suspects to his torture chambers, should prompt questions about how much President Barack Obama has improved civil liberties from the bad old days of George W. Bush. Answer: not much.

Obama's first promise in office was to close the infamous and torture-tainted U.S. military prison at Guantanamo within a year, which he abysmally failed to do. Granted, the Republican Congress has blocked the transfer of prisoners from the offshore facility to mainland civilian courts, but Obama, despite his prominent pledge, has failed to make the issue a top priority. The main reason he hasn't is because politicians of all political stripes read public opinion polls indicating that the American people would rather be safe than free. The politicians should not be surprised by this outcome, because it is they who have scared Americans into preferring "security" at the expense of civil liberties.

So "cleaned up," but still kangaroo, military tribunals will continue to be held at Guantanamo for terrorism suspects. And those are the lucky prisoners; others will be held behind bars without a trial or other rights indefinitely in the perpetual "war on terror" (regardless of whether Obama calls it that or not)—a violation of the constitutionally guaranteed doctrine of habeas corpus.

Also, Obama dramatically ended the torture of U.S.-held prisoners but left a loophole for rendering such prisoners to foreign lands under special circumstances. Since Obama has been reluctant to investigate the horrendous torture and abuse during the Bush administration, a skeptic might wonder whether he is afraid of similar future investigations of his administration for torture in foreign lands under the rendition loophole.

Although assassinations by the CIA are still prohibited by executive order, this has allowed the U.S. military to gobble up the hamstrung intelligence agency's turf. The military's Joint Special Operations Command can carry out targeted killings of even U.S. citizens on the mere suspicion that they might be involved in terrorism. This is even wider latitude than the government is given to spy on U.S. citizens, which itself has been much loosened by Congress after 9/11. More generally, unconstitutional warrantless government searches have been expanded.

And a U.S. resident was recently charged using the now much more widely used and abused "provision of material support for a terrorist group." His alleged crime: making a video advertising the Pakistani-based group Lashkar-e-Taiba and showing photos of a detainee at Abu Ghraib prison in Iraq and a naked U.S. prisoner in a defensive position before American soldiers. Although Lashkar-e-Taiba is on the U.S. terrorism list, like many of the groups on that list, it doesn't focus attacks on the United States.

Lastly, U.S. law enforcement agencies have misused the detention of “material witnesses” provision by turning it into a scheme of preventive detention, which Congress has rejected. The law was set up to prevent key witnesses from fleeing before a trial, but in the war on terror, it has morphed into a way to hold alleged terrorists that the authorities have insufficient evidence to charge with a crime.

But haven't all of these measures made us safer from terrorism? After all, many people point out that we have not had another cataclysmic terrorist attack since 9/11. Then again, terrorism was very rare in North America before 9/11. North America, of all continents in the world, because of its political stability, regularly had the fewest attacks. So saying that we've returned to normalcy after an abnormally lucky (for the terrorists, not for the victims) and sneaky attack says nothing about the effectiveness of the aforementioned liberty-robbing government muscle-flexing.

In fact, even after 9/11, the calculated chance of an American ever being killed by an international terrorist is very remote—one in 80,000 (even this may be high). Thus, perhaps citizens should be more scared of the certainty of their government's unnecessarily draconian measures to “prevent” any such attacks. And if Americans want to improve those odds, instead of being scared into allowing politicians to take away their liberties, they should pressure them to remove the source of the anti-U.S. terrorists' fury: constant meddling and military interventions in Islamic lands. Some U.S. interventions may even be popular in a particular Muslim country, such as Libya, but polls indicate that U.S. foreign policy is even less popular in Islamic countries than it was at the end of the Bush administration—continuing to provide a rich incubator for anti-U.S. terrorism. Thus, Obama's war on terror, expanded from even the aggressive Bush efforts, may in the long run be as counterproductive to the republic as his Bush Lite usurpation of civil liberties.

Ivan Eland is Senior Fellow and Director of the [Center on Peace & Liberty](#) at [The Independent Institute](#). Dr. Eland is a graduate of Iowa State University and received an M.B.A. in applied economics and Ph.D. in national security policy from George Washington University. He has been Director of Defense Policy Studies at the Cato Institute, and he spent 15 years working for Congress on national security issues, including stints as an investigator for the House Foreign Affairs Committee and Principal Defense Analyst at the Congressional Budget Office. He is author of the books [Partitioning for Peace: An Exit Strategy for Iraq](#), and [Recarving Rushmore](#).